Professional Standards

Chartered Accountants Ireland

Code of Ethics

Part 1 to 4 of the Code of Ethics - Effective date 1 March 2020, Updated 1 December 2020

Parts 1 to 4 of this Code of Ethics applies from 1 March 2020. For projects or engagements commencing prior to that date, previous requirements and guidance (as set out in the Code of Ethics effective from 30 September 2016 until 29 February 2020) may be applied up to completion of the project or engagement.

Except as noted in section 1, this Code of Ethics has been derived from the International Ethics Standards Board of Accountants ('IESBA') Code of Ethics issued in July 2018. In parts 1 to 4 of this Code of Ethics, wording in italics is additional discussion and/or requirements which have been considered by Chartered Accountants Ireland to be useful or necessary. The fact that wording is or is not in italics does not indicate any differences in the degree of importance that shall be attached to it.

Underlined words in parts 1 to 4 are defined or explained further in the Glossary to parts 1 to 4.

Part 5 of the Code of Ethics (insolvency practitioners) – Effective date 8 June 2020
Part 5 of the Code of Ethics applies from 8 June 2020. Part 5 of the Code of Ethics sets out the obligations of insolvency practitioners to meet the ethical requirements expected of them.

Underlined words in part 5 are defined or explained further in the definitions and interpretations section of part 5.

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GUIDE TO THE CODE

The Guide to the Code does not form part of the Code, but provides explanatory guidance on how the Code is to be applied.

Purpose of the Code

1. *The Chartered Accountants Ireland ('Institute') Code of Ethics ('the Code') is based on* the 'International Code of Ethics for Professional Accountants (including International Independence Standards)'. It sets out fundamental principles of ethics for professional accountants, reflecting the profession's recognition of its public interest responsibility. These principles establish the standard of behaviour expected of a professional accountant. The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

2. The Code provides a conceptual framework that professional accountants are to apply in order to identify, evaluate and address threats to compliance with the fundamental principles. The Code sets out requirements and application material on various topics to help accountants apply the conceptual framework to those topics.

3. In the case of audits, reviews and other assurance engagements, the Code sets out 'International Independence Standards', established by the application of the conceptual framework to threats to independence in relation to these engagements.

3a. See Section 400.0 for guidance on which auditor independence standards to apply in particular circumstances.

How the Code is Structured

4. The Code contains the following material:

- Part 1 – 'Complying with the Code, Fundamental Principles and Conceptual Framework', which includes the fundamental principles and the conceptual framework and is applicable to all professional accountants.
- Part 2 – 'Professional Accountants in Business', which sets out additional material that applies to professional accountants in business when performing professional activities. Professional accountants in business include professional accountants employed, engaged or contracted in an executive or non-executive capacity in, for example:
    - Commerce, industry or service.
    - The public sector.
    - Education.
    - The not-for-profit sector.
    - Regulatory or professional bodies.

  Part 2 is also applicable to individuals who are professional accountants in public practice when performing professional activities pursuant to their relationship with the firm, whether as a contractor, employee or owner.
- Part 3 – 'Professional Accountants in Public Practice', which sets out additional material that applies to professional accountants in public practice when providing professional services.

  Part 3 is also applicable to professional accountants in business when providing professional services.
- 'International Independence Standards', which sets out additional material that applies to professional accountants in public practice when providing assurance services, as follows:
    - Part 4A – 'Independence for Audit and Review Engagements', which applies when performing audit or review engagements.

- Part 4B – 'Independence for Assurance Engagements Other than Audit and Review Engagements', which applies when performing assurance engagements that are not audit or review engagements.

- Glossary, which contains defined terms (together with additional explanations where appropriate) and described terms which have a specific meaning in certain parts of the Code. For example, as noted in the Glossary, in Part 4A, the term "audit engagement" applies equally to both audit and review engagements. The Glossary also includes lists of abbreviations that are used in the Code and other standards to which the Code refers.

  Underlined words are defined or explained further in the Glossary.

- *Part 5 – 'Insolvency practitioners', which applies when performing insolvency or similar engagements.*

5. The Code contains sections which address specific topics. Some sections contain subsections dealing with specific aspects of those topics. Each section of the Code is structured, where appropriate, as follows:

   - Introduction – sets out the subject matter addressed within the section, and introduces the requirements and application material in the context of the conceptual framework. Introductory material contains information, including an explanation of terms used, which is important to the understanding and application of each Part and its sections.

   - Requirements – establish general and specific obligations with respect to the subject matter addressed.

   - Application material – provides context, explanations, suggestions for actions or matters to consider, illustrations and other guidance to assist in complying with the requirements.

How to Use the Code

The Fundamental Principles, Independence and Conceptual Framework

6. The Code requires professional accountants to comply with the fundamental principles of ethics. The Code also requires them to apply the conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles. Applying the conceptual framework requires exercising professional judgment, remaining alert for new information and to changes in facts and circumstances, and using the reasonable and informed third party test.

7. The conceptual framework recognises that the existence of conditions, policies and procedures established by the profession, legislation, regulation, the firm, or the employing organization might impact the identification of threats. Those conditions, policies and procedures might also be a relevant factor in the professional accountant's evaluation of whether a threat is at an acceptable level. When threats are not at an acceptable level, the conceptual framework requires the accountant to address those threats. Applying safeguards is one way that threats might be addressed. Safeguards are actions individually or in combination that the accountant takes that effectively reduce threats to an acceptable level.

8. In addition, the Code requires professional accountants to be independent when performing audit, review and other assurance engagements. The conceptual framework applies in the same way to identifying, evaluating and addressing threats to independence as to threats to compliance with the fundamental principles.

9. Complying with the Code requires knowing, understanding and applying:

   - All of the relevant provisions of a particular section in the context of Part 1, together with the additional material set out in Sections 200, 300, 400, 900 and Part 5, as applicable.

   - All of the relevant provisions of a particular section, for example, applying the provisions that are set out under the subheadings titled "General" and "All Audit Clients" together with additional specific provisions, including those set out under the subheadings titled "Audit Clients that are not Public Interest Entities" or "Audit Clients that are Public Interest Entities."

- All of the relevant provisions set out in a particular section together with any additional provisions set out in any relevant subsection.

Requirements and Application Material

10. Requirements and application material are to be read and applied with the objective of complying with the fundamental principles, applying the conceptual framework and, when performing audit, review and other assurance engagements, being independent.

Requirements

11. Requirements are designated with the letter "R" and, in most cases, include the word "shall." The word "shall" in the Code imposes an obligation on a professional accountant or firm to comply with the specific provision in which "shall" has been used.

12. In some situations, the Code provides a specific exception to a requirement. In such a situation, the provision is designated with the letter "R" but uses "may" or conditional wording.

13. When the word "may" is used in the Code, it denotes permission to take a particular action in certain circumstances, including as an exception to a requirement. It is not used to denote possibility.

14. When the word "might" is used in the Code, it denotes the possibility of a matter arising, an event occurring or a course of action being taken. The term does not ascribe any particular level of possibility or likelihood when used in conjunction with a threat, as the evaluation of the level of a threat depends on the facts and circumstances of any particular matter, event or course of action.

Application Material

15. In addition to requirements, the Code contains application material that provides context relevant to a proper understanding of the Code. In particular, the application material is intended to help a professional accountant to understand how to apply the conceptual framework to a particular set of circumstances and to understand and comply with a specific requirement. While such application material does not of itself impose a requirement, consideration of the material is necessary to the proper application of the requirements of the Code, including application of the conceptual framework. Application material is designated with the letter "A."

16. Where application material includes lists of examples, these lists are not intended to be exhaustive.

Note:

Professional accountants who are in doubt as to their ethical position may seek guidance from the Institute's Ethics Resource Centre (www.charteredaccountants.ie/ethics), available to all members of the Institute, which contains news updates in relation to professional and business ethics as well as guidance and reference material and a number of supports to assist members.

CODE OF ETHICS

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SECTION 1

SCOPE AND AUTHORITY

(This Code of Ethics applies from 1 March 2020. Where guidance relates to projects or engagements commencing prior to that date, previous requirements and guidance may be applied up to completion of the project or engagement.)

Introduction

1.1 *One of the principal objects of the Royal Charter is to maintain a high standard of efficiency and professional conduct by members of Chartered Accountants Ireland ('the Institute') . The Code of Ethics ('the Code') applies to all members of the Institute (which for the purposes of the Code also includes affiliates, students and employees of a member firm or an affiliate) and member firms where relevant. These are referred to in the remainder of the Code as professional accountants.*

Scope

R1.2 ***Professional accountants shall follow the guidance contained in the fundamental principles and specific requirements of the Code in all of their professional and business activities whether carried out with or without reward and in other circumstances where to fail to do so would bring discredit to the profession.***

1.2A1 *For convenience, the illustrations in the Code are grouped into parts applicable to professional accountants working in different spheres of activity. However, the specific requirements in any section, apply where circumstances are the same as, or analogous to, those addressed by those requirements.*

1.2A2 *Failure to follow such the specific requirements may be justified in those rare circumstances where to follow a precise prohibition or mandated action would result in failure to adhere to the fundamental principles.*

R1.3 ***Professional accountants shall be guided not merely by the terms but also by the spirit of the Code and the fact that particular conduct does not appear among a list of examples does not prevent it amounting to misconduct.***

R1.4 ***Professional accountants shall ensure that work for which they are responsible, which is undertaken by others on their behalf, is carried out in accordance with the requirements of this Code.***

1.4A1 *Member firms are reminded that this Code applies to their employees, whether members or not, and that they are responsible for applying this requirement.*

Authority

1.5A1 *Failure to follow this Code may lead to a professional accountant becoming liable to disciplinary action as outlined in the Institute's Disciplinary Bye-laws.*

1.5A2 *In determining whether or not a complaint is proved, the Investigation and Disciplinary Committees may have regard to any code of practice, ethical or technical, and to any regulations affecting professional accountants.*

1.5A3 *Paragraph R120.3 requires professional accountants to apply the conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles. In the event of a complaint, the Investigation and Disciplinary Committees will consider the matter, including whether a reasonable and informed third party would conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is compromised.*

Relationship with other requirements

1.6A1 *Except as noted below, the Code has been derived from the International Ethics Standards Board of Accountants ('IESBA') Code of Ethics issued in July 2018. Accordingly, compliance with the remainder of the Code will ensure compliance with the principles of the IESBA Code. Paragraph numbering in the rest of this Code replicates that used in the IESBA Code of Ethics, except in respect of:*

- *Sections 1, 331 and Part 5 which have no direct equivalent in the IESBA Code of Ethics; and*
- *Wording in italics in the other sections, where additional discussion and/or requirements have been considered by the Institute to be useful or necessary. The fact that wording is or is not in italics does not indicate any differences in the degree of importance that shall be attached to it.*

1.6A2 *In accordance with legislative requirements, the Institute has adopted, as regards auditor independence requirements, the Ethical Standard for Auditors (Ireland), issued by the Irish Auditing and Accounting Supervisory Authority ('IAASA') and the Ethical Standard for Auditors, issued by the Financial Reporting Council ('FRC'). Therefore, rather than the detailed provisions of part 4A of the Code, when conducting audit engagements in accordance with ISAs (Ireland), professional accountants shall comply with the requirements of IAASA's Ethical Standard for Auditors (Ireland), and when conducting audit engagements in accordance with ISAs (UK), professional accountants shall comply with the requirements of the FRC's Ethical Standard for Auditors. For other audit and assurance engagements part 4A may apply. This is explained in further detail in section 400.*

1.6A3 *Certain areas of work are reserved by statute to particular regulated individuals and firms, namely investment business, insolvency and audit. In these areas professional accountants may be subject to rules laid down by laws and regulation, breach of which can give rise to disciplinary proceedings against the professional accountant.*

1.6A4 *If the requirements in the Code conflict with relevant laws and regulations, professional accountants are bound to follow the laws and regulations.*

Sources of Guidance

1.7A1 *Professional accountants who are in doubt as to their ethical position may seek advice from from the Institute's Ethics Resource Centre (*www.charteredaccountants.ie/ethics*), available to all members of the Institute, which contains news updates in relation to professional and business ethics as well as guidance and reference material and a number of supports to assist members.*

1.7A2 *Seeking advice from the Institute does not discharge a professional accountant's duty to report misconduct, including their own misconduct.*

1.7A3 *A professional accountant is encouraged to consider taking legal advice to resolve issues arising from the application of laws and regulations to particular situations relating to confidentiality, disclosure, privilege, self-incrimination and other areas.*

Additional information on ethics, including case studies, is available at https://www.charteredaccountants.ie/Ethics/Home

COMPLYING WITH THE CODE

General

100.1 A1 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. A professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employing organization. Therefore, the Code contains requirements and application material to enable professional accountants to meet their responsibility to act in the public interest.

100.2 A1 The requirements in the Code, designated with the letter "R," impose obligations.

100.2 A2 Application material, designated with the letter "A," provides context, explanations, suggestions for actions or matters to consider, illustrations and other guidance relevant to a proper understanding of the Code. In particular, the application material is intended to help a professional accountant to understand how to apply the conceptual framework to a particular set of circumstances and to understand and comply with a specific requirement. While such application material does not of itself impose a requirement, consideration of the material is necessary to the proper application of the requirements of the Code, including application of the conceptual framework.

R100.3 A professional accountant shall comply with the Code. There might be circumstances where laws or regulations preclude an accountant from complying with certain parts of the Code. In such circumstances, those laws and regulations prevail, and the accountant shall comply with all other parts of the Code.

100.3 A1 The principle of professional behaviour requires a professional accountant to comply with relevant laws and regulations. Some jurisdictions might have provisions that differ from or go beyond those set out in the Code. Accountants in those jurisdictions need to be aware of those differences and comply with the more stringent provisions unless prohibited by law or regulation.

100.3 A2 A professional accountant might encounter unusual circumstances in which the accountant believes that the result of applying a specific requirement of the Code would be disproportionate or might not be in the public interest. In those circumstances, the accountant is encouraged to consult with a professional or regulatory body.

Breaches of the Code

R100.4 Paragraphs R400.80 to R400.89 and R900.50 to R900.55 address a breach of International Independence Standards. A professional accountant who identifies a breach of any other provision of the Code shall evaluate the significance of the breach and its impact on the accountant's ability to comply with the fundamental principles. The accountant shall also:

(a) Take whatever actions might be available, as soon as possible, to address the consequences of the breach satisfactorily; and

(b) Determine whether to report the breach to the relevant parties.

100.4 A1 Relevant parties to whom such a breach might be reported include those who might have been affected by it, a professional or regulatory body or an oversight authority.

THE FUNDAMENTAL PRINCIPLES

General

110.1 A1 There are five fundamental principles of ethics for professional accountants:

(a) Integrity – to be straightforward and honest in all professional and business relationships.

(b) Objectivity – not to compromise professional or business judgments because of bias, conflict of interest or undue influence of others.

(c) Professional Competence and Due Care – to:

(i) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and

(ii) Act diligently and in accordance with applicable technical and professional standards.

(d) Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships.

(e) Professional Behaviour – to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.

R110.2 A professional accountant shall comply with each of the fundamental principles.

110.2 A1 The fundamental principles of ethics establish the standard of behaviour expected of a professional accountant. The conceptual framework establishes the approach which an accountant is required to apply to assist in complying with those fundamental principles. Subsections 111 to 115 set out requirements and application material related to each of the fundamental principles.

110.2 A2 A professional accountant might face a situation in which complying with one fundamental principle conflicts with complying with one or more other fundamental principles. In such a situation, the accountant might consider consulting, on an anonymous basis if necessary, with:

- Others within the firm or employing organisation.
- Those charged with governance.
- A professional body.
- A regulatory body.
- Legal counsel.

However, such consultation does not relieve the accountant from the responsibility to exercise professional judgment to resolve the conflict or, if necessary, and unless prohibited by law or regulation, disassociate from the matter creating the conflict.

110.2 A3 The professional accountant is encouraged to document the substance of the issue, the details of any discussions, the decisions made and the rationale for those decisions.

SUBSECTION 111 – INTEGRITY

R111.1 **A professional accountant shall comply with the principle of integrity, which requires an accountant to be straightforward and honest in all professional and business relationships.**

111.1 A1 Integrity implies fair dealing and truthfulness.

R111.2 **A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:**

(a) Contains a materially false or misleading statement;

(b) Contains statements or information provided recklessly; or

(c) Omits or obscures required information where such omission or obscurity would be misleading.

111.2 A1 If a professional accountant provides a modified report in respect of such a report, return, communication or other information, the accountant is not in breach of paragraph R111.2.

R111.3 **When a professional accountant becomes aware of having been associated with information described in paragraph R111.2, the accountant shall take steps to be disassociated from that information**.

SUBSECTION 112 – OBJECTIVITY

R112.1 **A professional accountant shall comply with the principle of objectivity, which requires an accountant not to compromise professional or business judgment because of bias, conflict of interest or undue influence of others.**

112.1 A1 *Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other*.

R112.2 **A professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influences the accountant's professional judgment regarding that activity.**

SUBSECTION 113 – PROFESSIONAL COMPETENCE AND DUE CARE

R113.1 **A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to:**

(a) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and

(b) Act diligently and in accordance with applicable technical and professional standards.

113.1 A1 Serving clients and employing organisations with professional competence requires the exercise of sound judgment in applying professional knowledge and skill when undertaking professional activities.

113.1 A2 Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment

113.1 A3 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

R113.2 **In complying with the principle of professional competence and due care, a professional accountant shall take reasonable steps to ensure that those working in a professional capacity under the accountant's authority have appropriate training and supervision.**

R113.3 **Where appropriate, a professional accountant shall make clients, the employing organisation, or other users of the accountant's professional services or activities, aware of the limitations inherent in the services or activities.**

SUBSECTION 114 – CONFIDENTIALITY

114.0 A1 *The principle of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Whether information is confidential or not will depend on its nature. A safe and proper approach for professional accountants to adopt is to assume that all unpublished information about a client's or employer's affairs, however gained, is confidential. Some clients or employers may regard the mere fact of their relationship with a professional accountant as being confidential.*

R114.1 **A professional accountant shall comply with the principle of confidentiality, which requires an accountant to respect the confidentiality of information acquired as a result of professional and business relationships. An accountant shall:**

(a) **Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member;**

(b) **Maintain confidentiality of information within the firm or employing organisation;**

(c) **Maintain confidentiality of information disclosed by a prospective client or employing organisation;**

(d) **Not disclose confidential information acquired as a result of professional and business relationships outside the firm or employing organisation without proper and specific authority, unless there is a legal or professional duty or right to disclose;**

(e) **Not use confidential information acquired as a result of professional and business relationships for the personal advantage of the accountant or for the advantage of a third party;**

(f) **Not use or disclose any confidential information, either acquired or received as a result of a professional or business relationship, after that relationship has ended; and**

(g) **Take reasonable steps to ensure that personnel under the accountant's control, and individuals from whom advice and assistance are obtained, respect the accountant's duty of confidentiality.**

114.1 A1 Confidentiality serves the public interest because it facilitates the free flow of information from the professional accountant's client or employing organisation to the accountant in the knowledge that the information will not be disclosed to a third party. Nevertheless, the following are circumstances where professional accountants are or might be required to disclose confidential information or when such disclosure might be appropriate:

(a) Disclosure is required by law, for example:

(i) Production of documents or other provision of evidence in the course of legal proceedings; or

(ii) Disclosure to the appropriate public authorities of infringements of the law that come to light;

(b) Disclosure is permitted by law and is authorised by the client or the employing organisation; and

(c) There is a professional duty or right to disclose, when not prohibited by law:

(i) To comply with the quality review of a professional body;

(ii) To respond to an inquiry or investigation by a professional or regulatory body;

(iii) To protect the professional interests of a professional accountant in legal proceedings; or

(iv) To comply with technical and professional standards, including ethics requirements.

114.1 A2 In deciding whether to disclose confidential information, factors to consider, depending on the circumstances, include:

- Whether the interests of any parties, including third parties whose interests might be affected, could be harmed if the client or employing organisation consents to the disclosure of information by the professional accountant.
- Whether all the relevant information is known and substantiated, to the extent practicable. Factors affecting the decision to disclose include:
  - Unsubstantiated facts.
  - Incomplete information.
  - Unsubstantiated conclusions.
- The proposed type of communication, and to whom it is addressed.
- Whether the parties to whom the communication is addressed are appropriate recipients.

R114.2 **A professional accountant shall continue to comply with the principle of confidentiality even after the end of the relationship between the accountant and a client or employing organisation. When changing employment or acquiring a new client, the accountant is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship.**

114.2 A1 *This requirement extends not only to clients, past and present, but also to third parties from or about whom information has been received in confidence. The principle of confidentiality clearly does not prevent an employee from using the skills acquired while working with a former employer in undertaking a new role with a different organisation. It would not be appropriate for professional accountants to either use or appear to use special knowledge which could only have been acquired with access to confidential information. It is a matter of judgment as to the dividing line which separates experience gained from special knowledge acquired.*

Note:

*Additional information on confidentiality is available in a helpsheet at the Institute's Ethics Resource Centre (*www.charteredaccountants.ie/ethics*)*

SUBSECTION 115 – PROFESSIONAL BEHAVIOUR

R115.1 **A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to comply with relevant laws and regulations and avoid any conduct that the accountant knows or should know might discredit the profession. A professional accountant shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles.**

115.1 A1 Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

115.1 A2 *The concept of professional behaviour implies that it is appropriate for professional accountants to conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.*

R115.2 **When undertaking marketing or promotional activities, a professional accountant shall not bring the profession into disrepute. A professional accountant shall be honest and truthful and shall not make:**

(a) Exaggerated claims for the services offered by, or the qualifications or experience of, the accountant; or

(b) Disparaging references or unsubstantiated comparisons to the work of others.

115.2 A1 If a professional accountant is in doubt about whether a form of advertising or marketing is appropriate, the accountant is encouraged to consult with the relevant professional body.

R115.3 ***Professional accountants shall never promote or seek to promote their services, or the services of other professional accountants, in such a way, or to such an extent, as to amount to harassment of a potential client or employer.***

Note:

Additional information on ethical decision making and conflict resolution can be found https://www.charteredaccountants.ie/docs/default-source/dept-professional-standards-(psd)/news/29-framework-for-ethical-decision-making.pdf?sfvrsn=4

*Additional information on marketing is available in a helpsheet at the Institute's Ethics Resource Centre (*www.charteredaccountants.ie/ethics*)*

SECTION 120
THE CONCEPTUAL FRAMEWORK

Introduction

120.1 The circumstances in which professional accountants operate might create threats to compliance with the fundamental principles. Section 120 sets out requirements and application material, including a conceptual framework, to assist accountants in complying with the fundamental principles and meeting their responsibility to act in the public interest. Such requirements and application material accommodate the wide range of facts and circumstances, including the various professional activities, interests and relationships, that create threats to compliance with the fundamental principles. In addition, they deter accountants from concluding that a situation is permitted solely because that situation is not specifically prohibited by the Code.

120.2 The conceptual framework specifies an approach for a professional accountant to:

(a) Identify threats to compliance with the fundamental principles;

(b) Evaluate the threats identified; and

(c) Address the threats by eliminating or reducing them to an acceptable level.

Requirements and Application Material

General

R120.3 The professional accountant shall apply the conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles set out in Section 110.

120.3 A1 Additional requirements and application material that are relevant to the application of the conceptual framework are set out in:

(a) Part 2 – Professional Accountants in Business;

(b) Part 3 – Professional Accountants in Public Practice; and

(c) International Independence Standards, as follows:

(i) Part 4A – Independence for Audit and Review Engagements; and

(ii) Part 4B – Independence for Assurance Engagements Other than Audit and Review Engagements.

(iii) Part 5 – Insolvency Practitioners

R120.4 When dealing with an ethics issue, the professional accountant shall consider the context in which the issue has arisen or might arise. Where an individual who is a professional accountant in public practice is performing professional activities pursuant to the accountant's relationship with the firm, whether as a contractor, employee or owner, the individual shall comply with the provisions in Part 2 that apply to these circumstances.

R120.5 When applying the conceptual framework, the professional accountant shall:

(a) Exercise professional judgment;

(b) Remain alert for new information and to changes in facts and circumstances; and

(c) Use the reasonable and informed third party test described in paragraph 120.5 A4.

Exercise of Professional Judgment

120.5 A1 Professional judgment involves the application of relevant training, professional knowledge, skill and experience commensurate with the facts and circumstances, including the nature and scope of the particular professional activities, and the interests and relationships involved. In relation to undertaking professional activities, the exercise of professional judgment is required when the professional accountant applies the conceptual framework in order to make informed decisions about the courses of actions available, and to determine whether such decisions are appropriate in the circumstances.

120.5 A2 An understanding of known facts and circumstances is a prerequisite to the proper application of the conceptual framework. Determining the actions necessary to obtain this understanding and coming to a conclusion about whether the fundamental principles have been complied with also require the exercise of professional judgment.

120.5 A3 In exercising professional judgment to obtain this understanding, the professional accountant might consider, among other matters, whether:

- There is reason to be concerned that potentially relevant information might be missing from the facts and circumstances known to the accountant.
- There is an inconsistency between the known facts and circumstances and the accountant's expectations.
- The accountant's expertise and experience are sufficient to reach a conclusion.
- There is a need to consult with others with relevant expertise or experience.
- The information provides a reasonable basis on which to reach a conclusion.
- The accountant's own preconception or bias might be affecting the accountant's exercise of professional judgment.
- There might be other reasonable conclusions that could be reached from the available information.

Reasonable and Informed Third Party

120.5 A4 The reasonable and informed third party test is a consideration by the professional accountant about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the accountant knows, or could reasonably be expected to know, at the time the conclusions are made. The reasonable and informed third party does not need to be an accountant, but would possess the relevant knowledge and experience to understand and evaluate the appropriateness of the accountant's conclusions in an impartial manner.

Identifying Threats

R120.6 The professional accountant shall identify threats to compliance with the fundamental principles.

120.6 A1 An understanding of the facts and circumstances, including any professional activities, interests and relationships that might compromise compliance with the fundamental principles, is a prerequisite to the professional accountant's identification of threats to such compliance. The existence of certain conditions, policies and procedures established by the profession, legislation, regulation, the firm, or the employing organization that can enhance the accountant acting ethically might also help identify threats to compliance with the fundamental principles. Paragraph 120.8 A2 includes general examples of such conditions, policies and procedures which are also factors that are relevant in evaluating the level of threats.

120.6 A2 Threats to compliance with the fundamental principles might be created by a broad range of facts and circumstances. It is not possible to define every situation that creates threats. In addition, the nature of engagements and work assignments might differ and, consequently, different types of threats might be created.

120.6 A3 Threats to compliance with the fundamental principles fall into one or more of the following categories:

(a) Self-interest threat – the threat that a financial or other interest will inappropriately influence a professional accountant's judgment or behaviour;

(b) Self-review threat – the threat that a professional accountant will not appropriately evaluate the results of a previous judgment made; or an activity performed by the accountant, or by another individual within the accountant's firm or employing organization, on which the accountant will rely when forming a judgment as part of performing a current activity;

(c) Advocacy threat – the threat that a professional accountant will promote a client's or employing organization's position to the point that the accountant's objectivity is compromised;

(d) Familiarity threat – the threat that due to a long or close relationship with a client, or employing organization, a professional accountant will be too sympathetic to their interests or too accepting of their work; and

(e) Intimidation threat – the threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the accountant.

120.6 A4 A circumstance might create more than one threat, and a threat might affect compliance with more than one fundamental principle.

Evaluating Threats

R120.7 When the professional accountant identifies a threat to compliance with the fundamental principles, the accountant shall evaluate whether such a threat is at an acceptable level.

Acceptable Level

120.7 A1 An acceptable level is a level at which a professional accountant using the reasonable and informed third party test would likely conclude that the accountant complies with the fundamental principles.

Factors Relevant in Evaluating the Level of Threats

120.8 A1 The consideration of qualitative as well as quantitative factors is relevant in the professional accountant's evaluation of threats, as is the combined effect of multiple threats, if applicable.

120.8 A2 The existence of conditions, policies and procedures described in paragraph 120.6 A1 might also be factors that are relevant in evaluating the level of threats to compliance with fundamental principles. Examples of such conditions, policies and procedures include:

- Corporate governance requirements.
- Educational, training and experience requirements for the profession.

- Effective complaint systems which enable the professional accountant and the general public to draw attention to unethical behaviour.
- An explicitly stated duty to report breaches of ethics requirements.
- Professional or regulatory monitoring and disciplinary procedures.

Consideration of New Information or Changes in Facts and Circumstances

R120.9 **If the professional accountant becomes aware of new information or changes in facts and circumstances that might impact whether a threat has been eliminated or reduced to an acceptable level, the accountant shall re-evaluate and address that threat accordingly.**

120.9 A1 Remaining alert throughout the professional activity assists the professional accountant in determining whether new information has emerged or changes in facts and circumstances have occurred that:

(a) Impact the level of a threat; or

(b) Affect the accountant's conclusions about whether safeguards applied continue to be appropriate to address identified threats.

120.9 A2 If new information results in the identification of a new threat, the professional accountant is required to evaluate and, as appropriate, address this threat. (Ref: Paras. R120.7 and R120.10).

Addressing Threats

R120.10 **If the professional accountant determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the accountant shall address the threats by eliminating them or reducing them to an acceptable level. The accountant shall do so by:**

(a) Eliminating the circumstances, including interests or relationships, that are creating the threats;

(b) Applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level; or

(c) Declining or ending the specific professional activity.

Actions to Eliminate Threats

120.10 A1 Depending on the facts and circumstances, a threat might be addressed by eliminating the circumstance creating the threat. However, there are some situations in which threats can only be addressed by declining or ending the specific professional activity. This is because the circumstances that created the threats cannot be eliminated and safeguards are not capable of being applied to reduce the threat to an acceptable level.

Safeguards

120.10 A2 Safeguards are actions, individually or in combination, that the professional accountant takes that effectively reduce threats to compliance with the fundamental principles to an acceptable level.

Consideration of Significant Judgments Made and Overall Conclusions Reached

R120.11 **The professional accountant shall form an overall conclusion about whether the actions that the accountant takes, or intends to take, to address the threats created will eliminate those threats or reduce them to an acceptable level. In forming the overall conclusion, the accountant shall:**

(a) **Review any significant judgments made or conclusions reached; and**

(b) **Use the reasonable and informed third party test.**

Considerations for Audits, Reviews and Other Assurance Engagements

Independence

120.12 A1 Professional accountants in public practice are required by International Independence Standards to be independent when performing audits, reviews, or other assurance engagements. Independence is linked to the fundamental 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 allowing an individual to act with integrity, and exercise objectivity and professional scepticism.

(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 audit or assurance team member's integrity, objectivity or professional scepticism has been compromised.

120.12 A2 International Independence Standards set out requirements and application material on how to apply the conceptual framework to maintain independence when performing audits, reviews or other assurance engagements. Professional accountants and firms are required to comply with these standards in order to be independent when conducting such engagements. The conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles applies in the same way to compliance with independence requirements. The categories of threats to compliance with the fundamental principles described in paragraph 120.6 A3 are also the categories of threats to compliance with independence requirements.

Professional Scepticism

120.13 A1 Under auditing, review and other assurance standards, including those issued by the IAASB, professional accountants in public practice are required to exercise professional scepticism when planning and performing audits, reviews and other assurance engagements. Professional scepticism and the fundamental principles that are described in Section 110 are inter-related concepts.

120.13 A2 In an audit of financial statements, compliance with the fundamental principles, individually and collectively, supports the exercise of professional scepticism, as shown in the following examples:

- Integrity requires the professional accountant to be straightforward and honest. For example, the accountant complies with the principle of integrity by:

  (a) Being straightforward and honest when raising concerns about a position taken by a client; and

  (b) Pursuing inquiries about inconsistent information and seeking further audit evidence to address concerns about statements that might be materially false or misleading in order to make informed decisions about the appropriate course of action in the circumstances.

In doing so, the accountant demonstrates the critical assessment of audit evidence that contributes to the exercise of professional scepticism.

- Objectivity requires the professional accountant not to compromise professional or business judgment because of bias, conflict of interest or the undue influence of others. For example, the accountant complies with the principle of objectivity by:

  (a) Recognising circumstances or relationships such as familiarity with the client, that might compromise the accountant's professional or business judgment; and

  (b) Considering the impact of such circumstances and relationships on the accountant's judgment when evaluating the sufficiency and appropriateness of audit evidence related to a matter material to the client's financial statements.

  In doing so, the accountant behaves in a manner that contributes to the exercise of professional scepticism.

- Professional competence and due care requires the professional accountant to have professional knowledge and skill at the level required to ensure the provision of competent professional service, and to act diligently in accordance with applicable standards, laws and regulations. For example, the accountant complies with the principle of professional competence and due care by:

  (a) Applying knowledge that is relevant to a particular client's industry and business activities in order to properly identify risks of material misstatement;

  (b) Designing and performing appropriate audit procedures; and

  (c) Applying relevant knowledge when critically assessing whether audit evidence is sufficient and appropriate in the circumstances.

  In doing so, the accountant behaves in a manner that contributes to the exercise of professional scepticism.

SECTION 200

APPLYING THE CONCEPTUAL FRAMEWORK – PROFESSIONAL ACCOUNTANTS IN BUSINESS

Introduction

200.1 A1 This Part of the Code sets out 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, the conceptual framework requires professional accountants in business to be alert for such facts and circumstances.

200.2 A1 Investors, creditors, employing organizations and other sectors of the business community, as well as governments and the general 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.

200.3 A1 A professional accountant in business might be an employee, contractor, partner, director (executive or non-executive), owner-manager, or volunteer of an employing organisation. The legal form of the relationship of the accountant with the employing organisation has no bearing on the ethical responsibilities placed on the accountant.

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

(a) A professional accountant in business; and

(b) An individual who is a professional accountant in public practice when performing professional activities pursuant to the accountant's relationship with the accountant's firm, whether as a contractor, employee or owner. More information on when Part 2 is applicable to professional accountants in public practice is set out in paragraphs R120.4, R300.5 and 300.5 A1.

Requirements and Application Material

General

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.

200.5 A1 A professional accountant has a responsibility to further the legitimate objectives of the accountant's employing organisation. 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.

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

200.5 A3 The more senior the position of a professional 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

organisation. To the extent that they are able to do so, taking into account their position and seniority in the organisation, accountants are expected to encourage and promote an ethics-based culture in the organisation. Examples of actions that might be taken include the introduction, implementation and oversight of:

- 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 Threats to compliance with the fundamental principles might be created 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 threats for a professional accountant when undertaking a professional activity:

(a) Self-interest Threats

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

(b) Self-review Threats

- 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 favourable financing.

(d) Familiarity Threats

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

(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 an accounting principle.
  - 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.

Evaluating Threats

200.7 A1 The conditions, policies and procedures described in paragraphs 120.6 A1 and 120.8 A2 might impact the evaluation of whether a threat to compliance with the fundamental principles is at an acceptable level.

200.7 A2 The professional accountant's evaluation of the level of a threat is also impacted by the nature and scope of the professional activity.

200.7 A3 The professional accountant's evaluation of the level of a threat might be impacted by the work environment within the employing organisation and its operating environment. For example:

- Leadership that stresses the importance of ethical behaviour and the expectation that employees will act in an ethical manner.
- Policies and procedures to empower and encourage employees to communicate ethics issues that concern them to senior levels of management 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 calibre competent personnel.
- 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 A4 Professional accountants might consider obtaining legal advice where they believe that unethical behaviour or actions by others have occurred, or will continue to occur, within the employing organisation.

Addressing Threats

200.8 A1 Sections 210 to 270 describe certain threats that might arise during the course of performing professional activities and include examples of actions that might address such threats.

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

Communicating with Those Charged with Governance

R200.9 When communicating with those charged with governance in accordance with the Code, a professional accountant shall determine the appropriate individual(s) within the employing organisation'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 so that they are adequately informed.

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

(a) The nature and importance of the circumstances; and

(b) The matter to be communicated.

200.9 A2 Examples of a subgroup of those charged with governance include an audit committee or an individual member of those charged with governance.

R200.10 **If a professional accountant communicates with individuals who have management responsibilities as well as governance 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.**

200.10 A1 In some circumstances, all of those charged with governance are involved in managing the employing organisation, for example, a small business where a single owner manages the organisation and no one else has a governance role. In these cases, if matters are communicated with individual(s) with management responsibilities, and those individual(s) also have governance responsibilities, the professional accountant has satisfied the requirement to communicate with those charged with governance.

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.

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

(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 This section sets out specific requirements and application material relevant to applying the conceptual framework to conflicts of interest.

Requirements and Application Material

General

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

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

- 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:

(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, interests and relationships that might create a conflict of interest while performing a professional activity.**

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 the level of the threat is not at an acceptable level.

210.7 A2 An example of 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.

210.7 A3 Examples of actions that might be safeguards to address threats created by conflicts of interest include:

- Restructuring or segregating certain responsibilities and duties.
- Obtaining appropriate oversight, for example, acting under the supervision of an executive or non-executive director.

Disclosure and Consent

General

210.8 A1 It is generally necessary to:

(a) 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) Obtain consent from the relevant parties for the professional accountant to undertake the professional activity when safeguards are applied to address the threat.

210.8 A2 Consent might be implied by a party's conduct in circumstances where the professional accountant has sufficient evidence to conclude that the 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.

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

(a) The nature of the circumstances giving rise to the conflict of interest;

(b) The safeguards applied to address the threats when applicable; 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.

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.

220.2 Preparing or presenting information might create a self-interest, intimidation or other threats to compliance with one or more of the fundamental principles. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

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

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

- Management and those charged with governance.
- Investors and lenders or other creditors.
- Regulatory bodies.

This information might assist stakeholders in understanding and evaluating aspects of the employing 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 regulatory bodies for legal and compliance purposes.

220.3 A3 For the purposes of this section, preparing or presenting information includes recording, maintaining and approving information.

R220.4 When preparing or presenting information, a professional accountant shall:

(a) Prepare or present the information in accordance with a relevant reporting framework, where applicable;

(b) Prepare or present the information in a manner that is intended neither to mislead nor to influence contractual or regulatory outcomes inappropriately;

(c) Exercise professional judgment to:

(i) Represent the facts accurately and completely in all material respects;

(ii) Describe clearly the true nature of business transactions or activities; and

(iii) Classify and record information in a timely and proper manner; and

(d) Not omit anything with the intention of rendering the information misleading or of influencing contractual or regulatory outcomes inappropriately.

220.4 A1 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 for a financial institution.

Use of Discretion in Preparing or Presenting Information

R220.5 Preparing or presenting information might require the exercise of discretion in making professional judgments. The professional accountant shall not exercise such discretion with the intention of misleading others or influencing contractual or regulatory outcomes inappropriately.

220.5 A1 Examples of ways in which discretion might be misused to achieve inappropriate outcomes include:

- 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.

R220.6 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:

(a) The purpose for which the information is to be used;

(b) The context within which it is given; and

(c) The audience to whom it is addressed.

220.6 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.

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

Relying on the Work of Others

R220.7 A professional accountant who intends to rely on the work of others, either internal or external to the employing organisation, shall exercise professional judgment to determine what steps to take, if any, in order to fulfill the responsibilities set out in paragraph R220.4.

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

- The reputation and expertise of, and resources available to, the other individual or organisation.
- Whether the other individual is subject to applicable professional and ethics standards.

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

Addressing Information that s or Might be Misleading

R220.8 When the professional accountant knows or has reason to believe that the information with which the accountant is associated is misleading, the accountant shall take appropriate actions to seek to resolve the matter.

220.8 A1 Actions that might be appropriate include:

- Discussing concerns that the information is misleading with the professional accountant's superior and/or the appropriate level(s) of management within the accountant's employing organisation 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.
- Consulting the policies and procedures of the employing organisation (for example, an ethics or whistle-blowing policy) regarding how to address such matters internally.

220.8 A2 The professional accountant might determine that the employing organisation has not taken appropriate action. If the accountant continues to have reason to believe that the information is misleading, the following further actions might be appropriate provided that the accountant remains alert to the principle of confidentiality:

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

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

R220.9 **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.**

220.9 A1 In such circumstances, it might be appropriate for a professional accountant to resign from the employing organisation.

Documentation

220.10 A1 The professional accountant is encouraged to 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

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

220.11 A2 Where the misleading information might involve non-compliance with laws and regulations, the requirements and application material set out in Section 260 apply.

220.11 A3 Where threats to compliance with the fundamental principles relating to the preparation or presentation of information arise from pressure, the requirements and application material set out in Section 270 apply.

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.

230.2 Acting without sufficient expertise creates a self-interest threat to compliance with the principle of professional competence and due care. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

R230.3 A professional accountant shall not intentionally mislead an employing organisation as to the level of expertise or experience possessed.

230.3 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.

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

- 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.

230.3 A3 Factors that are relevant in evaluating the level of such a threat include:

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

230.3 A4 Examples of actions that might be safeguards to address such a self-interest threat include:

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

R230.4 If a threat to compliance with the principle of professional competence and due care cannot be addressed, a professional accountant shall determine whether to decline to perform the duties in question. If the accountant determines that declining is appropriate, the accountant shall communicate the reasons.

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.

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.

240.2 Having a financial interest, or knowing of a financial interest held by an immediate or close family member might create a self-interest threat to compliance with the principles of objectivity or confidentiality. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

R240.3 A professional accountant shall not manipulate information or use confidential information for personal gain or for the financial gain of others.

240.3 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.

240.3 A2 Examples of circumstances that might create a self-interest threat include situations in which the professional accountant or an immediate or close family member:

- Has a motive and opportunity to manipulate price-sensitive information in order to gain financially.
- 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 employing organisation, 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 maximise the value of the employing organisation's shares. An example of such an arrangement might be through participation in incentive plans which are linked to certain performance conditions being met.

240.3 A3 Factors that are relevant in evaluating the level of such a threat include:

- 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.
- 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.

- 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.

240.3 A4 Threats created by compensation or incentive arrangements might be compounded by explicit or implicit pressure from superiors or colleagues. See Section 270, 'Pressure to Breach the Fundamental Principles'.

SECTION 250

INDUCEMENTS, INCLUDING GIFTS AND HOSPITALITY

Introduction

250.1 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.

250.2 Offering or accepting inducements might create a self-interest, familiarity or intimidation threat to compliance with the fundamental principles, particularly the principles of integrity, objectivity and professional behaviour.

250.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the offering and accepting of inducements when undertaking professional activities that does not constitute non-compliance with laws and regulations. This section also requires a professional accountant to comply with relevant laws and regulations when offering or accepting inducements.

Requirements and Application Material

General

250.4 A1 An inducement is an object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour. Inducements can range from minor acts of hospitality between business colleagues to acts that result in non-compliance with laws and regulations. An inducement can take many different forms, for example:

- Gifts.
- Hospitality.
- Entertainment.
- Political or charitable donations.
- Appeals to friendship and loyalty.
- Employment or other commercial opportunities.
- Preferential treatment, rights or privileges.

Inducements Prohibited by Laws and Regulations

R250.5 In many jurisdictions, there are laws and regulations, such as those related to bribery and corruption, that prohibit the offering or accepting of inducements in certain circumstances. The professional accountant shall obtain an understanding of relevant laws and regulations and comply with them when the accountant encounters such circumstances.

Inducements Not Prohibited by Laws and Regulations

250.6 A1 The offering or accepting of inducements that is not prohibited by laws and regulations might still create threats to compliance with the fundamental principles.

Inducements with Intent to Improperly Influence Behaviour

R250.7 **A professional accountant shall not offer, or encourage others to offer, any inducement that is made, or which the accountant considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another individual.**

R250.8 **A professional accountant shall not accept, or encourage others to accept, any inducement that the accountant concludes is made, or considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another individual.**

250.9 A1 An inducement is considered as improperly influencing an individual's behaviour if it causes the individual to act in an unethical manner. Such improper influence can be directed either towards the recipient or towards another individual who has some relationship with the recipient. The fundamental principles are an appropriate frame of reference for a professional accountant in considering what constitutes unethical behaviour on the part of the accountant and, if necessary by analogy, other individuals.

250.9 A2 A breach of the fundamental principle of integrity arises when a professional accountant offers or accepts, or encourages others to offer or accept, an inducement where the intent is to improperly influence the behaviour of the recipient or of another individual.

250.9 A3 The determination of whether there is actual or perceived intent to improperly influence behaviour requires the exercise of professional judgment. Relevant factors to consider might include:

- The nature, frequency, value and cumulative effect of the inducement.
- Timing of when the inducement is offered relative to any action or decision that it might influence.
- Whether the inducement is a customary or cultural practice in the circumstances, for example, offering a gift on the occasion of a religious holiday or wedding.
- Whether the inducement is an ancillary part of a professional activity, for example, offering or accepting lunch in connection with a business meeting.
- Whether the offer of the inducement is limited to an individual recipient or available to a broader group. The broader group might be internal or external to the employing organization, such as other customers or vendors.
- The roles and positions of the individuals offering or being offered the inducement.
- Whether the professional accountant knows, or has reason to believe, that accepting the inducement would breach the policies and procedures of the counterparty's employing organization.
- The degree of transparency with which the inducement is offered.
- Whether the inducement was required or requested by the recipient.
- The known previous behaviour or reputation of the offeror.

Consideration of Further Actions

250.10 A1 If the professional accountant becomes aware of an inducement offered with actual or perceived intent to improperly influence behaviour, threats to compliance with the fundamental principles might still be created even if the requirements in paragraphs R250.7 and R250.8 are met.

250.10 A2 Examples of actions that might be safeguards to address such threats include:

- Informing senior management or those charged with governance of the employing organization of the professional accountant or the offeror regarding the offer.
- Amending or terminating the business relationship with the offeror.

Inducements with No Intent to Improperly Influence Behaviour

250.11 A1 The requirements and application material set out in the conceptual framework apply when a professional accountant has concluded there is no actual or perceived intent to improperly influence the behaviour of the recipient or of another individual.

250.11 A2 If such an inducement is trivial and inconsequential, any threats created will be at an acceptable level.

250.11 A3 Examples of circumstances where offering or accepting such an inducement might create threats even if the professional accountant has concluded there is no actual or perceived intent to improperly influence behaviour include:

- Self-interest threats
  - A professional accountant is offered part-time employment by a vendor.
- Familiarity threats
  - A professional accountant regularly takes a customer or supplier to sporting events.
- Intimidation threats
  - A professional accountant accepts hospitality, the nature of which could be perceived to be inappropriate were it to be publicly disclosed.

250.11 A4 Relevant factors in evaluating the level of such threats created by offering or accepting such an inducement include the same factors set out in paragraph 250.9 A3 for determining intent.

250.11 A5 Examples of actions that might eliminate threats created by offering or accepting such an inducement include:

- Declining or not offering the inducement.
- Transferring responsibility for any business-related decision involving the counterparty to another individual who the professional accountant has no reason to believe would be, or would be perceived to be, improperly influenced in making the decision.

250.11 A6 Examples of actions that might be safeguards to address such threats created by offering or accepting such an inducement include:

- Being transparent with senior management or those charged with governance of the employing organization of the professional accountant or of the counterparty about offering or accepting an inducement.
- Registering the inducement in a log maintained by the employing organization of the accountant or the counterparty.
- Having an appropriate reviewer, who is not otherwise involved in undertaking the professional activity, review any work performed or decisions made by the accountant with respect to the individual or organization from which the accountant accepted the inducement.

- Donating the inducement to charity after receipt and appropriately disclosing the donation, for example, to those charged with governance or the individual who offered the inducement.
- Reimbursing the cost of the inducement, such as hospitality, received.
- As soon as possible, returning the inducement, such as a gift, after it was initially accepted.

Immediate or Close Family Members

R250.12 **A professional accountant shall remain alert to potential threats to the accountant's compliance with the fundamental principles created by the offering of an inducement:**

(a) **By an immediate or close family member of the accountant to a counterparty with whom the accountant has a professional relationship; or**

(b) **To an immediate or close family member of the accountant by a counterparty with whom the accountant has a professional relationship.**

R250.13 **Where the professional accountant becomes aware of an inducement being offered to or made by an immediate or close family member and concludes there is intent to improperly influence the behaviour of the accountant or of the counterparty, or considers a reasonable and informed third party would be likely to conclude such intent exists, the accountant shall advise the immediate or close family member not to offer or accept the inducement.**

250.13 A1 The factors set out in paragraph 250.9 A3 are relevant in determining whether there is actual or perceived intent to improperly influence the behaviour of the professional accountant or of the counterparty. Another factor that is relevant is the nature or closeness of the relationship, between:

(a) The accountant and the immediate or close family member;

(b) The immediate or close family member and the counterparty; and

(c) The accountant and the counterparty.

For example, the offer of employment, outside of the normal recruitment process, to the spouse of the accountant by a counterparty with whom the accountant is negotiating a significant contract might indicate such intent.

250.13 A2 The application material in paragraph 250.10 A2 is also relevant in addressing threats that might be created when there is actual or perceived intent to improperly influence the behaviour of the professional accountant or of the counterparty even if the immediate or close family member has followed the advice given pursuant to paragraph R250.13.

Application of the Conceptual Framework

250.14 A1 Where the professional accountant becomes aware of an inducement offered in the circumstances addressed in paragraph R250.12, threats to compliance with the fundamental principles might be created where:

(a) The immediate or close family member offers or accepts the inducement contrary to the advice of the accountant pursuant to paragraph R250.13; or

(b) The accountant does not have reason to believe an actual or perceived intent to improperly influence the behaviour of the accountant or of the counterparty exists.

250.14 A2 The application material in paragraphs 250.11 A1 to 250.11 A6 is relevant for the purposes of identifying, evaluating and addressing such threats. Factors that are relevant in evaluating the level of threats in these circumstances also include the nature or closeness of the relationships set out in paragraph 250.13 A1.

Other Considerations

250.15 A1 If a professional accountant is offered an inducement by the employing organization relating to financial interests, compensation and incentives linked to performance, the requirements and application material set out in Section 240 apply.

250.15 A2 If a professional accountant encounters or is made aware of inducements that might result in non-compliance or suspected non-compliance with laws and regulations by other individuals working for or under the direction of the employing organization, the requirements and application material set out in Section 260 apply.

250.15 A3 If a professional accountant faces pressure to offer or accept inducements that might create threats to compliance with the fundamental principles, the requirements and application material set out in Section 270 apply.

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.

260.2 A self-interest or intimidation threat to compliance with the principles of integrity and professional behaviour is created when a professional accountant becomes aware of non-compliance or suspected non-compliance with laws and regulations.

260.3 A professional accountant might encounter or be made aware of non-compliance or suspected non-compliance 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 non-compliance or suspected non-compliance with:

(a) Laws and regulations generally recognised 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.

Objectives of the Professional Accountant in Relation to Non-compliance with Laws and Regulations

260.4 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 behaviour;

(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 non-compliance where it has not yet occurred; and

(c) To take such further action as appropriate in the public interest.

Requirements and Application Material

General

260.5 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:

(a) The professional accountant's employing organisation;

(b) Those charged with governance of the employing organisation;

(c) Management of the employing organisation; or

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

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

- 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.

260.5 A3 Non-compliance might result in fines, litigation or other consequences for the employing organisation, 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, non-compliance 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.

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:

(a) Any requirement to report the matter to an appropriate authority; and

(b) Any prohibition on alerting the relevant party.

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

260.7 A1 This section applies regardless of the nature of the employing organisation, including whether or not it is a public interest entity.

260.7 A2 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 organisation, its stakeholders and the general public.

260.7 A3 This section does not address:

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

(b) Non-compliance by parties other than those specified in paragraph 260.5 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 Organisation's Management and Those Charged with Governance

260.8 A1 The employing organisation's management, with the oversight of those charged with governance, is responsible for ensuring that the employing organisation'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:

(a) The employing organisation;

(b) An individual charged with governance of the employing organisation;

(c) A member of management; or

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

Responsibilities of All Professional Accountants

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

260.9 A1 Many employing organisations 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.

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 organisation, 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 organisation's human, financial, technological, physical and intangible resources. There is a greater expectation for such individuals to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance than other professional accountants within the employing organisation. This is because of senior professional accountants' roles, positions and spheres of influence within the employing organisation.

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 non-compliance or suspected non-compliance, the accountant shall obtain an understanding of the matter. This understanding shall include:**

(a) **The nature of the non-compliance or suspected non-compliance 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) **An assessment of the potential consequences to the employing organisation, 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 organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

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 organisation or a professional body, or with legal counsel.

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 organisation.**

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

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

(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.**

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 fulfil their responsibilities.

260.14 A2 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.

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 organisation's external auditor, if any, is needed.**

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.

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.**

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:

- The response is timely.
- They have taken or authorised 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.**

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

- The legal and regulatory framework.
- The urgency of the situation.
- The pervasiveness of the matter throughout the employing organisation.
- 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 organisation, 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:

- The accountant suspects or has evidence of their involvement or intended involvement in any non-compliance.
- Contrary to legal or regulatory requirements, they have not reported, or authorised 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.

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

- Informing the management of the parent entity of the matter if the employing organisation 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 organisation.

260.18 A2 Resigning from the employing organisation 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.

Seeking Advice

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

- 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 regulatory 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.

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:

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

- 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, that disclosure is permitted pursuant to paragraph R114.1(d) of the Code. When making such disclosure, the accountant shall act in good faith and exercise caution when making statements and assertions.

Imminent Breach

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. Having first considered whether it would be appropriate to discuss the matter with management or those charged with governance of the employing organisation, the accountant shall exercise professional judgment and determine whether to disclose the matter immediately to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach. If disclosure is made, that disclosure is permitted pursuant to paragraph R114.1(d) of the Code.

Documentation

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

- 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

R260.24 **If, in the course of carrying out professional activities, a professional accountant becomes aware of information concerning 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 non-compliance or suspected non-compliance and the circumstances in which it has occurred or might occur.**

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 organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

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 organisation or a professional body, or with legal counsel.

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 organisation.**

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, that disclosure is permitted pursuant to paragraph R114.1(d) of the Code. When making such disclosure, the accountant shall act in good faith and exercise caution when making statements and assertions.**

Documentation

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

- 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.

Note:

Additional information on protected disclosures under the UK Public Interest Disclosure Act 1998 is available at: https://www.legislation.gov.uk/ukpga/1998/23/section/1

Additional information on protected disclosures under the Irish Protected Disclosures Act 2014 is available at http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/html

SECTION 270

PRESSURE TO BREACH THE FUNDAMENTAL PRINCIPLES

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.

270.2 Pressure exerted on, or by, a professional accountant might create an intimidation or other threat to compliance with one or more of the fundamental principles. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

R270.3 A professional accountant shall not:

(a) Allow pressure from others to result in a breach of compliance with the fundamental principles; or

(b) Place pressure on others that the accountant knows, or has reason to believe, would result in the other individuals breaching the fundamental principles.

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

- Within the employing 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.

270.3 A2 Examples of pressure that might result in threats to compliance with the fundamental principles include:

- 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 the family member 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.
    - 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 from superiors, colleagues or others, for example, those who might benefit from participation in compensation or incentive arrangements to manipulate performance indicators.

  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 employing 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, Including Gifts and Hospitality'.

- 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'.

270.3 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 organisation including the extent to which they reflect or emphasise the importance of ethical behaviour and the expectation that employees will act ethically. For example, a corporate culture that tolerates unethical behaviour 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 organisation has established, such as ethics or human resources policies that address pressure.

270.3 A4 Discussing the circumstances creating the pressure and consulting with others about those circumstances might assist the professional accountant to evaluate the level of the threat. Such discussion and consultation, which requires being alert to the principle of confidentiality, might include: Discussing the matter with the individual who is exerting the pressure to seek to resolve it.

- Discussing the matter with the accountant's superior, if the superior is not the individual exerting the pressure.
- Escalating the matter within the employing organisation, including when appropriate, explaining any consequential risks to the organisation, for example with:
    - Higher levels of management.
    - Internal or external auditors.
    - Those charged with governance.
- Disclosing the matter in line with the employing organisation's policies, including ethics and whistleblowing policies, using any established mechanism, such as a confidential ethics hotline.
- Consulting with:
    - A colleague, superior, human resources personnel, or another professional accountant;
    - Relevant professional or regulatory bodies or industry associations; or
    - Legal counsel.

270.3 A5 An example of an action that might eliminate threats 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.

Documentation

270.4 A1 The professional accountant is encouraged to document:

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

SECTION 300

APPLYING THE CONCEPTUAL FRAMEWORK – PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

Introduction

300.1 This Part of the Code sets out requirements and application material for professional accountants in public practice 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 public practice, which create or might create threats to compliance with the fundamental principles. Therefore, the conceptual framework requires professional accountants in public practice to be alert for such facts and circumstances.

300.2 The requirements and application material that apply to professional accountants in public practice are set out in:

- Part 3 – *Professional Accountants in Public Practice*, Sections 300 to 399, which applies to all professional accountants in public practice, whether they provide assurance services or not.
- *International Independence Standards* as follows:
  - Part 4A – *Independence for Audit and Review Engagements*, Sections 400 to 899, which applies to professional accountants in public practice when performing audit and review engagements.
  - Part 4B – *Independence for Assurance Engagements Other than Audit and Review Engagements*, Sections 900 to 999, which applies to professional accountants in public practice when performing assurance engagements other than audit or review engagements.

300.3 In this Part, the term "professional accountant" refers to individual professional accountants in public practice and their firms. *It also applies to professional accountants in business when providing professional services.*

Requirements and Application Material

General

R300.4 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.

R300.5 When dealing with an ethics issue, the professional accountant shall consider the context in which the issue has arisen or might arise. Where an individual who is a professional accountant in public practice is performing professional activities pursuant to the accountant's relationship with the firm, whether as a contractor, employee or owner, the individual shall comply with the provisions in Part 2 that apply to these circumstances.

300.5 A1 Examples of situations in which the provisions in Part 2 apply to a professional accountant in public practice include:

- Facing a conflict of interest when being responsible for selecting a vendor for the firm when an immediate family member of the accountant might benefit financially from the contract. The requirements and application material set out in Section 210 apply in these circumstances.
- Preparing or presenting financial information for the accountant's client or firm. The requirements and application material set out in Section 220 apply in these circumstances.
- Being offered an inducement such as being regularly offered complimentary tickets to attend sporting

events by a supplier of the firm. The requirements and application material set out in Section 250 apply in these circumstances.

- Facing pressure from an engagement partner to report chargeable hours inaccurately for a client engagement. The requirements and application material set out in Section 270 apply in these circumstances.

Identifying Threats

300.6 A1 Threats to compliance with the fundamental principles might be created 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 of threats that might create threats for a professional accountant when undertaking a professional service:

(a) Self-interest Threats

- A professional accountant having a direct financial interest in a client.
- A professional accountant quoting a low fee to obtain a new engagement and the fee is so low that it might be difficult to perform the professional service in accordance with applicable technical and professional standards for that price.
- A professional accountant having a close business relationship with a client.
- A professional accountant having access to confidential information that might be used for personal gain.
- A professional accountant discovering a significant error when evaluating the results of a previous professional service performed by a member of the accountant's firm.

(b) Self-review Threats

- A professional accountant issuing an assurance report on the effectiveness of the operation of financial systems after implementing the systems.
- A professional accountant having prepared the original data used to generate records that are the subject matter of the assurance engagement.

(c) Advocacy Threats

- A professional accountant promoting the interests of, or shares in, a client.
- A professional accountant acting as an advocate on behalf of a client in litigation or disputes with third parties.
- A professional accountant lobbying in favour of legislation on behalf of a client.

(d) Familiarity Threats

- A professional accountant having a close or immediate family member who is a director or officer of the client.
- A director or officer of the client, or an employee in a position to exert significant influence over the subject matter of the engagement, having recently served as the engagement partner.

- An audit team member having a long association with the audit client.

(e) Intimidation Threats

- A professional accountant being threatened with dismissal from a client engagement or the firm because of a disagreement about a professional matter.
- A professional accountant feeling pressured to agree with the judgment of a client because the client has more expertise on the matter in question.
- A professional accountant being informed that a planned promotion will not occur unless the accountant agrees with an inappropriate accounting treatment.
- A professional accountant having accepted a significant gift from a client and being threatened that acceptance of this gift will be made public.

Evaluating Threats

300.7 A1 The conditions, policies and procedures described in paragraph 120.6 A1 and 120.8 A2 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:

(a) The client and its operating environment; and

(b) The firm and its operating environment.

300.7 A2 The professional accountant's evaluation of the level of a threat is also impacted by the nature and scope of the professional service.

The Client and its Operating Environment

300.7 A3 The professional accountant's evaluation of the level of a threat might be impacted by whether the client is:

(a) An audit client and whether the audit client is a public interest entity;

(b) An assurance client that is not an audit client; or

(c) A non-assurance client.

For example, providing a non-assurance service to an audit client that is a public interest entity might be perceived to result in a higher level of threat to compliance with the principle of objectivity with respect to the audit.

300.7 A4 The corporate governance structure, including the leadership of a client might promote compliance with the fundamental principles. Accordingly, a professional accountant's evaluation of the level of a threat might also be impacted by a client's operating environment. For example:

- The client requires appropriate individuals other than management to ratify or approve the appointment of a firm to perform an engagement.
- The client has competent employees with experience and seniority to make managerial decisions.
- The client has implemented internal procedures that facilitate objective choices in tendering non-assurance engagements.

- The client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's services.

The Firm and its Operating Environment

300.7 A5 A professional accountant's evaluation of the level of a threat might be impacted by the work environment within the accountant's firm and its operating environment. For example:

- Leadership of the firm that promotes compliance with the fundamental principles and establishes the expectation that assurance team members will act in the public interest.
- Policies or procedures for establishing and monitoring compliance with the fundamental principles by all personnel.
- Compensation, performance appraisal and disciplinary policies and procedures that promote compliance with the fundamental principles.
- Management of the reliance on revenue received from a single client.
- The engagement partner having authority within the firm for decisions concerning compliance with the fundamental principles, including decisions about accepting or providing services to a client.
- Educational, training and experience requirements.
- Processes to facilitate and address internal and external concerns or complaints.

Consideration of New Information or Changes in Facts and Circumstances

300.7 A6 New information or changes in facts and circumstances might:

(a) Impact the level of a threat; or

(b) Affect the professional accountant's conclusions about whether safeguards applied continue to address identified threats as intended.

In these situations, actions that were already implemented as safeguards might no longer be effective in addressing threats. Accordingly, the application of the conceptual framework requires that the professional accountant re-evaluate and address the threats accordingly. (Ref: Paras. R120.9 and R120.10).

300.7 A7 Examples of new information or changes in facts and circumstances that might impact the level of a threat include:

- When the scope of a professional service is expanded.
- When the client becomes a listed entity or acquires another business unit.
- When the firm merges with another firm.
- When the professional accountant is jointly engaged by two clients and a dispute emerges between the two clients.
- When there is a change in the professional accountant's personal or immediate family relationships.

Addressing Threats

300.8 A1 Paragraphs R120.10 to 120.10 A2 set out requirements and application material for addressing threats that are not at an acceptable level.

Examples of Safeguards

300.8 A2 Safeguards vary depending on the facts and circumstances. Examples of actions that in certain circumstances might be safeguards to address threats include:

- Assigning additional time and qualified personnel to required tasks when an engagement has been accepted might address a self-interest threat.
- Having an appropriate reviewer who was not a member of the team review the work performed or advise as necessary might address a self-review threat.
- Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client might address self-review, advocacy or familiarity threats.
- Involving another firm to perform or re-perform part of the engagement might address self-interest, self-review, advocacy, familiarity or intimidation threats.
- Disclosing to clients any referral fees or commission arrangements received for recommending services or products might address a self-interest threat.
- Separating teams when dealing with matters of a confidential nature might address a self-interest threat.

300.8 A3 The remaining sections of Part 3 and *International Independence Standards* describe certain threats that might arise during the course of performing professional services and include examples of actions that might address threats.

Appropriate Reviewer

300.8 A4 An appropriate reviewer is a professional with the necessary knowledge, skills, experience and authority to review, in an objective manner, the relevant work performed or service provided. Such an individual might be a professional accountant.

Communicating with Those Charged with Governance

R300.9 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 so that they are adequately informed.

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

(a) The nature and importance of the circumstances; and

(b) The matter to be communicated.

300.9 A2 Examples of a subgroup of those charged with governance include an audit committee or an individual member of those charged with governance.

R300.10 **If a professional accountant communicates with individuals who have management responsibilities as well as governance 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.**

300.10 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 to individual(s) with management responsibilities, and those individual(s) also have governance responsibilities, the professional accountant has satisfied the requirement to communicate with those charged with governance.

SECTION 310

CONFLICTS OF INTEREST

Introduction

310.1 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.

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

(a) A professional accountant provides a professional service related to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or

(b) The interests of a professional accountant with respect to a particular matter and the interests of the client for whom the accountant provides a professional service related to that matter are in conflict.

310.3 This section sets out specific requirements and application material relevant to applying the conceptual framework to conflicts of interest. When a professional accountant provides an audit, review or other assurance service, independence is also required in accordance with International Independence Standards.

Requirements and Application Material

General

R310.4 A professional accountant shall not allow a conflict of interest to compromise professional or business judgment.

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

- Providing a transaction advisory service to a client seeking to acquire an audit client, where the firm has obtained confidential information during the course of the audit that might be relevant to the transaction.
- Providing advice to two clients at the same time where the clients are competing to acquire the same company and the advice might be relevant to the parties' competitive positions.
- Providing services to a seller and a buyer in relation to the same transaction.
- Preparing valuations of assets for two parties who are in an adversarial position with respect to the assets.
- Representing two clients in the same matter who are in a legal dispute with each other, such as during divorce proceedings, or the dissolution of a partnership.
- In relation to a license agreement, providing an assurance report for a licensor on the royalties due while advising the licensee on the amounts payable.
- Advising a client to invest in a business in which, for example, the spouse of the professional accountant has a financial interest.
- Providing strategic advice to a client on its competitive position while having a joint venture or similar interest with a major competitor of the client.
- Advising a client on acquiring a business which the firm is also interested in acquiring.
- Advising a client on buying a product or service while having a royalty or commission agreement with a potential seller of that product or service.

Conflict Identification

General

R310.5 **Before accepting a new client relationship, engagement, or business relationship, 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:**

(a) The nature of the relevant interests and relationships between the parties involved; and

(b) The service and its implication for relevant parties.

310.5 A1 An effective conflict identification process assists a professional accountant when taking reasonable steps to identify interests and relationships that might create an actual or potential conflict of interest, both before determining whether to accept an engagement and throughout the engagement. Such a process includes considering matters identified by external parties, for example clients or potential clients. The earlier an actual or potential conflict of interest is identified, the greater the likelihood of the accountant being able to address threats created by the conflict of interest.

310.5 A2 An effective process to identify actual or potential conflicts of interest will take into account factors such as:

- The nature of the professional services provided.
- The size of the firm.
- The size and nature of the client base.
- The structure of the firm, for example, the number and geographic location of offices.

310.5 A3 More information on client acceptance is set out in Section 320, *Professional Appointments*.

Changes in Circumstances

R310.6 **A professional accountant shall remain alert to changes over time in the nature of services, interests and relationships that might create a conflict of interest while performing an engagement**.

310.6 A1 The nature of services, interests and relationships might change during the engagement. This is particularly true when a professional accountant is asked to conduct an engagement in a situation that might become adversarial, even though the parties who engage the accountant initially might not be involved in a dispute.

Network Firms

R310.7 **If the firm is a member of a network, a professional accountant shall consider conflicts of interest that the accountant has reason to believe might exist or arise due to interests and relationships of a network firm.**

310.7 A1 Factors to consider when identifying interests and relationships involving a network firm include:

- The nature of the professional services provided.
- The clients served by the network.
- The geographic locations of all relevant parties.

Threats Created by Conflicts of Interest

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

310.8 A2 Factors that are relevant in evaluating the level of a threat created by a conflict of interest include measures that prevent unauthorised disclosure of confidential information when performing professional services related to a particular matter for two or more clients whose interests with respect to that matter are in conflict. These measures include:

- The existence of separate practice areas for specialty functions within the firm, which might act as a barrier to the passing of confidential client information between practice areas.
- Policies and procedures to limit access to client files.
- Confidentiality agreements signed by personnel and partners of the firm.
- Separation of confidential information physically and electronically.
- Specific and dedicated training and communication.

310.8 A3 Examples of actions that might be safeguards to address threats created by a conflict of interest include:

- Having separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality.
- Having an appropriate reviewer, who is not involved in providing the service or otherwise affected by the conflict, review the work performed to assess whether the key judgments and conclusions are appropriate.

Disclosure and Consent

General

R310.9 A professional accountant shall exercise professional judgment to determine whether the nature and significance of a conflict of interest are such that specific disclosure and explicit consent are necessary when addressing the threat created by the conflict of interest.

310.9 A1 Factors to consider when determining whether specific disclosure and explicit consent are necessary include:

- The circumstances creating the conflict of interest.
- The parties that might be affected.
- The nature of the issues that might arise.
- The potential for the particular matter to develop in an unexpected manner.

310.9 A2 Disclosure and consent might take different forms, for example:

- General disclosure to clients of circumstances where, as is common commercial practice, the professional accountant does not provide professional services exclusively to any one client (for example, in a particular professional service and market sector). This enables the client to provide general consent accordingly. For example, an accountant might make general disclosure in the standard terms and conditions for the engagement.
- Specific disclosure to affected clients of the circumstances of the particular conflict in sufficient detail to enable the client to make an informed decision about the matter and to provide explicit consent

accordingly. Such disclosure might include a detailed presentation of the circumstances and a comprehensive explanation of any planned safeguards and the risks involved.

- Consent might be implied by clients' conduct in circumstances where the professional accountant has sufficient evidence to conclude that clients 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.

310.9 A3 It is generally necessary:

(a) To disclose the nature of the conflict of interest and how any threats created were addressed to clients affected by a conflict of interest; and

(b) To obtain consent of the affected clients to perform the professional services when safeguards are applied to address the threat.

310.9 A4 If such disclosure or consent is not in writing, the professional accountant is encouraged to document:

(a) The nature of the circumstances giving rise to the conflict of interest;

(b) The safeguards applied to address the threats when applicable; and

(c) The consent obtained.

When Explicit Consent is Refused

R310.10 If a professional accountant has determined that explicit consent is necessary in accordance with paragraph R310.9 and the client has refused to provide consent, the accountant shall either:

(a) End or decline to perform professional services that would result in the conflict of interest; or

(b) End relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.

Confidentiality

General

R310.11 A professional accountant shall remain alert to the principle of confidentiality, including when making disclosures or sharing information within the firm or network and seeking guidance from third parties.

310.11 A1 Subsection 114 sets out requirements and application material relevant to situations that might create a threat to compliance with the principle of confidentiality.

When Disclosure to Obtain Consent would Breach Confidentiality

R310.12 When making specific disclosure for the purpose of obtaining explicit consent would result in a breach of confidentiality, and such consent cannot therefore be obtained, the firm shall only accept or continue an engagement if:

(a) The firm does not act in an advocacy role for one client in an adversarial position against another client in the same matter;

(b) Specific measures are in place to prevent disclosure of confidential information between the engagement teams serving the two clients; and

(c) The firm is satisfied that a reasonable and informed third party would be likely to conclude that it is appropriate for the firm to accept or continue the engagement because a restriction on the firm's ability to provide the professional service would produce a disproportionate adverse outcome for the clients or other relevant third parties.

310.12 A1 A breach of confidentiality might arise, for example, when seeking consent to perform:

- A transaction-related service for a client in a hostile takeover of another client of the firm.
- A forensic investigation for a client regarding a suspected fraud, where the firm has confidential information from its work for another client who might be involved in the fraud.

Documentation

R310.13 In the circumstances set out in paragraph R310.12, the professional accountant shall document:

(a) The nature of the circumstances, including the role that the accountant is to undertake;

(b) The specific measures in place to prevent disclosure of information between the engagement teams serving the two clients; and

(c) Why it is appropriate to accept or continue the engagement.

Termination

R310.14 Where a professional accountant is required for any reason to disengage from the existing client, the professional accountant shall do so as speedily as practicable having regard to the interest of the client.

Note:

*A helpsheet relating to corporate finance practitioners, including information previously in section 221 of the Code of Ethics, is available from the Institute's Ethics Resource Centre (*www.charteredaccountants.ie/ethics*)*

SECTION 320

PROFESSIONAL APPOINTMENTS

Introduction

320.1 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.

320.2 Acceptance of a new client relationship or changes in an existing engagement might create a threat to compliance with one or more of the fundamental principles. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

Client and Engagement Acceptance

General

320.3 A1 Threats to compliance with the principles of integrity or professional behaviour might be created, for example, from questionable issues associated with the client (its owners, management or activities). Issues that, if known, might create such a threat include client involvement in illegal activities, dishonesty, questionable financial reporting practices or other unethical behaviour.

320.3 A2 Factors that are relevant in evaluating the level of such a threat include:

- Knowledge and understanding of the client, its owners, management and those charged with governance and business activities.
- The client's commitment to address the questionable issues, for example, through improving corporate governance practices or internal controls.

320.3 A3 A self-interest threat to compliance with the principle of professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies to perform the professional services.

320.3 A4 Factors that are relevant in evaluating the level of such a threat include:

- An appropriate understanding of:
  - The nature of the client's business;
  - The complexity of its operations;
  - The requirements of the engagement; and
  - The purpose, nature and scope of the work to be performed.
- Knowledge of relevant industries or subject matter.
- Experience with relevant regulatory or reporting requirements.
- The existence of quality control policies and procedures designed to provide reasonable assurance that engagements are accepted only when they can be performed competently.

320.3 A5 Examples of actions that might be safeguards to address a self-interest threat include:

- Assigning sufficient engagement personnel with the necessary competencies.
- Agreeing on a realistic time frame for the performance of the engagement.
- Using experts where necessary.

Changes in a Professional Appointment

General

R320.4 A professional accountant shall determine whether there are any reasons for not accepting an engagement when the accountant:

(a) Is asked by a potential client to replace another accountant;

(b) Considers tendering for an engagement held by another accountant; or

(c) Considers undertaking work that is complementary or additional to that of another accountant.

320.4 A1 There might be reasons for not accepting an engagement. One such reason might be if a threat created by the facts and circumstances cannot be addressed by applying safeguards. For example, there might be a self-interest threat to compliance with the principle of professional competence and due care if a professional accountant accepts the engagement before knowing all the relevant facts.

320.4 A2 If a professional accountant is asked to undertake work that is complementary or additional to the work of an existing or predecessor accountant, a self-interest threat to compliance with the principle of professional competence and due care might be created, for example, as a result of incomplete information.

320.4 A3 A factor that is relevant in evaluating the level of such a threat is whether tenders state that, before accepting the engagement, contact with the existing or predecessor accountant will be requested. This contact gives the proposed accountant the opportunity to inquire whether there are any reasons why the engagement should not be accepted.

320.4 A4 Examples of actions that might be safeguards to address such a self-interest threat include:

- Asking the existing or predecessor accountant to provide any known information of which, in the existing or predecessor accountant's opinion, the proposed accountant needs to be aware before deciding whether to accept the engagement. For example, inquiry might reveal previously undisclosed pertinent facts and might indicate disagreements with the existing or predecessor accountant that might influence the decision to accept the appointment.
- Obtaining information from other sources such as through inquiries of third parties or background investigations regarding senior management or those charged with governance of the client.

Communicating with the Existing or Predecessor Accountant

R320.5 Having been asked to accept an appointment, the professional accountant shall at least seek to contact the existing or predecessor accountant, irrespective of whether the existing or predecessor accountant works in public practice or not. This includes circumstances where the professional accountant is asked to undertake work

which is relevant to the work of an ongoing existing accountant unless the client provides acceptable reasons why the existing accountant cannot be informed.

320.5 A1 A proposed accountant will usually need the client's permission, preferably in writing, to initiate discussions with the existing or predecessor accountant.

320.5A2 Care must be taken when communicating all relevant facts to a proposed accountant in situations where the existing or predecessor accountant knows or suspects that their client is involved in money laundering or a terrorist activity. It is important that:

- *The proposed accountant does not specifically enquire whether the existing accountant has reported suspicions of money laundering or terrorism. Such questions place the existing accountant in a difficult position and are likely not to be answered.*
- *The proposed accountant does not ask the existing accountant whether client identification or 'knowing your client' procedures have been carried out under anti-money laundering legislation. The proposed accountant has responsibility for obtaining information for client identification and 'knowing your client' and this cannot be delegated to the existing accountant.*

R320.6 If unable to communicate with the existing or predecessor accountant, the proposed accountant shall take other reasonable steps to obtain information about any possible threats.

R320.6A In circumstances where the enquiries referred to above are not answered, the proposed accountant shall write to the existing accountant by recorded delivery service stating an intention to accept the engagement in the absence of a reply within a specific and reasonable period.

320.6A1 The proposed accountant is entitled to assume that the existing accountant's silence implies there was no adverse comment to be made, although this does not obviate the requirement in R320.6 to take other reasonable steps.

Communicating with the Proposed Accountant

R320.7 When an existing or predecessor accountant is asked to respond to a communication from a proposed accountant, the existing or predecessor accountant shall:

(a) Comply with relevant laws and regulations governing the request; and

(b) Provide any information honestly and unambiguously.

R320.7A If the client fails or refuses to grant the existing accountant permission to discuss the client's affairs with the proposed accountant, the existing accountant shall report this fact to the proposed accountant who shall consider carefully the reason for such failure or refusal when determining whether or not to accept nomination/appointment.

320.7 A1 An existing or predecessor accountant is bound by confidentiality. Whether the existing or predecessor accountant is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and:

(a) Whether the existing or predecessor accountant has permission from the client for the discussion; and

(b) The legal and ethics requirements relating to such communications and disclosure, which might vary by jurisdiction.

320.7 A2 Circumstances where a professional accountant is or might be required to disclose confidential information, or when disclosure might be appropriate, are set out in paragraph 114.1 A1 of the Code.

R320.7B ***If the existing accountant has made one or more suspicious activity reports relating to money laundering or terrorism, the existing accountant shall not disclose that fact to the prospective accountant, or make other disclosures that could amount to tipping off.***

320.7 A3 *Disclosure of money laundering or terrorist suspicion reporting by the existing accountant to the proposed accountant needs to be avoided because this information may be discussed with the client or former client.*

Transfer of records

R320.7C ***An existing accountant shall deal promptly with any reasonable request for the transfer of records and may have the right of particular lien if there are unpaid fees.***

R320.7D ***The prospective accountant often asks the existing accountant for information as to the client's affairs. If the client is unable to provide the information and lack thereof might prejudice the client's interests, such information shall be promptly given. In such circumstances, no charge shall normally be made unless there is good reason to the contrary.***

320.7 A4 *An example of a reason to make a charge would be that a significant amount of work is involved.*

Changes in Audit or Review Appointments

R320.8 **In the case of an audit or review of financial statements, a professional accountant shall request the existing or predecessor accountant to provide known information regarding any facts or other information of which, in the existing or predecessor accountant's opinion, the proposed accountant needs to be aware before deciding whether to accept the engagement. Except for the circumstances involving non-compliance or suspected non-compliance with laws and regulations set out in paragraphs R360.21 and R360.22:**

(a) **If the client consents to the existing or predecessor accountant disclosing any such facts or other information, the existing or predecessor accountant shall provide the information honestly and unambiguously; and**

(b) **If the client fails or refuses to grant the existing or predecessor accountant permission to discuss the client's affairs with the proposed accountant, the existing or predecessor accountant shall disclose this fact to the proposed accountant, who shall carefully consider such failure or refusal when determining whether to accept the appointment.**

Client and Engagement Continuance

R320.9 **For a recurring client engagement, a professional accountant shall periodically review whether to continue with the engagement.**

320.9 A1 Potential threats to compliance with the fundamental principles might be created after acceptance which, had they been known earlier, would have caused the professional accountant to decline the engagement. For example, a self-interest threat to compliance with the principle of integrity might be created by improper earnings management or balance sheet valuations.

Using the Work of an Expert

R320.10 **When a professional accountant intends to use the work of an expert, the accountant shall determine whether the use is warranted**.

320.10 A1 Factors to consider when a professional accountant intends to use the work of an expert include the reputation and expertise of the expert, the resources available to the expert, and the professional and ethics standards applicable to the expert. This information might be gained from prior association with the expert or from consulting others.

Note:

Additional information is available on the following matters:

Anti-Money Laundering Guidance: https://www.charteredaccountants.ie/knowledge-centre/guidance/Technical-Releases-and-Technical-Alerts/Technical-Releases

Access to audit information under Audit Regulation 3.09 at: *https://www.charteredaccountants.ie/Professional-Standards/Bye-laws-and-Regulations/Suite-of-Rules-and-Regs*

SECTION 321

SECOND OPINIONS

Introduction

321.1 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.

321.2 Providing a second opinion to an entity that is not an existing client might create a self-interest or other threat to compliance with one or more of the fundamental principles. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances. *This section does not apply to expert evidence assignments, opinions pursuant to litigation and opinions provided jointly to other firms and their clients jointly*.

Requirements and Application Material

General

R321.3 ***A professional accountant shall, when providing a second opinion:***

(a) ***Confirm oral opinions in writing as soon as practicable after giving the opinion;***

(b) ***If asked for a general opinion relative to a hypothetical situation, ensure that the recipient of the opinion understands that it has been given in the context of that particular hypothetical situation only.***

321.3 A1 A professional accountant might be asked to provide a second opinion on the application of accounting, auditing, reporting or other standards or principles to (a) specific circumstances, or (b) transactions by or on behalf of a company or an entity that is not an existing client. A threat, for example, a self-interest threat to compliance with the principle of professional competence and due care, might be created if the second opinion is not based on the same facts that the existing or predecessor accountant had, or is based on inadequate evidence.

321.3 A2 A factor that is relevant in evaluating the level of such a self-interest threat is the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgment.

321.3 A3 Examples of actions that might be safeguards to address such a self-interest threat include:

- With the client's permission, obtaining information from the existing or predecessor accountant.
- Describing the limitations surrounding any opinion in communications with the client.
- Providing the existing or predecessor accountant with a copy of the opinion.

When Permission to Communicate is Not Provided

R321.4 **If an entity seeking a second opinion from a professional accountant will not permit the accountant to communicate with the existing or predecessor accountant, the accountant shall determine whether the accountant may provide the second opinion sought.**

321.4 A1 *A professional accountant providing a second opinion will generally need to seek contact with the existing or predecessor accountant (particularly if the existing accountant is engaged as auditor). This is necessary to ascertain the circumstances in which the consultation has been made, and to be apprised of all the facts relevant to the issues at the time the opinion is given. If the client will not allow the opinion giver to carry out the steps referred to above, it will generally be appropriate for the opinion-giver to decline to act, particularly if the existing accountant is engaged as auditor.*

SECTION 330

FEES AND OTHER TYPES OF REMUNERATION

Introduction

330.1 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.

330.2 The level and nature of fee and other remuneration arrangements might create a self-interest threat to compliance with one or more of the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Application Material

Level of Fees

330.3 A1 The level of fees quoted might impact a professional accountant's ability to perform professional services in accordance with professional standards.

330.3 A2 A professional accountant might quote whatever fee is considered appropriate. Quoting a fee lower than another accountant is not in itself unethical. However, the level of fees quoted creates a self-interest threat to compliance with the principle of professional competence and due care if the fee quoted is so low that it might be difficult to perform the engagement in accordance with applicable technical and professional standards.

330.3 A3 Factors that are relevant in evaluating the level of such a threat include:

- Whether the client is aware of the terms of the engagement and, in particular, the basis on which fees are charged and which professional services the quoted fee covers.
- Whether the level of the fee is set by an independent third party such as a regulatory body.

330.3 A4 Examples of actions that might be safeguards to address such a self-interest threat include:

- Adjusting the level of fees or the scope of the engagement.
- Having an appropriate reviewer review the work performed.

R330.4 A professional accountant shall explain the basis on which fees will be calculated and provide an estimated initial fee where applicable. A professional accountant shall give the client this information at the earliest opportunity.

330.4 A1 Fee levels are a commercial matter, but may be determined by:

- *The seniority and expertise of the individuals performing the work;*
- *Time spent;*
- *The risk and responsibility of the work;*
- *The nature of the client's business;*
- *The priority and importance of the work to the client;*
- *Expenses properly incurred.*

R330.5 A professional accountant shall provide fee quotes or details of the basis of fees in writing, either before the beginning of the engagement, or as soon as possible after the start of the engagement. This information would

normally be provided in the engagement letter. If there is no engagement letter, then the professional accountant shall provide a specific document containing these details.

R330.6 ***If audit or assurance work has been obtained by a fee quote that is low compared to existing fees, a professional accountant shall be aware of the risk of an actual or perceived self-interest threat. In particular, the risk of the perception that the objectivity or quality of the work could be compromised. A professional accountant shall ensure that work for which the accountant is responsible complies with relevant standards, guidelines and regulations, in particular quality control.***

R330.7 ***A professional accountant shall not mislead clients about the basis of fees for current or future work.***

Contingent Fees

330.8 A1 Contingent fees are used for certain types of non-assurance services. However, contingent fees might create threats to compliance with the fundamental principles, particularly a self-interest threat to compliance with the principle of objectivity, in certain circumstances.

330.8 A2 Factors that are relevant in evaluating the level of such threats include:

- The nature of the engagement.
- The range of possible fee amounts.
- The basis for determining the fee.
- Disclosure to intended users of the work performed by the professional accountant and the basis of remuneration.
- Quality control policies and procedures.
- Whether an independent third party is to review the outcome or result of the transaction.
- Whether the level of the fee is set by an independent third party such as a regulatory body.

330.8 A3 Examples of actions that might be safeguards to address such a self-interest threat include:

- Having an appropriate reviewer who was not involved in performing the non-assurance service review the work performed by the professional accountant.
- Obtaining an advance written agreement with the client on the basis of remuneration.

330.8 A4 Requirements and application material related to contingent fees for services provided to audit or review clients and other assurance clients are set out in International Independence Standards.

330.8 A5 *For formal appointments under insolvency legislation e.g. bankruptcies, liquidations and administrations, the professional accountant might be required by statute to base fees on a percentage of:*

- *Realisations of value or property dealt with; or*
- *Distributions,*

rather than the bases outlined in 330.4A1

330.8 A6 *For Corporate Finance services where no professional opinion is given, such as advising on:*

- *Management Buy-Ins;*
- *Management Buy-Outs;*
- *Raising Venture Capital;*
- *Acquisition searches; or*
- *Sales Mandates*

A contingent fee basis might be more appropriate than a fee calculated on the bases outlined in 330.4A1.

330.8 A7 Due to the higher level of risk and responsibility associated with due diligence assignments, it may be appropriate to charge a higher fee for a transaction that completes, than for one that is aborted. Any higher fee may *reflect the additional risk and responsibility.*

Fee Information and Disputes

R330.9 If a client requests a fee breakdown then the professional accountant shall provide one. The breakdown shall contain enough detail for the client to understand how the fee has been calculated.

R330.10 If a professional accountant issues a fee in excess of the previous quote or estimate, then the professional accountant shall explain the reason for the excess, and how the excess has been calculated.

330.10 A1 If the client has not paid fees due, the professional accountant might have the right to retain certain books and papers of the client. The professional accountant should refer to S320 'Professional Appointment'.

R330.11 A professional accountant shall take reasonable steps to attempt to resolve any fee dispute

330.11 A1 If a client is overdue in paying fees owed, it could create a real or perceived self-interest threat for a professional accountant. See R112 Objectivity.

Referral Fees or Commissions

330.12 A1 A self-interest threat to compliance with the principles of objectivity and professional competence and due care is created if a professional accountant pays or receives a referral fee or receives a commission relating to a client. Such referral fees or commissions include, for example:

- A fee paid to another professional accountant for the purposes of obtaining new client work when the client continues as a client of the existing accountant but requires specialist services not offered by that accountant.
- A fee received for referring a continuing client to another professional accountant or other expert where the existing accountant does not provide the specific professional service required by the client.
- A commission received from a third party (for example, a software vendor) in connection with the sale of goods or services to a client.

330.12 A2 Examples of actions that might be safeguards to address such a self-interest threat include:

- Obtaining an advance agreement from the client for commission arrangements in connection with the sale by another party of goods or services to the client might address a self-interest threat.
- Disclosing to clients any referral fees or commission arrangements paid to, or received from, another professional accountant or third party for recommending services or products might address a self-interest threat.

R330.13 ***If a professional accountant, or an associate, receives any kind of fee, commission, payment, or benefit ("the commission") in connection with the referral of the professional accountant's client, the professional accountant shall either***

- ***account to the client for the commission by payment of the whole commission to the client or by deducting the amount received from the fees otherwise chargeable to the client and by showing such deduction on the face of the bill; or,***
- ***obtain explicit written consent to retain the commission.***

This requirement exists regardless of the amount of the commission.

Client consent shall be achieved one of in the following ways:

(a) ***A professional accountant may include a clause in their engagement letter that specifies that the firm will retain commission payments received in relation to referrals of the client to third parties. The clause shall state that by the client signing the engagement letter they are providing consent to the firm retaining the commission. The engagement letter shall include examples that provide a fair indication of the amount of expected commission. If the amount of commission received is significantly in excess of the amounts***

indicated in the engagement letter, the firm shall also write to the client promptly following receipt of the commission and shall specify:

- ***The amount and if relevant the frequency of the commission received;***
- ***What the commission was received for;***
- ***How the commission was calculated;***
- ***The payer and payee of the commission.***

(b) If there is no general clause in the engagement letter which provides a fair indication of the expected commission, a professional accountant may obtain advance specific written consent for the receipt of any commission. This consent from the client shall detail:

- ***The amount and if relevant the frequency of the commission the professional accountant will receive;***
- ***What the commission will be received for;***
- ***How the commission will be calculated;***
- ***The payer and payee of the commission.***

A professional accountant shall obtain explicit written consent from the client for the commission payment to be retained.

(c) If advance consent has not been obtained either in general (point a) or specifically (point b), a professional accountant shall make full disclosure to the client within a reasonable period of time following receipt of the commission. The professional accountant shall provide the following details to the client in writing:

- ***The amount and if relevant the frequency of the commission the professional accountant has received;***
- ***What the commission was received for;***
- ***How the commission was calculated;***
- ***The payer and payee of the commission.***

The professional accountant shall ask the client for explicit written consent for the commission payment to be retained. If a professional accountant has made reasonable efforts to obtain written consent from the client for retention of the commission, but the client has not responded, then the professional accountant may presume consent to retain the commission. The professional accountant would however need to demonstrate that they had made reasonable efforts to obtain consent.

330.13 A1 Where a professional accountant acts as agent for a client, or gives them professional advice, there will be a fiduciary relationship between the professional accountant and the client. This means that the professional accountant has

a legal obligation to obtain informed consent from the client, if the professional accountant wants to retain any commission, fee, or other benefit received from a third party in connection with the referral of the client.

330.13 A2 *The term 'associate' of a professional accountant includes the following:*

- *An immediate family member e.g. spouse, parent, child, sibling etc.*
- *A business partner;*
- *Any company or business in which there are common shareholdings with the professional accountant's company or business, or which have the same beneficial owner(s); or one of the companies or business controls or owns the other.*

330.13 A3 *The examples of associates are not exhaustive, and the substance of the association between the professional accountant and the recipient of the commission should be considered.*

330.13 A4 *A professional accountant might consider that a payment the professional accountant receives in connection with the referral of a client, is in substance a fee for services rendered, and not commission. In these circumstances the professional accountant should be able to demonstrate that the fee received is not disproportionate to the scope of the services provided. The fee should nevertheless be disclosed to the client with details of what services the fee represents.*

R330.14 ***Where an invitation to conduct a statutory audit comes other than directly from the client, the professional accountant shall first ensure that the audit appointment has been properly made in accordance with statute. It shall be made clear to all interested parties, on all relevant documents, that the professional accountant is acting as principal, with all that that function implies. In those circumstances the professional accountant, shall deal directly with the client and shall render their own fee account.***

Purchase or Sale of a Firm

330.15 A1 A professional accountant may purchase all or part of another firm on the basis that payments will be made to individuals formerly owning the firm or to their heirs or estates. Such payments are not referral fees or commissions for the purposes of this section.

SECTION 331

AGENCIES AND REFERRALS

Introduction

331.1 *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*

331.2 *If a professional accountant receives referred work, refers work to others, or establishes an agency arrangement, this might create a self-interest threat to compliance with one or more of the fundamental principles. A referral may be a formal request made in the course of a professional relationship, for advice on the selection of a potential professional adviser. A referral may also be an informal request, including where there is no existing relationship between the professional accountant and the enquirer. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.*

331.3 *The requirements in respect of referral fees are detailed in section 330.*

Requirements and Application Material

Duty of Care

331.4 A1 *When a professional accountant makes a referral, a duty of care may arise. The extent of a duty of care varies according to the circumstances, including whether the exchange or provision of information was solicited or not. A greater duty of care will arise for matters which are reasonably expected to be within a professional accountant's knowledge or where a fee is charged. A professional accountant needs to consider the expectations of their knowledge from the client's or enquirer's perspective:*

- *Where a referral fee is received, or where the service referred is in a professional sphere, the client (or enquirer) can reasonably presume knowledge by the professional accountant. Any limitation in knowledge would clearly need to be explained.*
- *Where the enquiry relates to a service outside the normal sphere of expertise of an accountant, and no referral fee is contemplated, then it is reasonable to presume that the enquiry is being made in a personal capacity, unless circumstances suggest otherwise. It is still advisable to express any limitations of knowledge and to clarify, in case of doubt, that any opinion is based on personal experience rather than in a professional capacity.*

R331.5 ***Professional accountants shall consider whether it would be in their interest for any knowledge limitations to be disclosed in writing, according to the circumstances.***

331.5 A1 *Factors that are relevant in such a consideration include:*

- *The nature of the professional relationship with the enquirer (an existing client, someone who could reasonably be considered to be making the enquiry as a prospective client or a casual enquiry).*
- *The context in which the enquiry is made. Is it professional or personal, casual or formal?*
- *The nature of the personal relationship. Does the enquirer know the professional accountant is a Chartered Accountant and are they consulting them as a respected professional?*
- *The scope of enquiry and whether a referral fee is contemplated, as considered in section 330.*

- *The enquirer's expectations.*

R331.6 ***The professional accountant shall consider the fitness for purpose of the third party to whom a referral is proposed, to address the client's needs.***

331.6 A1 *A referral arises typically, when the professional accountant does not have the expertise and/or resource in house to undertake the potential engagement. It follows that the professional accountant will not necessarily know enough to be able completely to assess whether the third party is the optimum choice or not. This is an inevitable limitation in most referrals, and what the referral is based on will vary.*

331.6 A2 *In making that consideration of fitness for purpose, the professional accountant:*

- *Can take account of the professional or regulatory status of the prospective referee;*
- *Is not normally expected to have to make additional enquiries about the prospective referee and can make the assessment based on what is already known.*

R331.7 ***A professional accountant shall not make a referral to a third party, even with a disclaimer, if they know of a better alternative. Where the referral relates to an end product or service, rather than an intermediary, and the professional accountant knows there are other alternatives but does not know if they are better, this shall be explained.***

331.7 A1 *If the client or enquirer insists on being referred to a particular third party and the professional accountant believes there is a better alternative, the reference may be made but the client or enquirer should be made aware of the professional accountant's concerns.*

R331.8 ***If the professional accountant has a relationship with the third party, for example a family connection or an automatic referral arrangement, there are clear self-interest or familiarity threats and the connection shall be disclosed.***

331.8 A1 *This is particularly important where a professional accountant is considering recommending the products of another supplier with which there is an agency, and/or a principal or employee of the professional accountant's firm is a principal or officer of the other supplier.*

331.8 A2 *The requirement to disclose includes situations where in substance there is a one-to-one relationship between the professional accountant and the third party (for example, the professional accountant is the only accountant in the area and the third party is the only solicitor), as this implies automatic referral.*

331.9 A1 *In summary, the duty of care requirements and application material in 331.4 A1 to 331.8 A2 mean that professional accountants should:*

- *Consider any factors they are aware of that would indicate the proposed third party is not fit for purpose in terms of the potential engagement. The professional accountant should take into account what a reasonable person might expect a Chartered Accountant to know;*
- *Make clients (or enquirers), that are proposed to be referred, aware of limitations in knowledge;*
- *Disclose any referral arrangement and any potential benefit they will receive;*
- *Ensure that any contractual arrangement does not override the needs of an individual client.*

Establishing Agencies

331.10 *The guidance which follows is intended to assist professional accountants in their arrangements with other suppliers of services and products. It addresses agreements that in effect provide for permanent arrangements for referrals. The issues are considered to be similar to those above for referrals in general except that an agency contract will usually bind the agent in terms of whom it can refer to for particular types of work.*

R331.11 ***When professional accountants are considering the establishment of an agency, the terms of the agency contract (actual or implied) shall not require exclusive referral of all clients regardless of suitability.***

331.11 A1 *For example, professional accountants could not be party to an agency by which they are constrained to channel all funds received by it for investment into a single bank/building society. Such a clause would make important safeguards inoperable.*

R331.12 ***Before accepting appointment as auditor or assurance provider of another entity of which they are an agent, professional accountants shall consider whether the agency constitutes a material business relationship and thus breach the independence requirements in part 4.***

R331.13 ***Professional accountants shall not, because of the self-interest threat, enter into any financial arrangements with another supplier either personally or through their firm which would prejudice the objectivity of themselves or their firm.***

R331.14 ***Before accepting or continuing an agency with another supplier, professional accountants should satisfy themselves that their ability to discharge their professional obligations to their clients is not compromised.***

R331.15 ***A professional accountant shall not in any circumstances conduct its practice in such a manner as to give the impression that the professional accountant is a principal rather than an agent.***

331.15 A1 *This includes considering signs on premises and any other outward signs or literature used. This would relate in particular to agencies with entities such as banks and building societies, where confusion as to status can arise.*

331.16 A1 *Firms in Ireland must be authorised under the Investment Intermediaries Act, 1995 to hold an agency with a building society, and that arrangement shall relate solely to deposit taking and not for example relate to products of a particular unit trust organisation for which the building society is an appointed representative. Firms holding building society agencies must ensure that their agency agreement contains no obligation which would cause, or would be perceived to cause, them to breach the provisions of either the Act or the Institute of Chartered Accountants in Ireland's Investment Business Regulations and Guidance. Firms cannot hold agencies with banks.*

Investment Business Agencies and Introductions

R331.17 ***When considering referrals of investment business ('introductions') or the establishment of investment business agencies, professional accountants shall apply the general principles and requirements set out above.***

331.17 A1 *Additional considerations will include:*

- *Whether the introduction or agency is permitted by regulation; and*
- *Whether the status of the third party investment business provider is compatible with the requirement to give objective advice.*

Regulated activities under the Financial Services and Markets Act 2000 (United Kingdom)

331.18 A1 *In order to make a decision about whether an introduction is a regulated activity, a professional accountant must look at how the introduction is made and also what type of investment the client is considering (such as life*

assurance and pensions, unit trusts, shares, mortgages or general insurance). A regulated introduction can only be made under the terms of the Act by a firm which is licensed by ICAEW as a Designated Professional Body ('DPB') (a licensed firm) or a firm which is authorised by the Financial Conduct Authority ('authorised'). Unauthorised / unlicensed firms are restricted in that they can only make introductions for general financial advice where no specific type of investment is referred to, or for a restricted range of investments, such as shares and unit trusts. Further guidance on the difference between a regulated introduction and the provision of information in respect of insurance business, and the regulatory consequences thereof, is set out in Schedule 6 to Part 3 of the DPB Handbook.

R331.19 ***Having established that an introduction can be made in compliance with regulatory requirements, professional accountants shall bear in mind the need to provide their clients with objective advice, in compliance with these ethical standards.***

R331.20 ***Professional accountants might become appointed representatives of another authorised firm. When selecting which authorised firm to become an appointed representative of, professional accountants shall again bear in mind the need to provide their clients with objective advice.***

Regulated Activities under the Investment Intermediaries Act, 1995 (Ireland)

331.21 A1 *Professional accountants may only make an introduction or refer clients to another authorised firm if they are themselves authorised to conduct investment business under the Investment Intermediaries Act 1995 and where required hold an appropriate letter of appointment.*

R331.22 ***Professional accountants when selecting an authorised firm shall bear in mind the need to provide their clients with objective advice.***

Status of Investment Business Providers

331.23 A1 *Considerations in implementing the above requirements when becoming an agent of an authorised firm are summarised below.*

Authorised firms within the United Kingdom may fall into the following categories: Type of firm	*What recommendations the firm may make*	*May there generally be introductions to this type of firm?*
Independent	*a) A firm provides independent advice across all markets and all retail investment products* *b) A firm provides independent advice in respect of a relevant market that does not include all retail investment products (but does include all retail investment products within the relevant market)*	*Yes (331.24 A1 below)* *Depends (R331.25 below)*
Restricted	*A firm provides restricted advice (being advice which is not independent as described in a and b above)*	*Depends on scope of choice (R331.26 below)*
Further information and the definitions of independent and restricted is available in the FCA Handbook		

Authorised firms within Ireland may fall into the following categories: Type of firm	*What recommendations the firm may make*	*May there generally be introductions to this type of firm?*
Independent	*Recommend products from the whole market and offer clients the ability to pay by fee. Only these firms can describe themselves as independent financial advisers. The client may be able to elect for the adviser to be paid by commission*	*Yes (331.24 A1 below)*
Tied	*Recommend the products of one product provider.*	*No*

331.24 A1 *An introduction to independent firms (category (a) only for the UK table above) would be likely to meet the requirement to give objective advice but professional accountants are reminded of the general requirements above.*

R331.25 ***Professional accountants shall apply the guidance in Sections 331.1 to 331.8. n respect of recommendations to firms providing independent advice in respect of a relevant market that does not include all retail investment products (category (b) in the UK table above).***

331.25 A1 *Whether they can make such recommendations will depend upon whether the relevant markets covered are appropriate to the client's requirements and on whether, within those markets, the firm places business with the product providers who account for a large majority of the relevant market or offer the sector of the market which is most suitable for the client's needs. The latter aspect is discussed further in 331.27 A1 below in the context of restricted advice but similar principles apply.*

R331.26 ***If considering an introduction to a restricted firm, professional accountants shall apply the guidance in 331.1 to 331.8 above. Professional accountants shall assess the client's requirements and whether the restricted firm places business with the product providers who account for a large majority of the relevant market or offer the sector of the market which is most suitable for the client's needs. If making such a referral, the professional accountant shall make the client aware of restrictions in the range of investments offered by the firm to which the client is being referred.***

331.26 A1 *Professional accountants may in some situations be able to introduce to restricted firms and still comply with the ethical requirements (however, see 331.18 A1 and R331.19 above as to whether the introduction can only be made by a DPB licensed firm or an FCA authorised firm, if it is a 'regulated' activity). Whether an introduction to a restricted firm will be acceptable will depend on the particular circumstances and the scope of the available choice. The principal threat is that clients might not be offered the most appropriate choice. However, professional accountants need to ensure that in making such an assessment, they are not effectively making their own recommendation unless they are able to do so under the terms of a licence or authorisation. The professional accountant may decide that this does not restrict the client's access to the range of product providers to an extent where there is any potential detriment.*

331.27 A1 *Similar considerations to those noted above apply to whether a professional accountant shall become an appointed representative under the Financial Services and Markets Act 2000. Thus, for example, a professional firm cannot become an appointed representative for regulated investment business, of a restricted firm if the agency agreement would obliged the firm to make referrals to the principal in all circumstances and the firm would be unable to provide objective advice.*

SECTION 340

INDUCEMENTS, INCLUDING GIFTS AND HOSPITALITY

Introduction

340.1 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.

340.2 Offering or accepting inducements might create a self-interest, familiarity or intimidation threat to compliance with the fundamental principles, particularly the principles of integrity, objectivity and professional behaviour.

340.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the offering and accepting of inducements when performing professional services that does not constitute non-compliance with laws and regulations. This section also requires a professional accountant to comply with relevant laws and regulations when offering or accepting inducements.

Requirements and Application Material

General

340.4 A1 An inducement is an object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour. Inducements can range from minor acts of hospitality between professional accountants and existing or prospective clients to acts that result in non-compliance with laws and regulations. An inducement can take many different forms, for example:

- Gifts.
- Hospitality.
- Entertainment.
- Political or charitable donations.
- Appeals to friendship and loyalty.
- Employment or other commercial opportunities.
- Preferential treatment, rights or privileges.

Inducements Prohibited by Laws and Regulations

R340.5 In many jurisdictions, there are laws and regulations, such as those related to bribery and corruption, that prohibit the offering or accepting of inducements in certain circumstances. The professional accountant shall obtain an understanding of relevant laws and regulations and comply with them when the accountant encounters such circumstances.

Inducements Not Prohibited by Laws and Regulations

340.6 A1 The offering or accepting of inducements that is not prohibited by laws and regulations might still create threats to compliance with the fundamental principles.

Inducements with Intent to Improperly Influence Behaviour

R340.7 **A professional accountant shall not offer, or encourage others to offer, any inducement that is made, or which the accountant considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another individual.**

R340.8 **A professional accountant shall not accept, or encourage others to accept, any inducement that the accountant concludes is made, or considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another individual.**

340.9 A1 An inducement is considered as improperly influencing an individual's behaviour if it causes the individual to act in an unethical manner. Such improper influence can be directed either towards the recipient or towards another individual who has some relationship with the recipient. The fundamental principles are an appropriate frame of reference for a professional accountant in considering what constitutes unethical behaviour on the part of the accountant and, if necessary by analogy, other individuals.

340.9 A2 A breach of the fundamental principle of integrity arises when a professional accountant offers or accepts, or encourages others to offer or accept, an inducement where the intent is to improperly influence the behaviour of the recipient or of another individual.

340.9 A3 The determination of whether there is actual or perceived intent to improperly influence behaviour requires the exercise of professional judgment. Relevant factors to consider might include:

- The nature, frequency, value and cumulative effect of the inducement.
- Timing of when the inducement is offered relative to any action or decision that it might influence.
- Whether the inducement is a customary or cultural practice in the circumstances, for example, offering a gift on the occasion of a religious holiday or wedding.
- Whether the inducement is an ancillary part of a professional service, for example, offering or accepting lunch in connection with a business meeting.
- Whether the offer of the inducement is limited to an individual recipient or available to a broader group. The broader group might be internal or external to the firm, such as other suppliers to the client.
- The roles and positions of the individuals at the firm or the client offering or being offered the inducement.
- Whether the professional accountant knows, or has reason to believe, that accepting the inducement would breach the policies and procedures of the client.
- The degree of transparency with which the inducement is offered.
- Whether the inducement was required or requested by the recipient.
- The known previous behaviour or reputation of the offeror.

Consideration of Further Actions

340.10 A1 If the professional accountant becomes aware of an inducement offered with actual or perceived intent to improperly influence behaviour, threats to compliance with the fundamental principles might still be created even if the requirements in paragraphs R340.7 and R340.8 are met.

340.10 A2 Examples of actions that might be safeguards to address such threats include:

- Informing senior management of the firm or those charged with governance of the client regarding the offer.
- Amending or terminating the business relationship with the client.

Inducements with No Intent to Improperly Influence Behaviour

340.11 A1 The requirements and application material set out in the conceptual framework apply when a professional accountant has concluded there is no actual or perceived intent to improperly influence the behaviour of the recipient or of another individual.

340.11 A2 If such an inducement is trivial and inconsequential, any threats created will be at an acceptable level.

340.11 A3 Examples of circumstances where offering or accepting such an inducement might create threats even if the professional accountant has concluded there is no actual or perceived intent to improperly influence behaviour include:

- Self-interest threats
  - A professional accountant is offered hospitality from the prospective acquirer of a client while providing corporate finance services to the client.
- Familiarity threats
  - A professional accountant regularly takes an existing or prospective client to sporting events.
- Intimidation threats
  - A professional accountant accepts hospitality from a client, the nature of which could be perceived to be inappropriate were it to be publicly disclosed.

340.11 A4 Relevant factors in evaluating the level of such threats created by offering or accepting such an inducement include the same factors set out in paragraph 340.9 A3 for determining intent.

340.11 A5 Examples of actions that might eliminate threats created by offering or accepting such an inducement include:

- Declining or not offering the inducement.
- Transferring responsibility for the provision of any professional services to the client to another individual who the professional accountant has no reason to believe would be, or would be perceived to be, improperly influenced when providing the services.

340.11 A6 Examples of actions that might be safeguards to address such threats created by offering or accepting such an inducement include:

- Being transparent with senior management of the firm or of the client about offering or accepting an inducement.
- Registering the inducement in a log monitored by senior management of the firm or another individual responsible for the firm's ethics compliance or maintained by the client.
- Having an appropriate reviewer, who is not otherwise involved in providing the professional service, review any work performed or decisions made by the professional accountant with respect to the client from which the accountant accepted the inducement.

- Donating the inducement to charity after receipt and appropriately disclosing the donation, for example, to a member of senior management of the firm or the individual who offered the inducement.
- Reimbursing the cost of the inducement, such as hospitality, received.
- As soon as possible, returning the inducement, such as a gift, after it was initially accepted.

Immediate or Close Family Members

R340.12 **A professional accountant shall remain alert to potential threats to the accountant's compliance with the fundamental principles created by the offering of an inducement:**

(a) By an immediate or close family member of the accountant to an existing or prospective client of the accountant.

(b) To an immediate or close family member of the accountant by an existing or prospective client of the accountant.

R340.13 **Where the professional accountant becomes aware of an inducement being offered to or made by an immediate or close family member and concludes there is intent to improperly influence the behaviour of the accountant or of an existing or prospective client of the accountant, or considers a reasonable and informed third party would be likely to conclude such intent exists, the accountant shall advise the immediate or close family member not to offer or accept the inducement.**

340.13 A1 The factors set out in paragraph 340.9 A3 are relevant in determining whether there is actual or perceived intent to improperly influence the behaviour of the professional accountant or of the existing or prospective client. Another factor that is relevant is the nature or closeness of the relationship, between:

(a) The accountant and the immediate or close family member;

(b) The immediate or close family member and the existing or prospective client; and

(c) The accountant and the existing or prospective client.

For example, the offer of employment, outside of the normal recruitment process, to the spouse of the accountant by a client for whom the accountant is providing a business valuation for a prospective sale might indicate such intent.

340.13 A2 The application material in paragraph 340.10 A2 is also relevant in addressing threats that might be created when there is actual or perceived intent to improperly influence the behaviour of the professional accountant, or of the existing or prospective client even if the immediate or close family member has followed the advice given pursuant to paragraph R340.13.

Application of the Conceptual Framework

340.14 A1 Where the professional accountant becomes aware of an inducement offered in the circumstances addressed in paragraph R340.12, threats to compliance with the fundamental principles might be created where:

(a) The immediate or close family member offers or accepts the inducement contrary to the advice of the accountant pursuant to paragraph R340.13; or

(b) The accountant does not have reason to believe an actual or perceived intent to improperly influence the behaviour of the accountant or of the existing or prospective client exists.

340.14 A2 The application material in paragraphs 340.11 A1 to 340.11 A6 is relevant for the purposes of identifying, evaluating and addressing such threats. Factors that are relevant in evaluating the level of threats in these circumstances also include the nature or closeness of the relationships set out in paragraph 340.13 A1.

Other Considerations

340.15 A1 If a professional accountant encounters or is made aware of inducements that might result in non-compliance or suspected non-compliance with laws and regulations by a client or individuals working for or under the direction of the client, the requirements and application material in Section 360 apply.

340.15 A2 If a firm, network firm or an audit team member is being offered gifts or hospitality from an audit client, the requirement and application material set out in Section 420 apply.

340.15 A3 If a firm or an assurance team member is being offered gifts or hospitality from an assurance client, the requirement and application material set out in Section 906 apply.

SECTION 350

CUSTODY OF CLIENT ASSETS

Introduction

350.1 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.

350.2 Holding client assets creates a self-interest or other threat to compliance with the principles of professional behaviour and objectivity. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

Before Taking Custody

R350.3 A professional accountant shall not assume custody of client money or other assets unless permitted to do so by law and in accordance with any conditions under which such custody may be taken.

R350.4 As part of client and engagement acceptance procedures related to assuming custody of client money or assets, a professional accountant shall:

(a) Make inquiries about the source of the assets; and

(b) Consider related legal and regulatory obligations.

350.4 A1 Inquiries about the source of client assets might reveal, for example, that the assets were derived from illegal activities, such as money laundering. In such circumstances, a threat would be created and the provisions of Section 360 would apply.

After Taking Custody

R350.5 A professional accountant entrusted with money or other assets belonging to others shall:

(a) Comply with the laws and regulations relevant to holding and accounting for the assets;

(b) Keep the assets separately from personal or firm assets;

(c) Use the assets only for the purpose for which they are intended; and

(d) Be ready at all times to account for the assets and any income, dividends, or gains generated, to any individuals entitled to that accounting.

Note:

Professional accountants should also refer to the following sources of information:

- The Client Money Regulations,contained with the Public Practice Regulations at: https://www.charteredaccountants.ie/Professional-Standards/Bye-laws-and-Regulations/Suite-of-Rules-and-Regs
- *The DPB Handbook and the Investment Business Regulationsat:* https://www.charteredaccountants.ie/Professional-Standards/Bye-laws-and-Regulations/Suite-of-Rules-and-Regs
- *The Anti-Money Laundering guidance for the Accountancy sector at: https://www.ccab.org.uk/documents/FinalAMLGuidance2018Formattedfinal.pdf*

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.

360.2 A self-interest or intimidation threat to compliance with the principles of integrity and professional behaviour is created when a professional accountant becomes aware of non-compliance or suspected non-compliance with laws and regulations.

360.3 A professional accountant might encounter or be made aware of non-compliance or suspected non-compliance 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 non-compliance or suspected non-compliance with:

(a) Laws and regulations generally recognised 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.

Objectives of the Professional Accountant in Relation to Non-compliance with Laws and Regulations

360.4 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 behaviour;

(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.

Requirements and Application Material

General

360.5 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:

(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.

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

- 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.

360.5 A3 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.

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.

360.6 A1 A prohibition on alerting the client might arise, for example, pursuant to anti-money laundering legislation.

360.7 A1 This section applies regardless of the nature of the client, including whether or not it is a public interest entity.

360.7 A2 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.

360.7 A3 This section does not address:

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

(b) Non-compliance by parties other than those specified in paragraph 360.5 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 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:

(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 All 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.

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 non-compliance or suspected non-compliance, the accountant shall obtain an understanding of the matter. This understanding shall include the nature of the non-compliance or suspected non-compliance and the circumstances in which it has occurred or might occur.

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

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.

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.

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.

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.

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:

- 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.

360.11 A4 The professional accountant might also consider discussing the matter with internal auditors, where applicable.

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.

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:

(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 management and those charged with governance understand their legal or regulatory responsibilities with respect to the non-compliance or suspected non-compliance.

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.

R360.15 The professional accountant shall comply with applicable:

(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.

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:**

(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. The communication requirement in paragraph R360.16 applies regardless of whether the group engagement partner's firm or network is the same as or different from the professional accountant's firm or network.

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:**

(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 **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. If necessary, the group engagement partner shall arrange for appropriate inquiries to be made (either of management or from publicly available information) 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. The communication requirement applies regardless of whether the group engagement partner's firm or network is the same as or different from the firms or networks of those performing work at the components.

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.**

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:

- 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.

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

- 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.

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 authorised 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 accountant pursuant to paragraph R320.8, provide all relevant facts and other information concerning the identified or suspected non-compliance to the proposed accountant. The predecessor accountant shall do so, even in the circumstances addressed in paragraph R320.8(b) where the client fails or refuses to grant the predecessor accountant permission to discuss the client's affairs with the proposed accountant, 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 accountant needs to be aware of before deciding whether to accept the audit appointment. Section 320 addresses communications from proposed accountants.

R360.23 If the proposed accountant is unable to communicate with the predecessor accountant, the proposed 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 assessment of the matter might involve complex analysis and judgments, the professional accountant might consider:

- 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 regulatory 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.

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:

- 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:

- 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, that disclosure is permitted pursuant to paragraph R114.1(d) 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.

Imminent Breach

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. Having first considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the accountant shall exercise professional judgment and determine whether to disclose the matter immediately to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach. If disclosure is made, that disclosure is permitted pursuant to paragraph R114.1(d) of the Code.

Documentation

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

- **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. ISAs, for example, require a professional accountant performing an audit of financial statements to:

- 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 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 non-compliance or suspected non-compliance and the circumstances in which it has occurred or might be about to occur.**

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.

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.

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 accountant shall also discuss the matter with them where appropriate.**

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.

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:

- 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:**

(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:**

(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:**

(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.

Relevant Factors to Consider

360.34 A1 Factors relevant to considering the communication in accordance with paragraphs R360.31 to R360.33 include:

- 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.

Purpose of Communication

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.

Considering Whether Further Action Is Needed

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

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

- 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:

- 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:

- 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, that disclosure is permitted pursuant to paragraph R114.1(d) 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.

Imminent Breach

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. Having first considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the accountant shall exercise professional judgment and determine whether to disclose the matter immediately

to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. If disclosure is made, that disclosure is permitted pursuant to paragraph R114.1(d) of the Code.

Seeking Advice

360.39 A1 The professional accountant might consider:

- 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 regulatory or professional body.

Documentation

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

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

Note:

Additional information on protected disclosures under the UK Public Interest Disclosure Act 1998 is available at: https://www.legislation.gov.uk/ukpga/1998/23/section/1

Additional information on protected disclosures under the Irish Protected Disclosures Act 2014 is available at http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/html

SECTION 400

APPLYING THE CONCEPTUAL FRAMEWORK TO INDEPENDENCE FOR AUDIT AND REVIEW ENGAGEMENTS

Applicability of Part 4A and FRC Ethical Standard on auditor independence

R400.0 ***When conducting audit engagements in accordance with ISAs (Ireland), professional accountants shall compy with the requirements of IAASA's Ethical Standard for Auditors (Ireland) ('IAASA ES'). When conducting audit engagements in accordance with ISAs (UK), professional accountants shall comply with the requirements of the Financial Reporting Council's Ethical Standard for Auditors ('FRC ES'). For other audit and assurance engagements Part 4A or 4B of this Code may apply.***

400.0 A1 *In accordance with legislative requirements, the Institute has adopted, as regards auditor independence requirements for Irish audits, the IAASA ES and for UK audits, the FRC ES. IAASA and the FRC have stated, in their respective Scope and Authority of Audit and Assurance Pronouncements, that the IAASA ES and the FRC ES, respectively, was developed with the intent that it should adhere to the principles of the IESBA Code. The Institute accordingly does not require Part 4A of this Code to be applied if the FRC ES or IAASA ES is followed.*

400.0 A2 *The independence requirements to be adopted for different types of assurance engagement, are set out below:*

Type of assurance engagement	***Independence requirements to be followed***
Audit engagements in accordance with ISAs (Ireland)	*The IAASA ES*
Audit engagements in accordance with ISAs (UK)	*The FRC ES*
Audit engagements performed in accordance with other standards	*Part 4A of this Code or if more convenient to apply, the independence requirements of the IAASA ES or the FRC ES as appropriate.*
Review engagements	*Part 4A of this Code or if more convenient to apply, the independence requirements of the IAASA ES or the FRC ES as appropriate.*
Other types of assurance engagements	*Part 4B of this Code.*

400.0A3 *Professional accountants should note that the scope of the FRC ES specifically extends to engagements undertaken in connection with an investment circular and performed in accordance with the Standards for Investment Reporting ('SIRs') issued by the FRC. Accordingly, any professional accountant in public practice issuing a report that states that the work has been carried out in the in accordance with the SIRS will need to comply with the independence requirements of the FRC ES.*

Introduction

General

400.1 It is in the public interest and required by the Code that professional accountants in public practice be independent when performing audit or review engagements.

400.2 This Part applies to both audit and review engagements. The terms "audit," "audit team," "audit engagement," "audit client," and "audit report" apply equally to review, review team, review engagement, review client, and review engagement report.

400.3 In this Part, the term "professional accountant" refers to individual professional accountants in public practice and their firms.

400.4 ISQC 1 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 (including network firm personnel), maintain independence where required by relevant ethics requirements. ISAs and ISREs establish responsibilities for engagement partners and engagement teams at the level of the engagement for audits and reviews, respectively. The allocation of responsibilities within a firm will depend on its size, structure and organization. Many of the provisions of this Part 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 audit team), in accordance with ISQC 1. In addition, an individual professional accountant remains responsible for compliance with any provisions that apply to that accountant's activities, interests or relationships.

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

(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 audit team member's, integrity, objectivity or professional scepticism has been compromised.

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

400.6 When performing audit engagements, the Code requires firms to comply with the fundamental principles and be independent. This Part sets out specific 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.

400.7 This Part describes:

(a) Facts and circumstances, including professional activities, interests and relationships, that create or might create threats to independence;

(b) Potential actions, including safeguards, that might be appropriate to address any such threats; and

(c) Some situations where the threats cannot be eliminated or there can be no safeguards to reduce them to an acceptable level.

Public Interest Entities

400.8 Some of the requirements and application material set out in this Part reflect the extent of public interest in certain entities which are defined to be public interest entities. Firms are encouraged to determine whether to treat additional entities, or certain categories of entities, as public interest entities because they have a large number and wide range of stakeholders. Factors to be considered include:

- The nature of the business, such as the holding of assets in a fiduciary capacity for a large number of stakeholders. Examples might include financial institutions, such as banks and insurance companies, and pension funds.
- Size.
- Number of employees.

Reports that Include a Restriction on Use and Distribution

400.9 An audit report might include a restriction on use and distribution. If it does and the conditions set out in Section 800 are met, then the independence requirements in this Part may be modified as provided in Section 800.

Assurance Engagements other than Audit and Review Engagements

400.10 Independence standards for assurance engagements that are not audit or review engagements are set out in Part 4B – *Independence for Assurance Engagements Other than Audit and Review Engagements*.

Requirements and Application Material

General

R400.11 A firm performing an audit engagement shall be independent.

R400.12 A firm shall apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence in relation to an audit engagement.

[Paragraphs 400.13 to 400.19 are intentionally left blank]

Related Entities

R400.20 As defined, an audit client that is a listed entity includes all of its related entities. For all other entities, references to an audit client in this Part include related entities over which the client has direct or indirect control. When the audit team knows, or has reason to believe, that a relationship or circumstance involving any other related entity of the client is relevant to the evaluation of the firm's independence from the client, the audit team shall include that related entity when identifying, evaluating and addressing threats to independence.

[Paragraphs 400.21 to 400.29 are intentionally left blank]

Period During which Independence is Required

R400.30 Independence, as required by this Part, shall be maintained during both:

(a) The engagement period; and

(b) The period covered by the financial statements.

400.30 A1 The engagement period starts when the audit team begins to perform the audit. The engagement period ends when the audit 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 audit report.

R400.31 **If an entity becomes an audit client during or after the period covered by the financial statements on which the firm will express an opinion, the firm shall determine whether any threats to independence are created by:**

(a) Financial or business relationships with the audit client during or after the period covered by the financial statements but before accepting the audit engagement; or

(b) Previous services provided to the audit client by the firm or a network firm.

400.31 A1 Threats to independence are created if a non-assurance service was provided to an audit client during, or after the period covered by the financial statements, but before the audit team begins to perform the audit, and the service would not be permitted during the engagement period.

400.31 A2 Examples of actions that might be safeguards to address such threats include:

- Using professionals who are not audit team members to perform the service.
- Having an appropriate reviewer review the audit and non-assurance work as appropriate.
- Engaging another firm outside of the network to evaluate the results of the non-assurance service or having another firm outside of the network re-perform the non-assurance service to the extent necessary to enable the other firm to take responsibility for the service.

[Paragraphs 400.32 to 400.39 are intentionally left blank]

Communication with those Charged with Governance

400.40 A1 Paragraphs R300.9 and R300.10 set out requirements with respect to communicating with those charged with governance.

400.40 A2 Even when not required by the Code, applicable professional standards, laws or regulations, regular communication is encouraged between a firm and those charged with governance of the client regarding relationships and other matters that might, in the firm's opinion, reasonably bear on independence. Such communication enables those charged with governance to:

(a) Consider the firm's judgments in identifying and evaluating threats;

(b) Consider how threats have been addressed including the appropriateness of safeguards when they are available and capable of being applied; and

(c) Take appropriate action.

Such an approach can be particularly helpful with respect to intimidation and familiarity threats.

[Paragraphs 400.41 to 400.49 are intentionally left blank]

Network Firms

400.50 A1 Firms frequently form larger structures with other firms and entities to enhance their ability to provide professional services. Whether these larger structures create a network depends on the particular facts and circumstances. It does not depend on whether the firms and entities are legally separate and distinct.

R400.51 **A network firm shall be independent of the audit clients of the other firms within the network as required by this Part.**

400.51 A1 The independence requirements in this Part that apply to a network firm apply to any entity that meets the definition of a network firm. It is not necessary for the entity also to meet the definition of a firm. For example, a consulting practice or professional law practice might be a network firm but not a firm.

R400.52 When associated with a larger structure of other firms and entities, a firm shall:

(a) Exercise professional judgment to determine whether a network is created by such a larger structure;

(b) Consider whether a reasonable and informed third party would be likely to conclude that the other firms and entities in the larger structure are associated in such a way that a network exists; and

(c) Apply such judgment consistently throughout such a larger structure.

R400.53 When determining whether a network is created by a larger structure of firms and other entities, a firm shall conclude that a network exists when such a larger structure is aimed at co-operation and:

(a) It is clearly aimed at profit or cost sharing among the entities within the structure. (Ref: Para. 400.53 A2);

(b) The entities within the structure share common ownership, control or management. (Ref: Para. 400.53 A3);

(c) The entities within the structure share common quality control policies and procedures. (Ref: Para. 400.53 A4);

(d) The entities within the structure share a common business strategy. (Ref: Para. 400.53 A5);

(e) The entities within the structure share the use of a common brand name. (Ref: Para. 400.53 A6, 400.53 A7); or

(f) The entities within the structure share a significant part of professional resources. (Ref: Para 400.53 A8, 400.53 A9).

400.53 A1 There might be other arrangements between firms and entities within a larger structure that constitute a network, in addition to those arrangements described in paragraph R400.53. However, a larger structure might be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network.

400.53 A2 The sharing of immaterial costs does not in itself create a network. In addition, if the sharing of costs is limited only to those costs related to the development of audit methodologies, manuals or training courses, this would not in itself create a network. Further, an association between a firm and an otherwise unrelated entity jointly to provide a service or develop a product does not in itself create a network. (Ref: Para. R400.53(a)).

400.53 A3 Common ownership, control or management might be achieved by contract or other means. (Ref: Para. R400.53(b)).

400.53 A4 Common quality control policies and procedures are those designed, implemented and monitored across the larger structure. (Ref: Para. R400.53(c)).

400.53 A5 Sharing a common business strategy involves an agreement by the entities to achieve common strategic objectives. An entity is not a network firm merely because it co-operates with another entity solely to respond jointly to a request for a proposal for the provision of a professional service. (Ref: Para. R400.53(d)).

400.53 A6 A common brand name includes common initials or a common name. A firm is using a common brand name if it includes, for example, the common brand name as part of, or along with, its firm name when a partner of the firm signs an audit report. (Ref: Para. R400.53(e)).

400.53 A7 Even if a firm does not belong to a network and does not use a common brand name as part of its firm name, it might appear to belong to a network if its stationery or promotional materials refer to the firm being a member of an association of firms. Accordingly, if care is not taken in how a firm describes such membership, a perception might be created that the firm belongs to a network. (Ref: Para. R400.53(e)).

400.53 A8 Professional resources include:

- Common systems that enable firms to exchange information such as client data, billing and time records.
- Partners and other personnel.
- Technical departments that consult on technical or industry specific issues, transactions or events for assurance engagements.
- Audit methodology or audit manuals.
- Training courses and facilities. (Ref: Para. R400.53(f)).

400.53 A9 Whether the shared professional resources are significant depends on the circumstances. For example:

- The shared resources might be limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information. In such circumstances, it is unlikely that the shared resources would be significant. The same applies to a common training endeavour.
- The shared resources might involve the exchange of personnel or information, such as where personnel are drawn from a shared pool, or where a common technical department is created within the larger structure to provide participating firms with technical advice that the firms are required to follow. In such circumstances, a reasonable and informed third party is more likely to conclude that the shared resources are significant. (Ref: Para. R400.53(f)).

R400.54 If a firm or a network sells a component of its practice, and the component continues to use all or part of the firm's or network's name for a limited time, the relevant entities shall determine how to disclose that they are not network firms when presenting themselves to outside parties.

400.54 A1 The agreement for the sale of a component of a practice might provide that, for a limited period of time, the sold component can continue to use all or part of the name of the firm or the network, even though it is no longer connected to the firm or the network. In such circumstances, while the two entities might be practicing under a common name, the facts are such that they do not belong to a larger structure aimed at cooperation. The two entities are therefore not network firms.

[Paragraphs 400.55 to 400.59 are intentionally left blank]

General Documentation of Independence for Audit and Review Engagements

R400.60 A firm shall document conclusions regarding compliance with this Part, and the substance of any relevant discussions that support those conclusions. In particular:

(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 required 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.

400.60 A1 Documentation provides evidence of the firm's judgments in forming conclusions regarding compliance with this

Part. However, a lack of documentation does not determine whether a firm considered a particular matter or whether the firm is independent.

[Paragraphs 400.61 to 400.69 are intentionally left blank]

Mergers and Acquisitions

When a Client Merger Creates a Threat

400.70 A1 An entity might become a related entity of an audit client because of a merger or acquisition. A threat to independence and, therefore, to the ability of a firm to continue an audit engagement might be created by previous or current interests or relationships between a firm or network firm and such a related entity.

R400.71 In the circumstances set out in paragraph 400.70 A1,

(a) The firm shall identify and evaluate previous and current interests and relationships with the related entity that, taking into account any actions taken to address the threat, might affect its independence and therefore its ability to continue the audit engagement after the effective date of the merger or acquisition; and

(b) Subject to paragraph R400.72, the firm shall take steps to end any interests or relationships that are not permitted by the Code by the effective date of the merger or acquisition.

R400.72 As an exception to paragraph R400.71(b), if the interest or relationship cannot reasonably be ended by the effective date of the merger or acquisition, the firm shall:

(a) Evaluate the threat that is created by the interest or relationship; and

(b) Discuss with those charged with governance the reasons why the interest or relationship cannot reasonably be ended by the effective date and the evaluation of the level of the threat.

400.72 A1 In some circumstances, it might not be reasonably possible to end an interest or relationship creating a threat by the effective date of the merger or acquisition. This might be because the firm provides a non-assurance service to the related entity, which the entity is not able to transition in an orderly manner to another provider by that date.

400.72 A2 Factors that are relevant in evaluating the level of a threat created by mergers and acquisitions when there are interests and relationships that cannot reasonably be ended include:

- The nature and significance of the interest or relationship.
- The nature and significance of the related entity relationship (for example, whether the related entity is a subsidiary or parent).
- The length of time until the interest or relationship can reasonably be ended.

R400.73 If, following the discussion set out in paragraph R400.72(b), those charged with governance request the firm to continue as the auditor, the firm shall do so only if:

(a) The interest or relationship will be ended as soon as reasonably possible but no later than six months after the effective date of the merger or acquisition;

(b) Any individual who has such an interest or relationship, including one that has arisen through performing a non-assurance service that would not be permitted by Section 600 and its subsections, will not be a

member of the engagement team for the audit or the individual responsible for the engagement quality control review; and

(c) Transitional measures will be applied, as necessary, and discussed with those charged with governance.

400.73 A1 Examples of such transitional measures include:

- Having a professional accountant review the audit or non-assurance work as appropriate.
- Having a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, perform a review that is equivalent to an engagement quality control review.
- Engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable the other firm to take responsibility for the service.

R400.74 The firm might have completed a significant amount of work on the audit prior to the effective date of the merger or acquisition and might be able to complete the remaining audit procedures within a short period of time. In such circumstances, if those charged with governance request the firm to complete the audit while continuing with an interest or relationship identified in paragraph 400.70 A1, the firm shall only do so if it:

(a) Has evaluated the level of the threat and discussed the results with those charged with governance;

(b) Complies with the requirements of paragraph R400.73(a) to (c); and

(c) Ceases to be the auditor no later than the date that the audit report is issued.

If Objectivity Remains Compromised

R400.75 Even if all the requirements of paragraphs R400.71 to R400.74 could be met, the firm shall determine whether the circumstances identified in paragraph 400.70 A1 create a threat that cannot be addressed such that objectivity would be compromised. If so, the firm shall cease to be the auditor.

Documentation

R400.76 The firm shall document:

(a) Any interests or relationships identified in paragraph 400.70 A1 that will not be ended by the effective date of the merger or acquisition and the reasons why they will not be ended;

(b) The transitional measures applied;

(c) The results of the discussion with those charged with governance; and

(d) The reasons why the previous and current interests and relationships do not create a threat such that objectivity would be compromised.

[Paragraphs 400.77 to 400.79 are intentionally left blank.]

Breach of an Independence Provision for Audit and Review Engagements

When a Firm Identifies a Breach

R400.80 **If a firm concludes that a breach of a requirement in this Part has occurred, the firm shall:**

(a) **End, suspend or eliminate the interest or relationship that created the breach and address the consequences of the breach;**

(b) **Consider whether any legal or regulatory requirements apply to the breach and, if so:**

(i) **Comply with those requirements; and**

(ii) **Consider reporting the breach to a professional or regulatory body or oversight authority if such reporting is common practice or expected in the relevant jurisdiction;**

(c) **Promptly communicate the breach in accordance with its policies and procedures to:**

(i) **The engagement partner;**

(ii) **Those with responsibility for the policies and procedures relating to independence;**

(iii) **Other relevant personnel in the firm and, where appropriate, the network; and**

(iv) **Those subject to the independence requirements in Part 4A who need to take appropriate action;**

(d) **Evaluate the significance of the breach and its impact on the firm's objectivity and ability to issue an audit report; and**

(e) **Depending on the significance of the breach, determine:**

(i) **Whether to end the audit engagement; or**

(ii) **Whether it is possible to take action that satisfactorily addresses the consequences of the breach and whether such action can be taken and is appropriate in the circumstances.**

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, and therefore, the firm would be unable to issue an audit report.

400.80 A1 A breach of a provision of this Part might occur despite the firm having policies and procedures designed to provide it with reasonable assurance that independence is maintained. It might be necessary to end the audit engagement because of the breach.

400.80 A2 The significance and impact of a breach on the firm's objectivity and ability to issue an audit report will depend on factors such as:

- The nature and duration of the breach.
- The number and nature of any previous breaches with respect to the current audit engagement.
- Whether an audit team member had knowledge of the interest or relationship that created the breach.
- Whether the individual who created the breach is an audit team member or another individual for whom there are independence requirements.
- If the breach relates to an audit team member, the role of that individual.

- If the breach was created by providing a professional service, the impact of that service, if any, on the accounting records or the amounts recorded in the financial statements on which the firm will express an opinion.
- The extent of the self-interest, advocacy, intimidation or other threats created by the breach.

400.80 A3 Depending upon the significance of the breach, examples of actions that the firm might consider to address the breach satisfactorily include:

- Removing the relevant individual from the audit team.
- Using different individuals to conduct an additional review of the affected audit work or to re-perform that work to the extent necessary.
- Recommending that the audit client engage another firm to review or re-perform the affected audit work to the extent necessary.
- If the breach relates to a non-assurance service that affects the accounting records or an amount recorded in the financial statements, engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable the other firm to take responsibility for the service.

R400.81 If the firm determines that action cannot be taken to address the consequences of the breach satisfactorily, the firm shall inform those charged with governance as soon as possible and take the steps necessary to end the audit engagement in compliance with any applicable legal or regulatory requirements. Where ending the engagement is not permitted by laws or regulations, the firm shall comply with any reporting or disclosure requirements.

R400.82 If the firm determines that action can be taken to address the consequences of the breach satisfactorily, the firm shall discuss with those charged with governance:

(a) The significance of the breach, including its nature and duration;

(b) How the breach occurred and how it was identified;

(c) The action proposed or taken and why the action will satisfactorily address the consequences of the breach and enable the firm to issue an audit report;

(d) The conclusion that, in the firm's professional judgment, objectivity has not been compromised and the rationale for that conclusion; and

(e) Any steps proposed or taken by the firm to reduce or avoid the risk of further breaches occurring.

Such discussion shall take place as soon as possible unless an alternative timing is specified by those charged with governance for reporting less significant breaches.

Communication of Breaches to Those Charged with Governance

400.83 A1 Paragraphs R300.9 and R300.10 set out requirements with respect to communicating with those charged with governance.

R400.84 With respect to breaches, the firm shall communicate in writing to those charged with governance:

(a) All matters discussed in accordance with paragraph R400.82 and obtain the concurrence of those charged with governance that action can be, or has been, taken to satisfactorily address the consequences of the breach; and

(b) A description of:

(i) The firm's policies and procedures relevant to the breach designed to provide it with reasonable assurance that independence is maintained; and

(ii) Any steps that the firm has taken, or proposes to take, to reduce or avoid the risk of further breaches occurring.

R400.85 If those charged with governance do not concur that the action proposed by the firm in accordance with paragraph R400.80(e)(ii) satisfactorily addresses the consequences of the breach, the firm shall take the steps necessary to end the audit engagement in accordance with paragraph R400.81.

Breaches Before the Previous Audit Report Was Issued

R400.86 If the breach occurred prior to the issuance of the previous audit report, the firm shall comply with the provisions of Part 4A in evaluating the significance of the breach and its impact on the firm's objectivity and its ability to issue an audit report in the current period.

R400.87 The firm shall also:

(a) Consider the impact of the breach, if any, on the firm's objectivity in relation to any previously issued audit reports, and the possibility of withdrawing such audit reports; and

(b) Discuss the matter with those charged with governance.

Documentation

R400.88 In complying with the requirements in paragraphs R400.80 to R400.87, the firm shall document:

(a) The breach;

(b) The actions taken;

(c) The key decisions made;

(d) All the matters discussed with those charged with governance; and

(e) Any discussions with a professional or regulatory body or oversight authority.

R400.89 If the firm continues with the audit engagement, it shall document:

(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 audit report.

SECTION 410

FEES

Introduction

410.1 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.

410.2 The nature and level of fees or other types of remuneration might create a self-interest or intimidation threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

Fees – Relative Size

All Audit Clients

410.3 A1 When the total fees generated from an audit client by the firm expressing the audit opinion 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.

410.3 A2 Factors that are relevant in evaluating the level of such threats include:

- 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.

410.3 A3 An example of an action that might be a safeguard to address such a self-interest or intimidation threat is increasing the client base in the firm to reduce dependence on the audit client.

410.3 A4 A self-interest or intimidation threat is also created when the fees generated by a firm from an audit client represent a large proportion of the revenue of one partner or one office of the firm.

410.3 A5 Factors that are relevant in evaluating the level of such threats include:

- The significance of the client qualitatively and/or quantitatively to the partner or office.
- The extent to which the compensation of the partner, or the partners in the office, is dependent upon the fees generated from the client.

410.3 A6 Examples of actions that might be safeguards to address such self-interest or intimidation threats include:

- Increasing the client base of the partner or the office to reduce dependence on the audit client.
- Having an appropriate reviewer who did not take part in the audit engagement review the work.

Audit Clients that are Public Interest Entities

R410.4 Where an audit client is a public interest entity and, for two consecutive years, the total fees from the client and its related entities represent more than 15% of the total fees received by the firm expressing the opinion on the financial statements of the client, the firm shall:

(a) Disclose to those charged with governance of the audit client the fact that the total of such fees represents more than 15% of the total fees received by the firm; and

(b) Discuss whether either of the following actions might be a safeguard to address the threat created by the total fees received by the firm from the client, and if so, apply it:

(i) Prior to the audit opinion being issued on the second year's financial statements, a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, performs an engagement quality control review of that engagement; or a professional body performs a review of that engagement that is equivalent to an engagement quality control review ("a pre-issuance review"); or

(ii) After the audit opinion on the second year's financial statements has been issued, and before the audit opinion being issued on the third year's financial statements, a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, or a professional body performs a review of the second year's audit that is equivalent to an engagement quality control review ("a post-issuance review").

R410.5 When the total fees described in paragraph R410.4 significantly exceed 15%, the firm shall determine whether the level of the threat is such that a post-issuance review would not reduce the threat to an acceptable level. If so, the firm shall have a pre-issuance review performed.

R410.6 If the fees described in paragraph R410.4 continue to exceed 15%, the firm shall each year:

(a) Disclose to and discuss with those charged with governance the matters set out in paragraph R410.4; and

(b) Comply with paragraphs R410.4(b) and R410.5.

Fees – Overdue

410.7 A1 A self-interest threat might be created if a significant part of fees is not paid before the audit report for the following year is issued. It is generally expected that the firm will require payment of such fees before such audit report is issued. The requirements and application material set out in Section 511 with respect to loans and guarantees might also apply to situations where such unpaid fees exist.

410.7 A2 Examples of actions that might be safeguards to address such a self-interest threat include:

- Obtaining partial payment of overdue fees.
- Having an appropriate reviewer who did not take part in the audit engagement review the work performed.

R410.8 When a significant part of fees due from an audit client remains unpaid for a long time, the firm shall determine:

(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 audit engagement.

Contingent Fees

410.9 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, a fee is not regarded as being contingent if established by a court or other public authority.

R410.10 A firm shall not charge directly or indirectly a contingent fee for an audit engagement.

R410.11 **A firm or network firm shall not charge directly or indirectly a contingent fee for a non-assurance service provided to an audit client, if:**

(a) **The fee is charged by the firm expressing the opinion on the financial statements and the fee is material or expected to be material to that firm;**

(b) **The fee is charged by a network firm that participates in a significant part of the audit and the fee is material or expected to be material to that firm; or**

(c) **The outcome of the non-assurance service, and therefore the amount of the fee, is dependent on a future or contemporary judgment related to the audit of a material amount in the financial statements.**

410.12 A1 Paragraphs R410.10 and R410.11 preclude a firm or a network firm from entering into certain contingent fee arrangements with an audit client. Even if a contingent fee arrangement is not precluded when providing a non-assurance service to an audit client, a self-interest threat might still be created.

410.12 A2 Factors that are relevant in evaluating the level of such a threat include:

- The range of possible fee amounts.
- Whether an appropriate authority determines the outcome on which the contingent fee depends.
- Disclosure to intended users of the work performed by the firm and the basis of remuneration.
- The nature of the service.
- The effect of the event or transaction on the financial statements.

410.12 A3 Examples of actions that might be safeguards to address such a self-interest threat include:

- Having an appropriate reviewer who was not involved in performing the non-assurance service review the work performed by the firm.
- Obtaining an advance written agreement with the client on the basis of remuneration.

SECTION 411

COMPENSATION AND EVALUATION POLICIES

Introduction

411.1 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.

411.2 A firm's evaluation or compensation policies might create a self-interest threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

411.3 A1 When an audit team member for a particular audit client is evaluated on or compensated for selling non-assurance services to that audit client, the level of the self-interest threat will depend on:

(a) What proportion of the compensation or evaluation is based on the sale of such services;

(b) The role of the individual on the audit team; and

(c) Whether the sale of such non-assurance services influences promotion decisions.

411.3 A2 Examples of actions that might eliminate such a self-interest threat include:

- Revising the compensation plan or evaluation process for that individual.
- Removing that individual from the audit team.

411.3 A3 An example of an action that might be a safeguard to address such a self-interest threat is having an appropriate reviewer review the work of the audit team member.

R411.4 A firm shall not evaluate or compensate a key audit partner based on that partner's success in selling non-assurance services to the partner's audit client. This requirement does not preclude normal profit-sharing arrangements between partners of a firm.

SECTION 420

GIFTS AND HOSPITALITY

Introduction

420.1 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.

420.2 Accepting gifts and hospitality from an audit client might create a self-interest, familiarity or intimidation threat. This section sets out a specific requirement and application material relevant to applying the conceptual framework in such circumstances.

Requirement and Application Material

R420.3 A firm, network firm or an audit team member shall not accept gifts and hospitality from an audit client, unless the value is trivial and inconsequential.

420.3 A1 Where a firm, network firm or audit team member is offering or accepting an inducement to or from an audit client, the requirements and application material set out in Section 340 apply and non-compliance with these requirements might create threats to independence.

420.3 A2 The requirements set out in Section 340 relating to offering or accepting inducements do not allow a firm, network firm or audit team member to accept gifts and hospitality where the intent is to improperly influence behaviour even if the value is trivial and inconsequential.

SECTION 430

ACTUAL OR THREATENED LITIGATION

Introduction

430.1 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.

430.2 When litigation with an audit client occurs, or appears likely, self-interest and intimidation threats are created. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Application Material

General

430.3 A1 The relationship between client management and audit team members must be characterised by complete candour and full disclosure regarding all aspects of a client's operations. Adversarial positions might result from actual or threatened litigation between an audit client and the firm, a network firm or an audit team member. Such adversarial positions might affect management's willingness to make complete disclosures and create self-interest and intimidation threats.

430.3 A2 Factors that are relevant in evaluating the level of such threats include:

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

430.3 A3 If the litigation involves an audit team member, an example of an action that might eliminate such self-interest and intimidation threats is removing that individual from the audit team.

430.3 A4 An example of an action that might be a safeguard to address such self-interest and intimidation threats is to have an appropriate reviewer review the work performed.

SECTION 510

FINANCIAL INTERESTS

Introduction

510.1 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.

510.2 Holding a financial interest in an audit client might create a self-interest threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

510.3 A1 A financial interest might be held directly or 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 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.

510.3 A2 This section 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.

510.3 A3 Factors that are relevant in evaluating the level of a self-interest threat created by holding a financial interest in an audit client include:

- 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, a Network Firm, Audit Team Members and Others

R510.4 Subject to paragraph R510.5, a direct financial interest or a material indirect financial interest in the audit client shall not be held by:

(a) The firm or a network firm;

(b) An audit team member, or any of that individual's immediate family;

(c) Any other partner in the office in which an engagement partner practices in connection with the audit engagement, or any of that other partner's immediate family; or

(d) Any other partner or managerial employee who provides non-audit services to the audit client, except for any whose involvement is minimal, or any of that individual's immediate family.

510.4 A1 The office in which the engagement partner practices in connection with an audit engagement is not necessarily the office to which that partner is assigned. When the engagement partner is located in a different office from that of the other audit team members, professional judgment is needed to determine the office in which the partner practices in connection with the engagement.

R510.5 As an exception to paragraph R510.4, an immediate family member identified in subparagraphs R510.4(c) or (d) may hold a direct or material indirect financial interest in an audit client, provided that:

(a) The family member received the financial interest because of employment rights, for example through pension or share option plans, and, when necessary, the firm addresses the threat created by the financial interest; and

(b) The family member disposes of or forfeits the financial interest as soon as practicable when the family member has or obtains the right to do so, or in the case of a stock option, when the family member obtains the right to exercise the option.

Financial Interests in an Entity Controlling an Audit Client

R510.6 When an entity has a controlling interest in an audit client and the client is material to the entity, neither the firm, nor a network firm, nor an audit team member, nor any of that individual's immediate family shall hold a direct or material indirect financial interest in that entity.

Financial Interests Held as Trustee

R510.7 Paragraph R510.4 shall also apply to a financial interest in an audit client held in a trust for which the firm, network firm or individual acts as trustee, unless:

(a) None of the following is a beneficiary of the trust: the trustee, the audit team member or any of that individual's immediate family, the firm or a network firm;

(b) The interest in the audit client held by the trust is not material to the trust;

(c) The trust is not able to exercise significant influence over the audit client; and

(d) None of the following can significantly influence any investment decision involving a financial interest in the audit client: the trustee, the audit team member or any of that individual's immediate family, the firm or a network firm.

Financial Interests in Common with the Audit Client

R510.8 (a) A firm, or a network firm, or an audit team member, or any of that individual's immediate family shall not hold a financial interest in an entity when an audit client also has a financial interest in that entity, unless:

(i) The financial interests are immaterial to the firm, the network firm, the audit team member and that individual's immediate family member and the audit client, as applicable; or

(ii) The audit client cannot exercise significant influence over the entity.

(b) Before an individual who has a financial interest described in paragraph R510.8(a) can become an audit team member, the individual or that individual's immediate family member shall either:

(i) Dispose of the interest; or

(ii) Dispose of enough of the interest so that the remaining interest is no longer material.

Financial Interests Received Unintentionally

R510.9 If a firm, a network firm or a partner or employee of the firm or a network firm, or any of that individual's immediate family, receives a direct financial interest or a material indirect financial interest in an audit client by

way of an inheritance, gift, as a result of a merger or in similar circumstances and the interest would not otherwise be permitted to be held under this section, then:

(a) If the interest is received by the firm or a network firm, or an audit team member or any of that individual's immediate family, the financial interest shall be disposed of immediately, or enough of an indirect financial interest shall be disposed of so that the remaining interest is no longer material; or

(b) (i) If the interest is received by an individual who is not an audit team member, or by any of that individual's immediate family, the financial interest shall be disposed of as soon as possible, or enough of an indirect financial interest shall be disposed of so that the remaining interest is no longer material; and

(ii) Pending the disposal of the financial interest, when necessary the firm shall address the threat created.

Financial Interests – Other Circumstances

Immediate Family

510.10 A1 A self-interest, familiarity, or intimidation threat might be created if an audit team member, or any of that individual's immediate family, or the firm or a network firm has a financial interest in an entity when a director or officer or controlling owner of the audit client is also known to have a financial interest in that entity.

510.10 A2 Factors that are relevant in evaluating the level of such threats include:

- The role of the individual on the audit team.
- Whether ownership of the entity is closely or widely held.
- Whether the interest allows the investor to control or significantly influence the entity.
- The materiality of the financial interest.

510.10 A3 An example of an action that might eliminate such a self-interest, familiarity, or intimidation threat is removing the audit team member with the financial interest from the audit team.

510.10 A4 An example of an action that might be a safeguard to address such a self-interest threat is having an appropriate reviewer review the work of the audit team member.

Close Family

510.10 A5 A self-interest threat might be created if an audit team member knows that a close family member has a direct financial interest or a material indirect financial interest in the audit client.

510.10 A6 Factors that are relevant in evaluating the level of such a threat include:

- The nature of the relationship between the audit team member and the close family member.
- Whether the financial interest is direct or indirect.
- The materiality of the financial interest to the close family member.

510.10 A7 Examples of actions that might eliminate such a self-interest threat include:

- Having the close family member dispose, as soon as practicable, of all of the financial interest or dispose of enough of an indirect financial interest so that the remaining interest is no longer material.

- Removing the individual from the audit team.

510.10 A8 An example of an action that might be a safeguard to address such a self-interest threat is having an appropriate reviewer review the work of the audit team member.

Other Individuals

510.10 A9 A self-interest threat might be created if an audit team member knows that a financial interest in the audit client is held by individuals such as:

- Partners and professional employees of the firm or network firm, apart from those who are specifically not permitted to hold such financial interests by paragraph R510.4, or their immediate family members.
- Individuals with a close personal relationship with an audit team member.

510.10 A10 Factors that are relevant in evaluating the level of such a threat include:

- The firm's organizational, operating and reporting structure.
- The nature of the relationship between the individual and the audit team member.

510.10 A11 An example of an action that might eliminate such a self-interest threat is removing the audit team member with the personal relationship from the audit team.

510.10 A12 Examples of actions that might be safeguards to address such a self-interest threat include:

- Excluding the audit team member from any significant decision-making concerning the audit engagement.
- Having an appropriate reviewer review the work of the audit team member.

Retirement Benefit Plan of a Firm or Network Firm

510.10 A13 A self-interest threat might be created if a retirement benefit plan of a firm or a network firm holds a direct or material indirect financial interest in an audit client.

SECTION 511

LOANS AND GUARANTEES

Introduction

511.1 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.

511.2 A loan or a guarantee of a loan with an audit client might create a self-interest threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

511.3 A1 This section contains references to the "materiality" of a loan or guarantee. In 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.

Loans and Guarantees with an Audit Client

R511.4 A firm, a network firm, an audit team member, or any of that individual's immediate family shall not make or guarantee a loan to an audit client unless the loan or guarantee is immaterial to:

(a) The firm, the network firm or the individual making the loan or guarantee, as applicable; and

(b) The client.

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

R511.5 A firm, a network firm, an audit team member, or any of that individual's immediate family shall not accept a loan, or a guarantee of a loan, from an audit client that is a bank or a similar institution unless the loan or guarantee is made under normal lending procedures, terms and conditions.

511.5 A1 Examples of loans include mortgages, bank overdrafts, car loans, and credit card balances.

511.5 A2 Even if a firm or network firm receives a loan from an audit client that is a bank or similar institution under normal lending procedures, terms and conditions, the loan might create a self-interest threat if it is material to the audit client or firm receiving the loan.

511.5 A3 An example of an action that might be a safeguard to address such a self-interest threat is having the work reviewed by an appropriate reviewer, who is not an audit team member, from a network firm that is not a beneficiary of the loan.

Deposits or Brokerage Accounts

R511.6 A firm, a network firm, an audit team member, or any of that individual's immediate family shall not have deposits or a brokerage account with an audit client that is a bank, broker or similar institution, unless the deposit or account is held under normal commercial terms.

Loans and Guarantees with an Audit Client that is Not a Bank or Similar Institution

R511.7 A firm, a network firm, an audit team member, or any of that individual's immediate family shall not accept a loan from, or have a borrowing guaranteed by, an audit client that is not a bank or similar institution, unless the loan or guarantee is immaterial to:

(a) The firm, the network firm, or the individual receiving the loan or guarantee, as applicable; and

(b) The client.

SECTION 520

BUSINESS RELATIONSHIPS

Introduction

520.1 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.

520.2 A close business relationship with an audit client or its management might create a self-interest or intimidation threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

520.3 A1 This section 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.

520.3 A2 Examples of a close business relationship arising from a commercial relationship or common financial interest include:

- 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 or a network 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 or a network firm distributes or markets the client's products or services, or the client distributes or markets the firm or a network firm's products or services.

Firm, Network Firm, Audit Team Member or Immediate Family Business Relationships

R520.4 A firm, a network firm or an audit team member shall not have a close business relationship with an audit 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, the network firm or the audit team member, as applicable.

520.4 A1 A self-interest or intimidation threat might be created if there is a close business relationship between the audit client or its management and the immediate family of an audit team member.

Common Interests in Closely-Held Entities

R520.5 A firm, a network firm, an audit team member, or any of that individual's immediate family shall not have a business relationship involving the holding of an interest in a closely-held entity when an audit client or a director or officer of the client, or any group thereof, also holds an interest in that entity, unless:

(a) The business relationship is insignificant to the firm, the network firm, or the individual as applicable, and the client;

(b) The financial interest is immaterial to the investor or group of investors; and

(c) The financial interest does not give the investor, or group of investors, the ability to control the closely-held entity.

Buying Goods or Services

520.6 A1 The purchase of goods and services from an audit client by a firm, a network firm, an audit 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. However, such transactions might be of such a nature and magnitude that they create a self-interest threat.

520.6 A2 Examples of actions that might eliminate such a self-interest threat include:

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

SECTION 521

FAMILY AND PERSONAL RELATIONSHIPS

Introduction

521.1 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.

521.2 Family or personal relationships with client personnel might create a self-interest, familiarity or intimidation threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

521.3 A1 A self-interest, familiarity or intimidation threat might be created by family and personal relationships between an audit team member and a director or officer or, depending on their role, certain employees of the audit client.

521.3 A2 Factors that are relevant in evaluating the level of such threats include:

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

Immediate Family of an Audit Team Member

521.4 A1 A self-interest, familiarity or intimidation threat is created when an immediate family member of an audit team member is an employee in a position to exert significant influence over the client's financial position, financial performance or cash flows.

521.4 A2 Factors that are relevant in evaluating the level of such threats include:

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

521.4 A3 An example of an action that might eliminate such a self-interest, familiarity or intimidation threat is removing the individual from the audit team.

521.4 A4 An example of an action that might be a safeguard to address such a self-interest, familiarity or intimidation threat is structuring the responsibilities of the audit team so that the audit team member does not deal with matters that are within the responsibility of the immediate family member.

R521.5 An individual shall not participate as an audit team member when any of that individual's immediate family:

(a) Is a director or officer of the audit client;

(b) Is an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion; or

(c) Was in such position during any period covered by the engagement or the financial statements.

Close Family of an Audit Team Member

521.6 A1 A self-interest, familiarity or intimidation threat is created when a close family member of an audit team member is:

(a) A director or officer of the audit client; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

521.6 A2 Factors that are relevant in evaluating the level of such threats include:

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

521.6 A3 An example of an action that might eliminate such a self-interest, familiarity or intimidation threat is removing the individual from the audit team.

521.6 A4 An example of an action that might be a safeguard to address such a self-interest, familiarity or intimidation threat is structuring the responsibilities of the audit team so that the audit team member does not deal with matters that are within the responsibility of the close family member.

Other Close Relationships of an Audit Team Member

R521.7 An audit team member shall consult in accordance with firm policies and procedures if the audit team member has a close relationship with an individual who is not an immediate or close family member, but who is:

(a) A director or officer of the audit client; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

521.7 A1 Factors that are relevant in evaluating the level of a self-interest, familiarity or intimidation threat created by such a relationship include:

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

521.7 A2 An example of an action that might eliminate such a self-interest, familiarity or intimidation threat is removing the individual from the audit team.

521.7 A3 An example of an action that might be a safeguard to address such a self-interest, familiarity or intimidation threat is structuring the responsibilities of the audit team so that the audit team member does not deal with matters that are within the responsibility of the individual with whom the audit team member has a close relationship.

Relationships of Partners and Employees of the Firm

R521.8 Partners and employees of the firm shall consult in accordance with firm policies and procedures if they are aware of a personal or family relationship between:

(a) A partner or employee of the firm or network firm who is not an audit team member; and

(b) A director or officer of the audit client or an employee of the audit client in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

521.8 A1 Factors that are relevant in evaluating the level of a self-interest, familiarity or intimidation threat created by such a relationship include:

- 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 audit team.
- The position of the partner or employee within the firm.
- The position the individual holds with the client.

521.8 A2 Examples of actions that might be safeguards to address such self-interest, familiarity or intimidation threats include:

- Structuring the partner's or employee's responsibilities to reduce any potential influence over the audit engagement.
- Having an appropriate reviewer review the relevant audit work performed.

SECTION 522

RECENT SERVICE WITH AN AUDIT CLIENT

Introduction

522.1 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.

522.2 If an audit team member has recently served as a director or officer, or employee of the audit client, a self-interest, self-review or familiarity threat might be created. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

Service During Period Covered by the Audit Report

R522.3 The audit team shall not include an individual who, during the period covered by the audit report:

(a) Had served as a director or officer of the audit client; or

(b) Was an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

Service Prior to Period Covered by the Audit Report

522.4 A1 A self-interest, self-review or familiarity threat might be created if, before the period covered by the audit report, an audit team member:

(a) Had served as a director or officer of the audit client; or

(b) Was an employee in a position to exert significant influence over the preparation of the client's accounting records or financial statements on which the firm will express an opinion.

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 audit engagement.

522.4 A2 Factors that are relevant in evaluating the level of such threats include:

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

522.4 A3 An example of an action that might be a safeguard to address such a self-interest, self-review or familiarity threat is having an appropriate reviewer review the work performed by the audit team member.

SECTION 523

SERVING AS A DIRECTOR OR OFFICER OF AN AUDIT CLIENT

Introduction

523.1 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.

523.2 Serving as a director or officer of an audit client creates self-review and self-interest threats. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

Service as Director or Officer

R523.3 A partner or employee of the firm or a network firm shall not serve as a director or officer of an audit client of the firm.

Service as Company Secretary

R523.4 A partner or employee of the firm or a network firm shall not serve as Company Secretary for an audit client of the firm, unless:

(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.

523.4 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 regulations or providing advice on corporate governance matters. Usually this position is seen to imply a close association with the entity. Therefore, a threat is created if a partner or employee of the firm or a network firm serves as Company Secretary for an audit client. (More information on providing non-assurance services to an audit client is set out in Section 600, *Provision of Non-assurance Services to an Audit Client*.)

SECTION 524

EMPLOYMENT WITH AN AUDIT CLIENT

Introduction

524.1 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.

524.2 Employment relationships with an audit client might create a self-interest, familiarity or intimidation threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

All Audit Clients

524.3 A1 A familiarity or intimidation threat might be created if any of the following individuals have been an audit team member or partner of the firm or a network firm:

- A director or officer of the audit client.
- An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

Former Partner or Audit Team Member Restrictions

R524.4 The firm shall ensure that no significant connection remains between the firm or a network firm and:

(a) A former partner who has joined an audit client of the firm; or

(b) A former audit team member who has joined the audit client,

if either has joined the audit client as:

(i) A director or officer; or

(ii) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

A significant connection remains between the firm or a network firm and the individual, unless:

(a) The individual is not entitled to any benefits or payments from the firm or network firm that are not made in accordance with fixed pre-determined arrangements;

(b) Any amount owed to the individual is not material to the firm or the network firm; and

(c) The individual does not continue to participate or appear to participate in the firm's or the network firm's business or professional activities.

524.4 A1 Even if the requirements of paragraph R524.4 are met, a familiarity or intimidation threat might still be created.

524.4 A2 A familiarity or intimidation threat might also be created if a former partner of the firm or network firm has joined an entity in one of the positions described in paragraph 524.3 A1 and the entity subsequently becomes an audit client of the firm.

524.4 A3 Factors that are relevant in evaluating the level of such threats include:

- The position the individual has taken at the client.
- Any involvement the individual will have with the audit team.
- The length of time since the individual was an audit team member or partner of the firm or network firm.
- The former position of the individual within the audit team, firm or network firm. An example is whether the individual was responsible for maintaining regular contact with the client's management or those charged with governance.

524.4 A4 Examples of actions that might be safeguards to address such familiarity or intimidation threats include:

- Modifying the audit plan.
- Assigning to the audit team individuals who have sufficient experience relative to the individual who has joined the client.
- Having an appropriate reviewer review the work of the former audit team member.

Audit Team Members Entering Employment with a Client

R524.5 A firm or network firm shall have policies and procedures that require audit team members to notify the firm or network firm when entering employment negotiations with an audit client.

524.5 A1 A self-interest threat is created when an audit team member participates in the audit engagement while knowing that the audit team member will, or might, join the client at some time in the future.

524.5 A2 An example of an action that might eliminate such a self-interest threat is removing the individual from the audit team.

524.5 A3 An example of an action that might be a safeguard to address such a self-interest threat is having an appropriate reviewer review any significant judgments made by that individual while on the team.

Audit Clients that are Public Interest Entities

Key Audit Partners

R524.6 Subject to paragraph R524.8, if an individual who was a key audit partner with respect to an audit client that is a public interest entity joins the client as:

(a) A director or officer; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion,

independence is compromised unless, subsequent to the individual ceasing to be a key audit partner:

(i) The audit client has issued audited financial statements covering a period of not less than twelve months; and

(ii) The individual was not an audit team member with respect to the audit of those financial statements.

Senior or Managing Partner (Chief Executive or Equivalent) of the Firm

R524.7 Subject to paragraph R524.8, if an individual who was the Senior or Managing Partner (Chief Executive or equivalent) of the firm joins an audit client that is a public interest entity as:

(a) A director or officer; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion,

independence is compromised, unless twelve months have passed since the individual was the Senior or Managing Partner (Chief Executive or equivalent) of the firm.

Business Combinations

R524.8 As an exception to paragraphs R524.6 and R524.7, independence is not compromised if the circumstances set out in those paragraphs arise as a result of a business combination and:

(a) The position was not taken in contemplation of the business combination;

(b) Any benefits or payments due to the former partner from the firm or a network firm have been settled in full, unless made in accordance with fixed pre-determined arrangements and any amount owed to the partner is not material to the firm or network firm as applicable;

(c) The former partner does not continue to participate or appear to participate in the firm's or network firm's business or professional activities; and

(d) The firm discusses the former partner's position held with the audit client with those charged with governance.

SECTION 525

TEMPORARY PERSONNEL ASSIGNMENTS

Introduction

525.1 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.

525.2 The loan of personnel to an audit client might create a self-review, advocacy or familiarity threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

525.3 A1 Examples of actions that might be safeguards to address threats created by the loan of personnel by a firm or a network firm to an audit client include:

- Conducting an additional review of the work performed by the loaned personnel might address a self-review threat.
- Not including the loaned personnel as an audit team member might address a familiarity or advocacy threat.
- Not giving the loaned personnel audit responsibility for any function or activity that the personnel performed during the loaned personnel assignment might address a self-review threat.

525.3 A2 When familiarity and advocacy threats are created by the loan of personnel by a firm or a network firm to an audit client, such that the firm or the network firm becomes too closely aligned with the views and interests of management, safeguards are often not available.

R525.4 A firm or network firm shall not loan personnel to an audit client unless:

(a) Such assistance is provided only for a short period of time;

(b) The personnel are not involved in providing non-assurance services that would not be permitted under Section 600 and its subsections; and

(c) The personnel do not assume management responsibilities and the audit client is responsible for directing and supervising the activities of the personnel.

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.

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. This section sets out requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

All Audit Clients

540.3 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:

(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.

540.3 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.

540.3 A3 Factors that are relevant to evaluating the level of such familiarity or self-interest threats include:

(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.

540.3 A4 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.

540.3 A5 An example of an action that might eliminate the familiarity and self-interest threats created by an individual being involved in an audit engagement over a long period of time would be rotating the individual off the audit team.

540.3 A6 Examples of actions that might be safeguards to address such familiarity or self-interest threats include:

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

R540.4 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:

(a) Be a member of the engagement team for the audit engagement;

(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 be addressed. In the case of a public interest entity, paragraphs R540.5 to R540.20 also apply.

Audit Clients that are Public Interest Entities

R540.5 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):

(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 R540.11 to R540.19.

R540.6 **In calculating the time-on period, the count of years shall not be restarted unless the individual ceases to act in any one of the roles in paragraph R540.5(a) to (c) for a minimum period. This minimum period is a consecutive period equal to at least the cooling-off period determined in accordance with paragraphs R540.11 to R540.13 as applicable to the role in which the individual served in the year immediately before ceasing such involvement.**

540.6 A1 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 R540.14.

R540.7 **As an exception to paragraph R540.5, 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.**

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.

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 paragraph R540.5, 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.**

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 R540.5, if an independent regulatory body in the 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 regulatory body 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.**

Other Considerations Relating to the Time-on Period

R540.10 **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.**

540.10 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.

Cooling-off Period

R540.11 **If the individual acted as the engagement partner for seven cumulative years, the cooling-off period shall be five consecutive years.**

R540.12 **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.**

R540.13 **If the individual has acted as a key audit partner other than in the capacities set out in paragraphs R540.11 and R540.12 for seven cumulative years, the cooling-off period shall be two consecutive years.**

Service in a combination of key audit partner roles

R540.14 **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.**

R540.15 **Subject to paragraph R540.16(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.**

R540.16 **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:**

(a) **As an exception to paragraph R540.15, 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.**

R540.17 **If the individual acted in any combination of key audit partner roles other than those addressed in paragraphs R540.14 to R540.16, the cooling-off period shall be two consecutive years.**

Service at a Prior Firm

R540.18 **In determining the number of years that an individual has been a key audit partner as set out in paragraph R540.5, 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.**

Shorter Cooling-off Period Established by Law or Regulation

R540.19 **Where a legislative or regulatory body (or organization authorised or recognised by such legislative or regulatory body) 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 R540.11, R540.14 and R540.16(a) provided that the applicable time-on period does not exceed seven years.**

Restrictions on Activities During the Cooling-off Period

R540.20 **For the duration of the relevant cooling-off period, the individual shall not:**

(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 professional services provided by the firm or a network firm to the audit client, or overseeing the relationship of the firm or a network firm 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.

540.20 A1 The provisions of paragraph R540.20 are not intended to prevent the individual from assuming a leadership role in the firm or a network firm, such as that of the Senior or Managing Partner (Chief Executive or equivalent).

SECTION 600

PROVISION OF NON-ASSURANCE SERVICES TO AN AUDIT CLIENT

Introduction

600.1 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.

600.2 Firms and network firms might provide a range of non-assurance services to their audit clients, consistent with their skills and expertise. Providing non-assurance services to audit clients might create threats to compliance with the fundamental principles and threats to independence.

600.3 This section sets out requirements and application material relevant to applying the conceptual framework to identify, evaluate and address threats to independence when providing non-assurance services to audit clients. The subsections that follow set out specific requirements and application material relevant when a firm or network firm provides certain non-assurance services to audit clients and indicate the types of threats that might be created as a result. Some of the subsections include requirements that expressly prohibit a firm or network firm from providing certain services to an audit client in certain circumstances because the threats created cannot be addressed by applying safeguards.

Requirements and Application Material

General

R600.4 Before a firm or a network firm accepts an engagement to provide a non-assurance service to an audit client, the firm shall determine whether providing such a service might create a threat to independence.

600.4 A1 The requirements and application material in this section assist the firm in analysing certain types of non-assurance services and the related threats that might be created if a firm or network firm provides non-assurance services to an audit client.

600.4 A2 New business practices, the evolution of financial markets and changes in information technology, are among the developments that make it impossible to draw up an all-inclusive list of non-assurance services that might be provided to an audit client. As a result, the Code does not include an exhaustive list of all non-assurance services that might be provided to an audit client.

Evaluating Threats

600.5 A1 Factors that are relevant in evaluating the level of threats created by providing a non-assurance service to an audit client include:

- The nature, scope and purpose of the service.
- The degree of reliance that will be placed on the outcome of the service as part of the audit.
- The legal and regulatory environment in which the service is provided.
- Whether the outcome of the service will affect matters reflected in the financial statements on which the firm will express an opinion, and, if so:
    - The extent to which the outcome of the service will have a material effect on the financial statements.

- The degree of subjectivity involved in determining the appropriate amounts or treatment for those matters reflected in the financial statements.

- The level of expertise of the client's management and employees with respect to the type of service provided.
- The extent of the client's involvement in determining significant matters of judgment.
- The nature and extent of the impact of the service, if any, on the systems that generate information that forms a significant part of the client's:
  - Accounting records or financial statements on which the firm will express an opinion.
  - Internal controls over financial reporting.
- Whether the client is a public interest entity. For example, providing a non-assurance service to an audit client that is a public interest entity might be perceived to result in a higher level of a threat.

600.5 A2 Subsections 601 to 610 include examples of additional factors that are relevant in evaluating the level of threats created by providing the non-assurance services set out in those subsections.

Materiality in Relation to Financial Statements

600.5 A3 Subsections 601 to 610 refer to materiality in relation to an audit client's financial statements. The concept of materiality in relation to an audit is addressed in ISA 320, *Materiality in Planning and Performing an Audit*, and in relation to a review in ISRE 2400 (Revised), *Engagements to Review Historical Financial Statements*. The determination of materiality involves the exercise of professional judgment and is impacted by both quantitative and qualitative factors. It is also affected by perceptions of the financial information needs of users.

Multiple Non-assurance Services Provided to the Same Audit Client

600.5 A4 A firm or network firm might provide multiple non-assurance services to an audit client. In these circumstances the consideration of the combined effect of threats created by providing those services is relevant to the firm's evaluation of threats.

Addressing Threats

600.6 A1 Subsections 601 to 610 include examples of actions, including safeguards, that might address threats to independence created by providing those non-assurance services when threats are not at an acceptable level. Those examples are not exhaustive.

600.6 A2 Some of the subsections include requirements that expressly prohibit a firm or network firm from providing certain services to an audit client in certain circumstances because the threats created cannot be addressed by applying safeguards.

600.6 A3 Paragraph 120.10 A2 includes a description of safeguards. In relation to providing non-assurance services to audit clients, safeguards are actions, individually or in combination, that the firm takes that effectively reduce threats to independence to an acceptable level. In some situations, when a threat is created by providing a non-assurance service to an audit client, safeguards might not be available. In such situations, the application of the conceptual framework set out in Section 120 requires the firm to decline or end the non-assurance service or the audit engagement.

Prohibition on Assuming Management Responsibilities

R600.7 **A firm or a network firm shall not assume a management responsibility for an audit client.**

600.7 A1 Management responsibilities involve controlling, leading and directing an entity, including making decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

600.7 A2 Providing a non-assurance service to an audit client creates self-review and self-interest threats if the firm or network firm assumes a management responsibility when performing the service. Assuming a management responsibility also creates a familiarity threat and might create an advocacy threat because the firm or network firm becomes too closely aligned with the views and interests of management.

600.7 A3 Determining whether an activity is a management responsibility depends on the circumstances and requires the exercise of professional judgment. Examples of activities that would be considered a management responsibility include:

- Setting policies and strategic direction.
- Hiring or dismissing employees.
- Directing and taking responsibility for the actions of employees in relation to the employees' work for the entity.
- Authorizing transactions.
- Controlling or managing bank accounts or investments.
- Deciding which recommendations of the firm or network firm or other third parties to implement.
- Reporting to those charged with governance on behalf of management.
- Taking responsibility for:
    - The preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework.
    - Designing, implementing, monitoring or maintaining internal control.

600.7 A4 Providing advice and recommendations to assist the management of an audit client in discharging its responsibilities is not assuming a management responsibility. (Ref: Para. R600.7 to 600.7 A3).

R600.8 **To avoid assuming a management responsibility when providing any non-assurance service to an audit client, the firm shall be satisfied that client management makes all judgments and decisions that are the proper responsibility of management. This includes ensuring that the client's management:**

(a) **Designates an individual who possesses suitable skill, knowledge and experience to be responsible at all times for the client's decisions and to oversee the services. Such an individual, preferably within senior management, would understand:**

(i) **The objectives, nature and results of the services; and**

(ii) **The respective client and firm or network firm responsibilities.**

However, the individual is not required to possess the expertise to perform or re-perform the services.

(b) Provides oversight of the services and evaluates the adequacy of the results of the service performed for the client's purpose.

(c) Accepts responsibility for the actions, if any, to be taken arising from the results of the services.

Providing Non-Assurance Services to an Audit Client that Later Becomes a Public Interest Entity

R600.9 A non-assurance service provided, either currently or previously, by a firm or a network firm to an audit client compromises the firm's independence when the client becomes a public interest entity unless:

(a) The previous non-assurance service complies with the provisions of this section that relate to audit clients that are not public interest entities;

(b) Non-assurance services currently in progress that are not permitted under this section for audit clients that are public interest entities are ended before, or as soon as practicable after, the client becomes a public interest entity; and

(c) The firm addresses threats that are created that are not at an acceptable level.

Considerations for Certain Related Entities

R600.10 This section includes requirements that prohibit firms and network firms from assuming management responsibilities or providing certain non-assurance services to audit clients. As an exception to those requirements, a firm or network firm may assume management responsibilities or provide certain non-assurance services that would otherwise be prohibited to the following related entities of the client on whose financial statements the firm will express an opinion:

(a) An entity that has direct or indirect control over the client;

(b) An entity with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity; or

(c) An entity which is under common control with the client,

provided that all of the following conditions are met:

(i) The firm or a network firm does not express an opinion on the financial statements of the related entity;

(ii) The firm or a network firm does not assume a management responsibility, directly or indirectly, for the entity on whose financial statements the firm will express an opinion;

(iii) The services do not create a self-review threat because the results of the services will not be subject to audit procedures; and

(iv) The firm addresses other threats created by providing such services that are not at an acceptable level.

SUBSECTION 601 – ACCOUNTING AND BOOKKEEPING SERVICES

Introduction

601.1 Providing accounting and bookkeeping services to an audit client might create a self-review threat.

601.2 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing an audit client with accounting and bookkeeping services. This subsection includes requirements that prohibit firms and network firms from providing certain accounting and bookkeeping services to audit clients in some circumstances because the threats created cannot be addressed by applying safeguards.

Requirements and Application Material

All Audit Clients

601.3 A1 Accounting and bookkeeping services comprise a broad range of services including:

- Preparing accounting records and financial statements.
- Recording transactions.
- Payroll services.

601.3 A2 Management is responsible for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework. These responsibilities include:

- Determining accounting policies and the accounting treatment in accordance with those policies.
- Preparing or changing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction. Examples include:
  - Purchase orders.
  - Payroll time records.
  - Customer orders.
- Originating or changing journal entries.
- Determining or approving the account classifications of transactions.

601.3 A3 The audit process necessitates dialogue between the firm and the management of the audit client, which might involve:

- Applying accounting standards or policies and financial statement disclosure requirements.
- Assessing the appropriateness of financial and accounting control and the methods used in determining the stated amounts of assets and liabilities.
- Proposing adjusting journal entries.

These activities are considered to be a normal part of the audit process and do not usually create threats as long as the client is responsible for making decisions in the preparation of accounting records and financial statements.

601.3 A4 Similarly, the client might request technical assistance on matters such as resolving account reconciliation problems or analysing and accumulating information for regulatory reporting. In addition, the client might request

technical advice on accounting issues such as the conversion of existing financial statements from one financial reporting framework to another. Examples include:

- Complying with group accounting policies.
- Transitioning to a different financial reporting framework such as International Financial Reporting Standards.

Such services do not usually create threats provided neither the firm nor network firm assumes a management responsibility for the client.

Accounting and Bookkeeping Services that are Routine or Mechanical

601.4 A1 Accounting and bookkeeping services that are routine or mechanical in nature require little or no professional judgment. Some examples of these services are:

- Preparing payroll calculations or reports based on client-originated data for approval and payment by the client.
- Recording recurring transactions for which amounts are easily determinable from source documents or originating data, such as a utility bill where the client has determined or approved the appropriate account classification.
- Calculating depreciation on fixed assets when the client determines the accounting policy and estimates of useful life and residual values.
- Posting transactions coded by the client to the general ledger.
- Posting client-approved entries to the trial balance.
- Preparing financial statements based on information in the client-approved trial balance and preparing related notes based on client-approved records.

Audit Clients that are Not Public Interest Entities

R601.5 A firm or a network firm shall not provide to an audit client that is not a public interest entity accounting and bookkeeping services including preparing financial statements on which the firm will express an opinion or financial information which forms the basis of such financial statements, unless:

(a) The services are of a routine or mechanical nature; and

(b) The firm addresses any threats that are created by providing such services that are not at an acceptable level.

601.5 A1 Examples of actions that might be safeguards to address a self-review threat created when providing accounting and bookkeeping services of a routine and mechanical nature to an audit client include:

- Using professionals who are not audit team members to perform the service.
- Having an appropriate reviewer who was not involved in providing the service review the audit work or service performed.

Audit Clients that are Public Interest Entities

R601.6 **Subject to paragraph R601.7, a firm or a network firm shall not provide to an audit client that is a public interest entity accounting and bookkeeping services including preparing financial statements on which the firm will express an opinion or financial information which forms the basis of such financial statements.**

R601.7 **As an exception to paragraph R601.6, a firm or network firm may provide accounting and bookkeeping services of a routine or mechanical nature for divisions or related entities of an audit client that is a public interest entity if the personnel providing the services are not audit team members and:**

(a) **The divisions or related entities for which the service is provided are collectively immaterial to the financial statements on which the firm will express an opinion; or**

(b) **The service relates to matters that are collectively immaterial to the financial statements of the division or related entity.**

SUBSECTION 602 – ADMINISTRATIVE SERVICES

Introduction

602.1 Providing administrative services to an audit client does not usually create a threat.

602.2 In addition to the specific application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing administrative services.

Application Material

All Audit Clients

602.3 A1 Administrative services involve assisting clients with their routine or mechanical tasks within the normal course of operations. Such services require little to no professional judgment and are clerical in nature.

602.3 A2 Examples of administrative services include:

- Word processing services.
- Preparing administrative or statutory forms for client approval.
- Submitting such forms as instructed by the client.
- Monitoring statutory filing dates, and advising an audit client of those dates.

SUBSECTION 603 – VALUATION SERVICES

Introduction

603.1 Providing valuation services to an audit client might create a self-review or advocacy threat.

603.2 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing valuation services to an audit client. This subsection includes requirements that prohibit firms and network firms from providing certain valuation services to audit clients in some circumstances because the threats created cannot be addressed by applying safeguards.

Requirements and Application Material

All Audit Clients

603.3 A1 A valuation comprises the making of assumptions with regard to future developments, the application of appropriate methodologies and techniques, and the combination of both to compute a certain value, or range of values, for an asset, a liability or for a business as a whole.

603.3 A2 If a firm or network firm is requested to perform a valuation to assist an audit client with its tax reporting obligations or for tax planning purposes and the results of the valuation will not have a direct effect on the financial statements, the application material set out in paragraphs 604.9 A1 to 604.9 A5, relating to such services, applies.

603.3 A3 Factors that are relevant in evaluating the level of self-review or advocacy threats created by providing valuation services to an audit client include:

- The use and purpose of the valuation report.
- Whether the valuation report will be made public.
- The extent of the client's involvement in determining and approving the valuation methodology and other significant matters of judgment.
- The degree of subjectivity inherent in the item for valuations involving standard or established methodologies.
- Whether the valuation will have a material effect on the financial statements.
- The extent and clarity of the disclosures related to the valuation in the financial statements.
- The degree of dependence on future events of a nature that might create significant volatility inherent in the amounts involved.

603.3 A4 Examples of actions that might be safeguards to address threats include:

- Using professionals who are not audit team members to perform the service might address self-review or advocacy threats.
- Having an appropriate reviewer who was not involved in providing the service review the audit work or service performed might address a self-review threat.

Audit Clients that are Not Public Interest Entities

R603.4 A firm or a network firm shall not provide a valuation service to an audit client that is not a public interest entity if:

(a) The valuation involves a significant degree of subjectivity; and

(b) The valuation will have a material effect on the financial statements on which the firm will express an opinion.

603.4 A1 Certain valuations do not involve a significant degree of subjectivity. This is likely to be the case when the underlying assumptions are either established by law or regulation, or are widely accepted and when the techniques and methodologies to be used are based on generally accepted standards or prescribed by law or regulation. In such circumstances, the results of a valuation performed by two or more parties are not likely to be materially different.

Audit Clients that are Public Interest Entities

R603.5 **A firm or a network firm shall not provide a valuation service to an audit client that is a public interest entity if the valuation service would have a material effect, individually or in the aggregate, on the financial statements on which the firm will express an opinion.**

SUBSECTION 604 – TAX SERVICES

Introduction

604.1 Providing tax services to an audit client might create a self-review or advocacy threat.

604.2 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing a tax service to an audit client. This subsection includes requirements that prohibit firms and network firms from providing certain tax services to audit clients in some circumstances because the threats created cannot be addressed by applying safeguards.

Requirements and Application Material

All Audit Clients

604.3 A1 Tax services comprise a broad range of services, including activities such as:

- Tax return preparation.
- Tax calculations for the purpose of preparing the accounting entries.
- Tax planning and other tax advisory services.
- Tax services involving valuations.
- Assistance in the resolution of tax disputes.

While this subsection deals with each type of tax service listed above under separate headings, in practice, the activities involved in providing tax services are often inter-related.

604.3 A2 Factors that are relevant in evaluating the level of threats created by providing any tax service to an audit client include:

- The particular characteristics of the engagement.
- The level of tax expertise of the client's employees.
- The system by which the tax authorities assess and administer the tax in question and the role of the firm or network firm in that process.
- The complexity of the relevant tax regime and the degree of judgment necessary in applying it.

Tax Return Preparation

All Audit Clients

604.4 A1 Providing tax return preparation services does not usually create a threat.

604.4 A2 Tax return preparation services involve:

- Assisting clients with their tax reporting obligations by drafting and compiling information, including the amount of tax due (usually on standardised forms) required to be submitted to the applicable tax authorities.
- Advising on the tax return treatment of past transactions and responding on behalf of the audit client to the tax authorities' requests for additional information and analysis (for example, providing explanations of and technical support for the approach being taken).

604.4 A3 Tax return preparation services are usually based on historical information and principally involve analysis and presentation of such historical information under existing tax law, including precedents and established practice. Further, the tax returns are subject to whatever review or approval process the tax authority considers appropriate.

Tax Calculations for the Purpose of Preparing Accounting Entries

All Audit Clients

604.5 A1 Preparing calculations of current and deferred tax liabilities (or assets) for an audit client for the purpose of preparing accounting entries that will be subsequently audited by the firm creates a self-review threat.

604.5 A2 In addition to the factors in paragraph 604.3 A2, a factor that is relevant in evaluating the level of the threat created when preparing such calculations for an audit client is whether the calculation might have a material effect on the financial statements on which the firm will express an opinion.

Audit Clients that are Not Public Interest Entities

604.5 A3 Examples of actions that might be safeguards to address such a self-review threat when the audit client is not a public interest entity include:

- Using professionals who are not audit team members to perform the service.
- Having an appropriate reviewer who was not involved in providing the service review the audit work or service performed.

Audit Clients that are Public Interest Entities

R604.6 A firm or a network firm shall not prepare tax calculations of current and deferred tax liabilities (or assets) for an audit client that is a public interest entity for the purpose of preparing accounting entries that are material to the financial statements on which the firm will express an opinion.

604.6 A1 The examples of actions that might be safeguards in paragraph 604.5 A3 to address self-review threats are also applicable when preparing tax calculations of current and deferred tax liabilities (or assets) to an audit client that is a public interest entity that are immaterial to the financial statements on which the firm will express an opinion.

Tax Planning and Other Tax Advisory Services

All Audit Clients

604.7 A1 Providing tax planning and other tax advisory services might create a self-review or advocacy threat.

604.7 A2 Tax planning or other tax advisory services comprise a broad range of services, such as advising the client how to structure its affairs in a tax efficient manner or advising on the application of a new tax law or regulation.

604.7 A3 In addition to paragraph 604.3 A2, factors that are relevant in evaluating the level of self-review or advocacy threats created by providing tax planning and other tax advisory services to audit clients include:

- The degree of subjectivity involved in determining the appropriate treatment for the tax advice in the financial statements.
- Whether the tax treatment is supported by a private ruling or has otherwise been cleared by the tax authority before the preparation of the financial statements.

  For example, whether the advice provided as a result of the tax planning and other tax advisory services:

  - Is clearly supported by a tax authority or other precedent.
  - Is an established practice.
  - Has a basis in tax law that is likely to prevail.
- The extent to which the outcome of the tax advice will have a material effect on the financial statements.
- Whether the effectiveness of the tax advice depends on the accounting treatment or presentation in the financial statements and there is doubt as to the appropriateness of the accounting treatment or presentation under the relevant financial reporting framework.

604.7 A4 Examples of actions that might be safeguards to address such threats include:

- Using professionals who are not audit team members to perform the service might address self-review or advocacy threats.
- Having an appropriate reviewer, who was not involved in providing the service review the audit work or service performed might address a self-review threat.
- Obtaining pre-clearance from the tax authorities might address self-review or advocacy threats.

When Effectiveness of Tax Advice Is Dependent on a Particular Accounting Treatment or Presentation

R604.8 A firm or a network firm shall not provide tax planning and other tax advisory services to an audit client when the effectiveness of the tax advice depends on a particular accounting treatment or presentation in the financial statements and:

(a) The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and

(b) The outcome or consequences of the tax advice will have a material effect on the financial statements on which the firm will express an opinion.

Tax Services Involving Valuations

All Audit Clients

604.9 A1 Providing tax valuation services to an audit client might create a self-review or advocacy threat.

604.9 A2 A firm or a network firm might perform a valuation for tax purposes only, where the result of the valuation will not have a direct effect on the financial statements (that is, the financial statements are only affected through accounting entries related to tax). This would not usually create threats if the effect on the financial statements is immaterial or the valuation is subject to external review by a tax authority or similar regulatory authority.

604.9 A3 If the valuation that is performed for tax purposes is not subject to an external review and the effect is material to the financial statements, in addition to paragraph 604.3 A2, the following factors are relevant in evaluating the level of self-review or advocacy threats created by providing those services to an audit client:

- The extent to which the valuation methodology is supported by tax law or regulation, other precedent or established practice.
- The degree of subjectivity inherent in the valuation.
- The reliability and extent of the underlying data.

604.9 A4 Examples of actions that might be safeguards to address threats include:

- Using professionals who are not audit team members to perform the service might address self-review or advocacy threats.
- Having an appropriate reviewer who was not involved in providing the service review the audit work or service performed might address a self-review threat.
- Obtaining pre-clearance from the tax authorities might address self-review or advocacy threats.

604.9 A5 A firm or network firm might also perform a tax valuation to assist an audit client with its tax reporting obligations or for tax planning purposes where the result of the valuation will have a direct effect on the financial statements. In such situations, the requirements and application material set out in Subsection 603 relating to valuation services apply.

Assistance in the Resolution of Tax Disputes

All Audit Clients

604.10 A1 Providing assistance in the resolution of tax disputes to an audit client might create a self-review or advocacy threat.

604.10 A2 A tax dispute might reach a point when the tax authorities have notified an audit client that arguments on a particular issue have been rejected and either the tax authority or the client refers the matter for determination in a formal proceeding, for example, before a public tribunal or court.

604.10 A3 In addition to paragraph 604.3 A2, factors that are relevant in evaluating the level of self-review or advocacy threats created by assisting an audit client in the resolution of tax disputes include:

- The role management plays in the resolution of the dispute.
- The extent to which the outcome of the dispute will have a material effect on the financial statements on which the firm will express an opinion.
- Whether the advice that was provided is the subject of the tax dispute.
- The extent to which the matter is supported by tax law or regulation, other precedent, or established practice.

- Whether the proceedings are conducted in public.

604.10 A4 Examples of actions that might be safeguards to address threats include:

- Using professionals who are not audit team members to perform the service might address self-review or advocacy threats.
- Having an appropriate reviewer who was not involved in providing the service review the audit work or the service performed might address a self-review threat.

Resolution of Tax Matters Involving Acting as An Advocate

R604.11 A firm or a network firm shall not provide tax services that involve assisting in the resolution of tax disputes to an audit client if:

(a) The services involve acting as an advocate for the audit client before a public tribunal or court in the resolution of a tax matter; and

(b) The amounts involved are material to the financial statements on which the firm will express an opinion.

604.11 A1 Paragraph R604.11 does not preclude a firm or network firm from having a continuing advisory role in relation to the matter that is being heard before a public tribunal or court, for example:

- Responding to specific requests for information.
- Providing factual accounts or testimony about the work performed.
- Assisting the client in analysing the tax issues related to the matter.

604.11 A2 What constitutes a "public tribunal or court" depends on how tax proceedings are heard in the particular jurisdiction.

SUBSECTION 605 – INTERNAL AUDIT SERVICES

Introduction

605.1 Providing internal audit services to an audit client might create a self-review threat.

605.2 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing an internal audit service to an audit client. This subsection includes requirements that prohibit firms and network firms from providing certain internal audit services to audit clients in some circumstances because the threats created cannot be addressed by applying safeguards.

Requirements and Application Material

All Audit Clients

605.3 A1 Internal audit services involve assisting the audit client in the performance of its internal audit activities. Internal audit activities might include:

- Monitoring of internal control – reviewing controls, monitoring their operation and recommending improvements to them.
- Examining financial and operating information by:

- Reviewing the means used to identify, measure, classify and report financial and operating information.
- Inquiring specifically into individual items including detailed testing of transactions, balances and procedures.

- Reviewing the economy, efficiency and effectiveness of operating activities including non-financial activities of an entity.
- Reviewing compliance with:
  - Laws, regulations and other external requirements.
  - Management policies, directives and other internal requirements.

605.3 A2 The scope and objectives of internal audit activities vary widely and depend on the size and structure of the entity and the requirements of management and those charged with governance.

R605.4 When providing an internal audit service to an audit client, the firm shall be satisfied that:

(a) The client designates an appropriate and competent resource, preferably within senior management, to:

(i) Be responsible at all times for internal audit activities; and

(ii) Acknowledge responsibility for designing, implementing, monitoring and maintaining internal control.

(b) The client's management or those charged with governance reviews, assesses and approves the scope, risk and frequency of the internal audit services;

(c) The client's management evaluates the adequacy of the internal audit services and the findings resulting from their performance;

(d) The client's management evaluates and determines which recommendations resulting from internal audit services to implement and manages the implementation process; and

(e) The client's management reports to those charged with governance the significant findings and recommendations resulting from the internal audit services.

605.4 A1 Paragraph R600.7 precludes a firm or a network firm from assuming a management responsibility. Performing a significant part of the client's internal audit activities increases the possibility that firm or network firm personnel providing internal audit services will assume a management responsibility.

605.4 A2 Examples of internal audit services that involve assuming management responsibilities include:

- Setting internal audit policies or the strategic direction of internal audit activities.
- Directing and taking responsibility for the actions of the entity's internal audit employees.
- Deciding which recommendations resulting from internal audit activities to implement.
- Reporting the results of the internal audit activities to those charged with governance on behalf of management.
- Performing procedures that form part of the internal control, such as reviewing and approving changes to employee data access privileges.

- Taking responsibility for designing, implementing, monitoring and maintaining internal control.
- Performing outsourced internal audit services, comprising all or a substantial portion of the internal audit function, where the firm or network firm is responsible for determining the scope of the internal audit work; and might have responsibility for one or more of the matters noted above.

605.4 A3 When a firm uses the work of an internal audit function in an audit engagement, ISAs require the performance of procedures to evaluate the adequacy of that work. Similarly, when a firm or network firm accepts an engagement to provide internal audit services to an audit client, the results of those services might be used in conducting the external audit. This creates a self-review threat because it is possible that the audit team will use the results of the internal audit service for purposes of the audit engagement without:

(a) Appropriately evaluating those results; or

(b) Exercising the same level of professional scepticism as would be exercised when the internal audit work is performed by individuals who are not members of the firm.

605.4 A4 Factors that are relevant in evaluating the level of such a self-review threat include:

- The materiality of the related financial statement amounts.
- The risk of misstatement of the assertions related to those financial statement amounts.
- The degree of reliance that the audit team will place on the work of the internal audit service, including in the course of an external audit.

605.4 A5 An example of an action that might be a safeguard to address such a self-review threat is using professionals who are not audit team members to perform the service.

Audit Clients that are Public Interest Entities

R605.5 A firm or a network firm shall not provide internal audit services to an audit client that is a public interest entity, if the services relate to:

(a) A significant part of the internal controls over financial reporting;

(b) Financial accounting systems that generate information that is, individually or in the aggregate, material to the client's accounting records or financial statements on which the firm will express an opinion; or

(c) Amounts or disclosures that are, individually or in the aggregate, material to the financial statements on which the firm will express an opinion.

SUBSECTION 606 – INFORMATION TECHNOLOGY SYSTEMS SERVICES

Introduction

606.1 Providing information technology (IT) systems services to an audit client might create a self-review threat.

606.2 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing an IT systems service to an audit client. This subsection includes requirements that prohibit firms and network firms from providing certain IT systems services to audit clients in some circumstances because the threats created cannot be addressed by applying safeguards.

Requirements and Application Material

All Audit Clients

606.3 A1 Services related to IT systems include the design or implementation of hardware or software systems. The IT systems might:

(a) Aggregate source data;

(b) Form part of the internal control over financial reporting; or

(c) Generate information that affects the accounting records or financial statements, including related disclosures.

However, the IT systems might also involve matters that are unrelated to the audit client's accounting records or the internal control over financial reporting or financial statements.

606.3 A2 Paragraph R600.7 precludes a firm or a network firm from assuming a management responsibility. Providing the following IT systems services to an audit client does not usually create a threat as long as personnel of the firm or network firm do not assume a management responsibility:

(a) Designing or implementing IT systems that are unrelated to internal control over financial reporting;

(b) Designing or implementing IT systems that do not generate information forming a significant part of the accounting records or financial statements;

(c) Implementing "off-the-shelf" accounting or financial information reporting software that was not developed by the firm or network firm, if the customization required to meet the client's needs is not significant; and

(d) Evaluating and making recommendations with respect to an IT system designed, implemented or operated by another service provider or the client.

R606.4 When providing IT systems services to an audit client, the firm or network firm shall be satisfied that:

(a) The client acknowledges its responsibility for establishing and monitoring a system of internal controls;

(b) The client assigns the responsibility to make all management decisions with respect to the design and implementation of the hardware or software system to a competent employee, preferably within senior management;

(c) The client makes all management decisions with respect to the design and implementation process;

(d) The client evaluates the adequacy and results of the design and implementation of the system; and

(e) The client is responsible for operating the system (hardware or software) and for the data it uses or generates.

606.4 A1 Factors that are relevant in evaluating the level of a self-review threat created by providing IT systems services to an audit client include:

- The nature of the service.
- The nature of IT systems and the extent to which they impact or interact with the client's accounting records or financial statements.
- The degree of reliance that will be placed on the particular IT systems as part of the audit.

606.4 A2 An example of an action that might be a safeguard to address such a self-review threat is using professionals who are not audit team members to perform the service.

Audit Clients that are Public Interest Entities

R606.5 A firm or a network firm shall not provide IT systems services to an audit client that is a public interest entity if the services involve designing or implementing IT systems that:

(a) Form a significant part of the internal control over financial reporting; or

(b) Generate information that is significant to the client's accounting records or financial statements on which the firm will express an opinion.

SUBSECTION 607 – LITIGATION SUPPORT SERVICES

Introduction

607.1 Providing certain litigation support services to an audit client might create a self-review or advocacy threat.

607.2 In addition to the specific application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing a litigation support service to an audit client.

Application Material

All Audit Clients

607.3 A1 Litigation support services might include activities such as:

- Assisting with document management and retrieval.
- Acting as a witness, including an expert witness.
- Calculating estimated damages or other amounts that might become receivable or payable as the result of litigation or other legal dispute.

607.3 A2 Factors that are relevant in evaluating the level of self-review or advocacy threats created by providing litigation support services to an audit client include:

- The legal and regulatory environment in which the service is provided, for example, whether an expert witness is chosen and appointed by a court.
- The nature and characteristics of the service.
- The extent to which the outcome of the litigation support service will have a material effect on the financial statements on which the firm will express an opinion.

607.3 A3 An example of an action that might be a safeguard to address such a self-review or advocacy threat is using a professional who was not an audit team member to perform the service.

607.3 A4 If a firm or a network firm provides a litigation support service to an audit client and the service involves estimating damages or other amounts that affect the financial statements on which the firm will express an opinion, the requirements and application material set out in Subsection 603 related to valuation services apply.

SUBSECTION 608 – LEGAL SERVICES

Introduction

608.1 Providing legal services to an audit client might create a self-review or advocacy threat.

608.2 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing a legal service to an audit client. This subsection includes requirements that prohibit firms and network firms from providing certain legal services to audit clients in some circumstances because the threats cannot be addressed by applying safeguards.

Requirements and Application Material

All Audit Clients

608.3 A1 Legal services are defined as any services for which the individual providing the services must either:

(a) Have the required legal training to practice law; or

(b) Be admitted to practice law before the courts of the jurisdiction in which such services are to be provided.

Acting in an Advisory Role

608.4 A1 Depending on the jurisdiction, legal advisory services might include a wide and diversified range of service areas including both corporate and commercial services to audit clients, such as:

- Contract support.
- Supporting an audit client in executing a transaction.
- Mergers and acquisitions.
- Supporting and assisting an audit client's internal legal department.
- Legal due diligence and restructuring.

608.4 A2 Factors that are relevant in evaluating the level of self-review or advocacy threats created by providing legal advisory services to an audit client include:

- The materiality of the specific matter in relation to the client's financial statements.
- The complexity of the legal matter and the degree of judgment necessary to provide the service.

608.4 A3 Examples of actions that might be safeguards to address threats include:

- Using professionals who are not audit team members to perform the service might address a self-review or advocacy threat.
- Having an appropriate reviewer who was not involved in providing the service review the audit work or the service performed might address a self-review threat.

Acting as General Counsel

R608.5 A partner or employee of the firm or the network firm shall not serve as General Counsel for legal affairs of an audit client.

608.5 A1 The position of General Counsel is usually a senior management position with broad responsibility for the legal affairs of a company.

Acting in an Advocacy Role

R608.6 **A firm or a network firm shall not act in an advocacy role for an audit client in resolving a dispute or litigation when the amounts involved are material to the financial statements on which the firm will express an opinion.**

608.6 A1 Examples of actions that might be safeguards to address a self-review threat created when acting in an advocacy role for an audit client when the amounts involved are not material to the financial statements on which the firm will express an opinion include:

- Using professionals who are not audit team members to perform the service.
- Having an appropriate reviewer who was not involved in providing the service review the audit work or the service performed.

SUBSECTION 609 – RECRUITING SERVICES

Introduction

609.1 Providing recruiting services to an audit client might create a self-interest, familiarity or intimidation threat.

609.2 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing a recruiting service to an audit client. This subsection includes requirements that prohibit firms and network firms from providing certain types of recruiting services to audit clients in some circumstances because the threats created cannot be addressed by applying safeguards.

Requirements and Application Material

All Audit Clients

609.3 A1 Recruiting services might include activities such as:

- Developing a job description.
- Developing a process for identifying and selecting potential candidates.
- Searching for or seeking out candidates.
- Screening potential candidates for the role by:
  - Reviewing the professional qualifications or competence of applicants and determining their suitability for the position.
  - Undertaking reference checks of prospective candidates.
  - Interviewing and selecting suitable candidates and advising on candidates' competence.
- Determining employment terms and negotiating details, such as salary, hours and other compensation.

609.3 A2 Paragraph R600.7 precludes a firm or a network firm from assuming a management responsibility. Providing the following services does not usually create a threat as long as personnel of the firm or network firm does not assume a management responsibility:

- Reviewing the professional qualifications of a number of applicants and providing advice on their suitability for the position.
- Interviewing candidates and advising on a candidate's competence for financial accounting, administrative or control positions.

R609.4 **When a firm or network firm provides recruiting services to an audit client, the firm shall be satisfied that:**

(a) **The client assigns the responsibility to make all management decisions with respect to hiring the candidate for the position to a competent employee, preferably within senior management; and**

(b) **The client makes all management decisions with respect to the hiring process, including:**

- **Determining the suitability of prospective candidates and selecting suitable candidates for the position.**
- **Determining employment terms and negotiating details, such as salary, hours and other compensation.**

609.5 A1 Factors that are relevant in evaluating the level of self-interest, familiarity or intimidation threats created by providing recruiting services to an audit client include:

- The nature of the requested assistance.
- The role of the individual to be recruited.
- Any conflicts of interest or relationships that might exist between the candidates and the firm providing the advice or service.

609.5 A2 An example of an action that might be a safeguard to address such a self-interest, familiarity or intimidation threat is using professionals who are not audit team members to perform the service.

Recruiting Services that are Prohibited

R609.6 **When providing recruiting services to an audit client, the firm or the network firm shall not act as a negotiator on the client's behalf.**

R609.7 **A firm or a network firm shall not provide a recruiting service to an audit client if the service relates to:**

(a) **Searching for or seeking out candidates; or**

(b) **Undertaking reference checks of prospective candidates,**

with respect to the following positions:

(i) **A director or officer of the entity; or**

(ii) **A member of senior management in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.**

SUBSECTION 610 – CORPORATE FINANCE SERVICES

Introduction

610.1 Providing corporate finance services to an audit client might create a self-review or advocacy threat.

610.2 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to R600.10 are relevant to applying the conceptual framework when providing a corporate finance service to an audit client. This subsection includes requirements that prohibit firms and network firms from providing certain corporate finance services in some circumstances to audit clients because the threats created cannot be addressed by applying safeguards.

Requirements and Application Material

All Audit Clients

610.3 A1 Examples of corporate finance services that might create a self-review or advocacy threat include:

- Assisting an audit client in developing corporate strategies.
- Identifying possible targets for the audit client to acquire.
- Advising on disposal transactions.
- Assisting in finance raising transactions.
- Providing structuring advice.
- Providing advice on the structuring of a corporate finance transaction or on financing arrangements that will directly affect amounts that will be reported in the financial statements on which the firm will express an opinion.

610.3 A2 Factors that are relevant in evaluating the level of such threats created by providing corporate finance services to an audit client include:

- The degree of subjectivity involved in determining the appropriate treatment for the outcome or consequences of the corporate finance advice in the financial statements.
- The extent to which:
    - The outcome of the corporate finance advice will directly affect amounts recorded in the financial statements.
    - The amounts are material to the financial statements.
- Whether the effectiveness of the corporate finance advice depends on a particular accounting treatment or presentation in the financial statements and there is doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework.

610.3 A3 Examples of actions that might be safeguards to address threats include:

- Using professionals who are not audit team members to perform the service might address self-review or advocacy threats.
- Having an appropriate reviewer who was not involved in providing the service review the audit work or service performed might address a self-review threat.

Corporate Finance Services that are Prohibited

R610.4 **A firm or a network firm shall not provide corporate finance services to an audit client that involve promoting, dealing in, or underwriting the audit client's shares.**

R610.5 **A firm or a network firm shall not provide corporate finance advice to an audit client where the effectiveness of such advice depends on a particular accounting treatment or presentation in the financial statements on which the firm will express an opinion and:**

(a) **The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and**

(b) **The outcome or consequences of the corporate finance advice will have a material effect on the financial statements on which the firm will express an opinion.**

SECTION 800

REPORTS ON SPECIAL PURPOSE FINANCIAL STATEMENTS THAT INCLUDE A RESTRICTION ON USE AND DISTRIBUTION (AUDIT AND REVIEW ENGAGEMENTS)

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.

800.2 This section sets out certain modifications to Part 4A 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."

Requirements and Application Material

General

R800.3 When a firm intends to issue a report on an audit of special purpose financial statements which includes a restriction on use and distribution, the independence requirements set out in Part 4A shall be eligible for the modifications that are permitted by this section, but only if:

(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.

800.3 A1 The intended users of the report might obtain an understanding of the purpose and limitations of the report by participating, either directly, or indirectly through a representative who has authority to act for the intended users, in establishing the nature and scope of the engagement. 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.

R800.4 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.

800.4 A1 For example, where the intended users are a class of users such as 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.

R800.5 When the firm performs an eligible audit engagement, any modifications to Part 4A shall be limited to those set out in paragraphs R800.7 to R800.14. The firm shall not apply these modifications when an audit of financial statements is required by law or regulation.

R800.6 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 to that audit engagement.

Public Interest Entities

R800.7 **When the firm performs an eligible audit engagement, the firm does not need to apply the independence requirements set out in Part 4A that apply only to public interest entity audit engagements.**

Related Entities

R800.8 **When the firm performs an eligible audit engagement, references to "audit client" in Part 4A 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.**

Networks and Network Firms

R800.9 **When the firm performs an eligible audit engagement, the specific requirements regarding network firms set out in Part 4A 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.**

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

R800.10 **When the firm performs an eligible audit engagement:**

(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, where applicable, close family members;**

(b) **The firm shall identify, evaluate and address any threats to independence 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:**

(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.**

800.10 A1 Others within a firm who can directly influence the outcome of the audit engagement include those who recommend the compensation, or who provide direct supervisory, management or other oversight, of the audit engagement partner in connection with the performance of the audit engagement including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent).

R800.11 **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 R510.4(c) and (d), R510.5, R510.7 and 510.10 A5 and A9.**

R800.12 **When the firm performs an eligible audit engagement, the firm, in applying the provisions set out in paragraphs R510.4(a), R510.6 and R510.7 to interests of the firm, shall not hold a material direct or a material indirect financial interest in the audit client.**

Employment with an Audit Client

R800.13 **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 524.3 A1 to 524.5 A3.**

Providing Non-Assurance Services

R800.14 **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 R800.7 to R800.9.**

SECTION 900

APPLYING THE CONCEPTUAL FRAMEWORK TO INDEPENDENCE FOR ASSURANCE ENGAGEMENTS OTHER THAN AUDIT AND REVIEW ENGAGEMENTS

Introduction

General

900.1 This Part 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 this Part, the term "professional accountant" refers to individual professional accountants in public practice and their firms.

900.3 ISQC 1 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. ISAEs establish responsibilities for engagement partners and engagement teams at the level of the engagement. The allocation of 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, an individual professional accountant remains 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 allowing an individual to act with integrity, and exercise objectivity and professional scepticism.

(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 scepticism has been compromised.

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

900.5 When performing assurance engagements, the Code requires firms to comply with the fundamental principles and be independent. This Part sets out specific 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.

900.6 This Part describes:

(a) Facts and circumstances, including professional activities, interests and relationships, that create or might create threats to independence;

(b) Potential actions, including safeguards, that might be appropriate to address any such threats; and

(c) Some situations where the threats cannot be eliminated or there can be no safeguards to reduce the threats to an acceptable level.

Description of Other Assurance Engagements

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. In an assurance engagement, the firm 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. 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.

900.8 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).

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

900.10 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.

900.11 In a direct reporting assurance engagement, the firm:

(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.

Reports that Include a Restriction on Use and Distribution

900.12 An assurance report might include a restriction on use and distribution. If it does and the conditions set out in Section 990 are met, then the independence requirements in this Part may be modified as provided in Section 990.

Audit and Review Engagements

900.13 Independence standards for audit and review engagements are set out in Part 4A – *Independence for Audit and Review Engagements*. If a firm performs both an assurance engagement and an audit or review engagement for

the same client, the requirements in Part 4A continue to apply to the firm, a network firm and the audit or review team members.

Requirements and Application Material

General

R900.14 **A firm performing an assurance engagement shall be independent.**

R900.15 **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.**

Network firms

R900.16 **When a firm has reason to believe that interests and relationships of a network firm create a threat to the firm's independence, the firm shall evaluate and address any such threat.**

900.16 A1 Network firms are discussed in paragraphs 400.50 A1 to 400.54 A1.

Related Entities

R900.17 **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.**

Types of Assurance Engagements

Assertion-based Assurance Engagements

R900.18 **When performing an assertion-based assurance engagement:**

(a) **The assurance team members 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 this Part. The independence requirements set out in this Part 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;**

(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**

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

R900.19 **When performing an assertion-based assurance engagement where the responsible party is responsible for the subject matter information but not the subject matter:**

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

(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.**

900.19 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).

Direct Reporting Assurance Engagements

R900.20 When performing a direct reporting assurance engagement:

(a) The assurance team members 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.

Multiple Responsible Parties

900.21 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 this Part 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:

(a) The materiality of the subject matter information (or of the subject matter) for which the particular responsible party is responsible.

(b) 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 900.22 to 900.29 are intentionally left blank]

Period During which Independence is Required

R900.30 Independence, as required by this Part, 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 with respect to the particular engagement. 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.

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:

(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 **Threats to independence are created 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 engagement period. In such circumstances, 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.**

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

- Using professionals who are not assurance team members to perform the service.
- Having an appropriate reviewer review the assurance and non-assurance work as appropriate.

R900.33 **If a non-assurance service that would not be permitted during the engagement period 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:**

(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 Other than Audit and Review Engagements

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

(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 required 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 this Part. However, a lack of documentation does not determine whether a firm considered a particular matter or whether the firm is independent.

[Paragraphs 900.41 to 900.49 are intentionally left blank]

Breach of an Independence Provision for Assurance Engagements Other than Audit and Review Engagements

When a Firm Identifies a Breach

R900.50 **If a firm concludes that a breach of a requirement in this Part has occurred, the firm shall:**

(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, and therefore, the firm would be unable to issue an assurance report.

R900.51 **If the firm determines that action cannot be taken 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.**

R900.52 **If the firm determines that action can be taken 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.**

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.**

Documentation

R900.54 **In complying with the requirements in paragraphs R900.50 to R900.53, the firm shall document:**

(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 document:**

(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.**

Note: (inserted 1 December 2020)

In January 2020, the International Ethics Standards Board for Accountants revised Part 4B of the IESBA Code of Ethics. Chartered Accountants Ireland has not yet adopted the revised Part 4B as there are no substantive changes to requirements. However, the IESBA revision does change some terminology to reflect terms and concepts used in the latest version of ISAE3000 and reference to it may be of use in applying the requirements of Part 4B of this Code. The revised IESBA Part 4B is available at https://www.ethicsboard.org/publications/final-pronouncement-alignment-part-4b-code-isae-3000-revised."

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.

905.2 The nature and level of fees or other types of remuneration might create a self-interest or intimidation threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

Fees—Relative Size

905.3 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.

905.3 A2 Factors that are relevant in evaluating the level of such threats include:

- 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.

905.3 A3 An example of an action that might be a safeguard to address such a self-interest or intimidation threat is increasing the client base in the firm to reduce dependence on the assurance client.

905.3 A4 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.

905.3 A5 Examples of actions that might be safeguards to address such a self-interest or intimidation threat include:

- Increasing the client base of the partner to reduce dependence on the assurance client.
- Having an appropriate reviewer who was not an assurance team member review the work.

Fees—Overdue

905.4 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 apply to situations where such unpaid fees exist.

905.4 A2 Examples of actions that might be safeguards to address such a self-interest threat include:

- Obtaining partial payment of overdue fees.
- Having an appropriate reviewer who did not take part in the assurance engagement review the work performed.

R905.5 When a significant part of fees due from an assurance client remains unpaid for a long time, the firm shall determine:

(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.

Contingent Fees

905.6 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, a fee is not regarded as being contingent if established by a court or other public authority.

R905.7 A firm shall not charge directly or indirectly a contingent fee for an assurance engagement.

R905.8 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.

905.9 A1 Paragraphs R905.7 and R905.8 preclude a firm from entering into certain contingent fee arrangements with an assurance client. Even if a contingent fee arrangement is not precluded when providing a non-assurance service to an assurance client, a self-interest threat might still be created.

905.9 A2 Factors that are relevant in evaluating the level of such a threat include:

- The range of possible fee amounts.
- Whether an appropriate authority determines the outcome on which the contingent fee depends.
- Disclosure to intended users of the work performed by the firm and the basis of remuneration.
- The nature of the service.
- The effect of the event or transaction on the subject matter information.

905.9 A3 Examples of actions that might be safeguards to address such a self-interest threat include:

- Having an appropriate reviewer who was not involved in performing the non-assurance service review the relevant assurance work.
- Obtaining an advance written agreement with the client on the basis of remuneration.

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.

906.2 Accepting gifts and hospitality from an assurance client might create a self-interest, familiarity or intimidation threat. This section sets out a specific requirement and application material relevant to applying the conceptual framework in such circumstances.

Requirement and Application Material

R906.3 A firm or an assurance team member shall not accept gifts and hospitality from an assurance client, unless the value is trivial and inconsequential.

906.3 A1 Where a firm or assurance team member is offering or accepting an inducement to or from an assurance client, the requirements and application material set out in Section 340 apply and non-compliance with these requirements might create threats to independence.

906.3 A2 The requirements set out in Section 340 relating to offering or accepting inducements do not allow a firm or assurance team member to accept gifts and hospitality where the intent is to improperly influence behaviour even if the value is trivial and inconsequential.

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.

907.2 When litigation with an assurance client occurs, or appears likely, self-interest and intimidation threats are created. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Application Material

General

907.3 A1 The relationship between client management and assurance team members must be characterised by complete candour and full disclosure regarding all aspects of a client's operations. Adversarial positions might result from actual or threatened litigation between an assurance client and the firm or an assurance team member. Such adversarial positions might affect management's willingness to make complete disclosures and create self-interest and intimidation threats.

907.3 A2 Factors that are relevant in evaluating the level of such threats include:

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

907.3 A3 If the litigation involves an assurance team member, an example of an action that might eliminate such self-interest and intimidation threats is removing that individual from the assurance team.

907.3 A4 An example of an action that might be a safeguard to address such self-interest and intimidation threats is having an appropriate reviewer review the work performed.

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.

910.2 Holding a financial interest in an assurance client might create a self-interest threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

910.3 A1 A financial interest might be held directly or 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 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.

910.3 A2 This section 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.

910.3 A3 Factors that are relevant in evaluating the level of a self-interest threat created by holding a financial interest in an assurance client include:

- 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

R910.4 A direct financial interest or a material indirect financial interest in the assurance client shall not be held by:

(a) The firm; or

(b) An assurance team member or any of that individual's immediate family.

Financial Interests in an Entity Controlling an Assurance Client

R910.5 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.

Financial Interests Held as Trustee

R910.6 Paragraph R910.4 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:

(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

R910.7 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 otherwise be permitted to be held under this section, then:

(a) If the interest is received by the firm, the financial interest shall be disposed of immediately, or enough 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 enough of an indirect financial interest so that the remaining interest is no longer material.

Financial Interests – Other Circumstances

Close Family

910.8 A1 A self-interest threat might be created 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.

910.8 A2 Factors that are relevant in evaluating the level of such a threat include:

- The nature of the relationship between the assurance team member and the close family member.
- Whether the financial interest is direct or indirect.
- The materiality of the financial interest to the close family member.

910.8 A3 Examples of actions that might eliminate such a self-interest threat include:

- Having the close family member dispose, as soon as practicable, of all of the financial interest or dispose of enough of an indirect financial interest so that the remaining interest is no longer material.
- Removing the individual from the assurance team.

910.8 A4 An example of an action that might be a safeguard to address such a self-interest threat is having an appropriate reviewer review the work of the assurance team member.

Other Individuals

910.8 A5 A self-interest threat might be created if an assurance team member knows that a financial interest is held in the assurance client by individuals such as:

- Partners and professional employees of the firm, apart from those who are specifically not permitted to hold such financial interests by paragraph R910.4, or their immediate family members.
- Individuals with a close personal relationship with an assurance team member.

910.8 A6 An example of an action that might eliminate such a self-interest threat is removing the assurance team member with the personal relationship from the assurance team.

910.8 A7 Examples of actions that might be safeguards to address such a self-interest threat include:

- Excluding the assurance team member from any significant decision-making concerning the assurance engagement.
- Having an appropriate reviewer review the work of the assurance team member.

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.

911.2 A loan or a guarantee of a loan with an assurance client might create a self-interest threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

911.3 A1 This section contains references to the "materiality" of a loan or guarantee. In 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.

Loans and Guarantees with an Assurance Client

R911.4 A firm, 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.

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

R911.5 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.

911.5 A1 Examples of loans include mortgages, bank overdrafts, car loans and credit card balances.

911.5 A2 Even if a firm receives a loan from an assurance client that is a bank or similar institution under normal lending procedures, terms and conditions, the loan might create a self-interest threat if it is material to the assurance client or firm receiving the loan.

911.5 A3 An example of an action that might be a safeguard to address such a self-interest threat is having the work reviewed by an appropriate reviewer, who is not an assurance team member, from a network firm that is not a beneficiary of the loan.

Deposit or Brokerage Accounts

R911.6 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 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

R911.7 A firm or an assurance team member, or any of that individual's immediate family, 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.

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.

920.2 A close business relationship with an assurance client or its management might create a self-interest or intimidation threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

920.3 A1 This section 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.

920.3 A2 Examples of a close business relationship arising from a commercial relationship or common financial interest include:

- 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, Assurance Team Member or Immediate Family Business Relationships

R920.4 A 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.

920.4 A1 A self-interest or intimidation threat might be created if there is a close business relationship between the assurance client or its management and the immediate family of an assurance team member.

Buying Goods or Services

920.5 A1 The purchase of goods and services from an assurance client by a 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. However, such transactions might be of such a nature and magnitude that they create a self-interest threat.

920.5 A2 Examples of actions that might eliminate such a self-interest threat include:

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

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.

921.2 Family or personal relationships with client personnel might create a self-interest, familiarity or intimidation threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

921.3 A1 A self-interest, familiarity or intimidation threat 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.

921.3 A2 Factors that are relevant in evaluating the level of such threats include:

- 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

921.4 A1 A self-interest, familiarity or intimidation threat is 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.

921.4 A2 Factors that are relevant in evaluating the level of such threats include:

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

921.4 A3 An example of an action that might eliminate such a self-interest, familiarity or intimidation threat is removing the individual from the assurance team.

921.4 A4 An example of an action that might be a safeguard to address such a self-interest, familiarity or intimidation threat 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.

R921.5 An individual shall not participate as an assurance team member when any of that individual's immediate family:

(a) Is a director or officer of the assurance client;

(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 an Assurance Team Member

921.6 A1 A self-interest, familiarity or intimidation threat is created when a close family member of an assurance team member is:

(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.

921.6 A2 Factors that are relevant in evaluating the level of such threats include:

- 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.

921.6 A3 An example of an action that might eliminate such a self-interest, familiarity or intimidation threat is removing the individual from the assurance team.

921.6 A4 An example of an action that might be a safeguard to address such a self-interest, familiarity or intimidation threat 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.

Other Close Relationships of an Assurance Team Member

R921.7 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:

(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.

921.7 A1 Factors that are relevant in evaluating the level of a self-interest, familiarity or intimidation threat created by such relationships include:

- 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.

921.7 A2 An example of an action that might eliminate such a self-interest, familiarity or intimidation threat is removing the individual from the assurance team.

921.7 A3 An example of an action that might be a safeguard to address such a self-interest, familiarity or intimidation threat 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 individual with whom the assurance team member has a close relationship.

Relationships of Partners and Employees of the Firm

921.8 A1 A self-interest, familiarity or intimidation threat 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.

921.8 A2 Factors that are relevant in evaluating the level of such threats include:

- 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.

921.8 A3 Examples of actions that might be safeguards to address such self-interest, familiarity or intimidation threats include:

- Structuring the partner's or employee's responsibilities to reduce any potential influence over the assurance engagement.
- Having an appropriate reviewer 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.

922.2 If an assurance team member has recently served as a director or officer or employee of the assurance client, a self-interest, self-review or familiarity threat might be created . This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

Service During the Period Covered by the Assurance Report

R922.3 The assurance team shall not include an individual who, during the period covered by the assurance report:

(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.

Service Prior to the Period Covered by the Assurance Report

922.4 A1 A self-interest, self-review or familiarity threat might be created if, before the period covered by the assurance report, an assurance team member:

(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.

922.4 A2 Factors that are relevant in evaluating the level of such threats include:

- 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.

922.4 A3 An example of an action that might be a safeguard to address such a self-interest, self-review or familiarity threat is having an appropriate reviewer review the work performed by the assurance team member.

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.

923.2 Serving as a director or officer of an assurance client creates self-review and self-interest threats. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

Service as Director or Officer

R923.3 A partner or employee of the firm shall not serve as a director or officer of an assurance client of the firm.

Service as Company Secretary

R923.4 A partner or employee of the firm shall not serve as Company Secretary for an assurance client of the firm unless:

(a) This practice is specifically permitted under local law, professional rules or practice;

(b) Management makes all 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.

923.4 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 regulations or providing advice on corporate governance matters. Usually this position is seen to imply a close association with the entity. Therefore, a threat is created if a partner or employee of the firm serves as Company Secretary for an assurance client. (More information on providing non-assurance services to an assurance client is set out in Section 950, 'Provision of Non-assurances Services to an Assurance Client'.*)*

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.

924.2 Employment relationships with an assurance client might create a self-interest, familiarity or intimidation threat. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

924.3 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:

- 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.

Former Partner or Assurance Team Member Restrictions

R924.4 If a former partner has joined an assurance client of the firm or a former assurance team member has joined the assurance client as:

(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.

924.4 A1 Even if one of the individuals described in paragraph R924.4 has joined the assurance client in such a position and does not continue to participate in the firm's business or professional activities, a familiarity or intimidation threat might still be created.

924.4 A2 A familiarity or intimidation threat might also be created if a former partner of the firm has joined an entity in one of the positions described in paragraph 924.3 A1 and the entity subsequently becomes an assurance client of the firm.

924.4 A3 Factors that are relevant in evaluating the level of such threats include:

- 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. An example is whether the individual was responsible for maintaining regular contact with the client's management or those charged with governance.

924.4 A4 Examples of actions that might be safeguards to address such a familiarity or intimidation threat include:

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

Assurance Team Members Entering Employment Negotiations with a Client

R924.5 A firm shall have policies and procedures that require assurance team members to notify the firm when entering employment negotiations with an assurance client.

924.5 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.

924.5 A2 An example of an action that might eliminate such a self-interest threat is removing the individual from the assurance engagement.

924.5 A3 An example of an action that might be a safeguard to address such a self-interest threat is having an appropriate reviewer review any significant judgments made by that assurance team member while on the team.

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.

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. This section sets out requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

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

(a) The assurance client;

(b) The assurance client's senior management; or

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

940.3 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 a member of senior management or those charged with governance. Such a threat might influence the individual's judgment inappropriately.

940.3 A3 Factors that are relevant to evaluating the level of such familiarity or self-interest threats include:

- 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.
- 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.

940.3 A4 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.

940.3 A5 An example of an action that might eliminate the familiarity and self-interest threats in relation to a specific engagement would be rotating the individual off the assurance team.

940.3 A6 Examples of actions that might be safeguards to address such familiarity or self-interest threats include:

- Changing the role of the individual on the assurance team or the nature and extent of the tasks the individual performs.
- Having an appropriate reviewer who was not an assurance team member review the work of the individual.
- Performing regular independent internal or external quality reviews of the engagement.

R940.4 If a firm decides 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 for the assurance engagement;

(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 addressed.

SECTION 950

PROVISION OF NON-ASSURANCE SERVICES TO ASSURANCE CLIENTS OTHER THAN AUDIT AND REVIEW ENGAGEMENT CLIENTS

Introduction

950.1 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.

950.2 Firms might provide a range of non-assurance services to their assurance clients, consistent with their skills and expertise. Providing certain non-assurance services to assurance clients might create threats to compliance with the fundamental principles and threats to independence. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

R950.3 Before a firm accepts an engagement to provide a non-assurance service to an assurance client, the firm shall determine whether providing such a service might create a threat to independence.

950.3 A1 The requirements and application material in this section assist firms in analyzing certain types of non-assurance services and the related threats that might be created when a firm accepts or provides non-assurance services to an assurance client.

950.3 A2 New business practices, the evolution of financial markets and changes in information technology are among the developments that make it impossible to draw up an all-inclusive list of non-assurance services that might be provided to an assurance client. As a result, the Code does not include an exhaustive listing of all non-assurance services that might be provided to an assurance client.

Evaluating Threats

950.4 A1 Factors that are relevant in evaluating the level of threats created by providing a non-assurance service to an assurance client include:

- The nature, scope and purpose of the service.
- The degree of reliance that will be placed on the outcome of the service as part of the assurance engagement.
- The legal and regulatory environment in which the service is provided.
- Whether the outcome of the service will affect matters reflected in the subject matter or subject matter information of the assurance engagement, and, if so:
    - The extent to which the outcome of the service will have a material or significant effect on the subject matter of the assurance engagement.
    - The extent of the assurance client's involvement in determining significant matters of judgment.
- The level of expertise of the client's management and employees with respect to the type of service provided.

Materiality in Relation to an Assurance Client's Information

950.4 A2 The concept of materiality in relation to an assurance client's information is addressed in 'International Standard on Assurance Engagements (ISAE) 3000 (Revised), Assurance Engagements other than Audits or Reviews of Historical Financial Information'. The determination of materiality involves the exercise of professional judgment and is impacted by both quantitative and qualitative factors. It is also affected by perceptions of the financial or other information needs of users.

Multiple Non-assurance Services Provided to the Same Assurance Client

950.4 A3 A firm might provide multiple non-assurance services to an assurance client. In these circumstances the combined effect of threats created by providing those services is relevant to the firm's evaluation of threats.

Addressing Threats

950.5 A1 Paragraph 120.10 A2 includes a description of safeguards. In relation to providing non-assurance services to assurance clients, safeguards are actions, individually or in combination, that the firm takes that effectively reduce threats to independence to an acceptable level. In some situations, when a threat is created by providing a service to an assurance client, safeguards might not be available. In such situations, the application of the conceptual framework set out in Section 120 requires the firm to decline or end the non-assurance service or the assurance engagement.

Prohibition on Assuming Management Responsibilities

R950.6 A firm shall not assume a management responsibility related to the subject matter or subject matter information of an assurance engagement provided by the firm. If the firm assumes a management responsibility as part of any other service provided to the assurance client, the firm shall ensure that the responsibility is not related to the subject matter or subject matter information of the assurance engagement provided by the firm.

950.6 A1 Management responsibilities involve controlling, leading and directing an entity, including making decisions regarding the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

950.6 A2 Providing a non-assurance service to an assurance client creates self-review and self-interest threats if the firm assumes a management responsibility when performing the service. In relation to providing a service related to the subject matter or subject matter information of an assurance engagement provided by the firm, assuming a management responsibility also creates a familiarity threat and might create an advocacy threat because the firm becomes too closely aligned with the views and interests of management.

950.6 A3 Determining whether an activity is a management responsibility depends on the circumstances and requires the exercise of professional judgment. Examples of activities that would be considered a management responsibility include:

- Setting policies and strategic direction.
- Hiring or dismissing employees.
- Directing and taking responsibility for the actions of employees in relation to the employees' work for the entity.
- Authorizing transactions.
- Controlling or managing bank accounts or investments.
- Deciding which recommendations of the firm or other third parties to implement.
- Reporting to those charged with governance on behalf of management.
- Taking responsibility for designing, implementing, monitoring and maintaining internal control.

950.6 A4 Providing advice and recommendations to assist the management of an assurance client in discharging its responsibilities is not assuming a management responsibility. (Ref: Paras. R950.6 to 950.6 A3).

R950.7 To avoid assuming a management responsibility when providing non-assurance services to an assurance client that are related to the subject matter or subject matter information of the assurance engagement, the firm shall be satisfied that client management makes all related judgments and decisions that are the proper responsibility of management. This includes ensuring that the client's management:

(a) Designates an individual who possesses suitable skill, knowledge and experience to be responsible at all times for the client's decisions and to oversee the services. Such an individual, preferably within senior management, would understand:

(i) The objectives, nature and results of the services; and

(ii) The respective client and firm responsibilities.

However, the individual is not required to possess the expertise to perform or re-perform the services.

(b) Provides oversight of the services and evaluates the adequacy of the results of the service performed for the client's purpose; and

(c) Accepts responsibility for the actions, if any, to be taken arising from the results of the services.

Other Considerations Related to Providing Specific Non-Assurance Services

950.8 A1 A self-review threat might be created if the firm is involved in the preparation of subject matter information which is subsequently the subject matter information of an assurance engagement. Examples of non-assurance services that might create such self-review threats when providing services related to the subject matter information of an assurance engagement include:

(a) Developing and preparing prospective information and subsequently providing assurance on this information.

(b) Performing a valuation that forms part of the subject matter information of an assurance engagement.

SECTION 990

REPORTS THAT INCLUDE A RESTRICTION ON USE AND DISTRIBUTION (ASSURANCE ENGAGEMENTS OTHER THAN AUDIT AND REVIEW ENGAGEMENTS)

Introduction

990.1 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.

990.2 This section sets out certain modifications to Part 4B 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 R990.3 is referred to as an "eligible assurance engagement."

Requirements and Application Material

General

R990.3 When a firm intends to issue a report on an assurance engagement which includes a restriction on use and distribution, the independence requirements set out in Part 4B shall be eligible for the modifications that are permitted by this section, but only if:

(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, subject matter information and limitations of the report and explicitly agree to the application of the modifications.

990.3 A1 The intended users of the report might obtain an understanding of the purpose, subject matter information, and limitations of the report by participating, either directly, or indirectly through a representative who has authority to act for the intended users, in establishing the nature and scope of the engagement. 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.

R990.4 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.

990.4 A1 For example, where the intended users are a class of users such as 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.

R990.5 When the firm performs an eligible assurance engagement, any modifications to Part 4B shall be limited to those modifications set out in paragraphs R990.7 and R990.8.

R990.6 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 to that assurance engagement.

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

R990.7 When the firm performs an eligible assurance engagement:

(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 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.**

990.7 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.

R990.8 **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.**

GLOSSARY, INCLUDING LISTS OF ABBREVIATIONS

In the Code, the singular shall be construed as including the plural as well as the reverse, and the terms below have the following meanings assigned to them.

This glossary includes explanations of defined terms; explanations of described terms which have a specific meaning in certain parts of the Code; and references to terms described in the Code.

Acceptable level	A level at which a professional accountant using the reasonable and informed third party test would likely conclude that the accountant complies with the fundamental principles.
Advertising	The communication to the public of information as to the services or skills provided by professional accountants in public practice with a view to procuring professional business.
Affiliate	*A person granted affiliate status under the General Affiliate Regulations (part of the Public Practice Regulations), the Audit Regulations and Guidance, the Designated Professional Body Handbook, the Investment Business Regulations and Guidance or the Insolvency Licensing Regulations and Guidance.*
Appropriate reviewer	An appropriate reviewer is a professional with the necessary knowledge, skills, experience and authority to review, in an objective manner, the relevant work performed or service provided. Such an individual might be a professional accountant. This term is described in paragraph 300.8 A4.
Assurance client	The responsible party that is the person (or persons) who: a) In a direct reporting engagement, is responsible for the subject matter; or b) In an assertion-based engagement, is responsible for the subject matter information and might be responsible for the subject matter.
Assurance engagement	An engagement in which a professional accountant in public practice 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 guidance on assurance engagements, see the International Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board. The International Framework for Assurance Engagements describes the elements and objectives of an assurance engagement and identifies engagements to which International Standards on Auditing (ISAs), International Standards on Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs) apply.)
Assurance team	a) All members of the engagement team for the assurance engagement; b) All others within a firm who can directly influence the outcome of the assurance engagement, including: i. Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the assurance engagement partner in connection with the performance of the assurance engagement; ii. Those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement; and (iii) Those who provide quality control for the assurance engagement, including those who perform the engagement quality control review for the assurance engagement.
Audit	In Part 4A, the term "audit" applies equally to "review."

Audit client	An entity in respect of which a firm conducts an audit engagement. When the client is a listed entity, audit client will always include its related entities. When the audit client is not a listed entity, audit client includes those related entities over which the client has direct or indirect control. (See also paragraph R400.20.) In Part 4A, the term "audit client" applies equally to "review client."
Audit engagement	A reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an engagement conducted in accordance with International Standards on Auditing. This includes a Statutory Audit, which is an audit required by legislation or other regulation. In Part 4A, the term "audit engagement" applies equally to "review engagement."
Audit report	In Part 4A, the term "audit report" applies equally to "review report."
Audit team	a) All members of the engagement team for the audit engagement; b) All others within a firm who can directly influence the outcome of the audit engagement, including: i. Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the audit engagement, including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent); ii. Those who provide consultation regarding technical or industry-specific issues, transactions or events for the engagement; and iii. Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and c) All those within a network firm who can directly influence the outcome of the audit engagement. In Part 4A, the term "audit team" applies equally to "review team."
Close family	A parent, child or sibling who is not an immediate family member.
Conceptual framework	This term is described in Section 120.
Contingent fee	A fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. A fee that is established by a court or other public authority is not a contingent fee.
Cooling-off period	This term is described in paragraph R540.5 for the purposes of paragraphs R540.11 to R540.19.
Direct financial interest	A financial interest: a) Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or b) Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control, or the ability to influence investment decisions.
Director or officer	Those charged with the governance of an entity, or acting in an equivalent capacity, regardless of their title, which might vary from jurisdiction to jurisdiction.

Eligible audit engagement	This term is described in paragraph 800.2 for the purposes of Section 800.
Eligible assurance engagement	This term is described in paragraph 990.2 for the purposes of Section 990.
Engagement partner	The partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.
Engagement period (Audit and Review Engagements)	The engagement period starts when the audit team begins to perform the audit. The engagement period ends when the audit 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 audit report.
Engagement period (Assurance Engagements Other than Audit and Review Engagements)	The engagement period starts when the assurance team begins to perform assurance services with respect to the particular engagement. 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.
Engagement quality control review	A process designed to provide an objective evaluation, on or before the report is issued, of the significant judgments the engagement team made and the conclusions it reached in formulating the report.
Engagement team	All partners and staff performing the engagement, and any individuals engaged by the firm or a network firm who perform assurance procedures on the engagement. This excludes external experts engaged by the firm or by a network firm. The term "engagement team" also excludes individuals within the client's internal audit function who provide direct assistance on an audit engagement when the external auditor complies with the requirements of ISA 610 (Revised 2013), Using the Work of Internal Auditors.
Existing accountant	A professional accountant in public practice currently holding an audit appointment or carrying out accounting, tax, consulting or similar professional services for a client.
External expert	An individual (who is not a partner or a member of the professional staff, including temporary staff, of the firm or a network firm) or organization possessing skills, knowledge and experience in a field other than accounting or auditing, whose work in that field is used to assist the professional accountant in obtaining sufficient appropriate evidence.
Financial interest	An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.
Financial statements	A structured representation of historical financial information, including related notes, intended to communicate an entity's economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework. The related notes ordinarily comprise a summary of significant accounting policies and other explanatory information. The term can relate to a complete set of financial statements, but it can also refer to a single financial statement, for example, a balance sheet, or a statement of revenues and expenses, and related explanatory notes.

Financial statements on which the firm will express an opinion	In the case of a single entity, the financial statements of that entity. In the case of consolidated financial statements, also referred to as group financial statements, the consolidated financial statements.
Firm	a) A *member firm*; b) An entity that controls *a member firm*, through ownership, management or other means; and c) An entity controlled by *a member firm*, through ownership, management or other means. Paragraphs 400.4 and 900.3 explain how the word "firm" is used to address the responsibility of professional accountants and firms for compliance with Parts 4A and 4B, respectively.
Fundamental principles	This term is described in paragraph 110.1 A1.Each of the fundamental principles is, in turn, described in the following paragraphs: Integrity R111.1 Objectivity R112.1 Professional competence and due care R113.1 Confidentiality R114.1 Professional behaviour R115.1
Historical financial information	Information expressed in financial terms in relation to a particular entity, derived primarily from that entity's accounting system, about economic events occurring in past time periods or about economic conditions or circumstances at points in time in the past.
Immediate family	A spouse (or equivalent) or dependent.
Independence	Independence 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 allowing an individual to act with integrity, and exercise objectivity and professional scepticism. 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 audit or assurance team member's, integrity, objectivity or professional scepticism has been compromised. As set out in paragraphs 400.5 and 900.4, references to an individual or firm being "independent" mean that the individual or firm has complied with Parts 4A and 4B, as applicable.
Indirect financial interest	A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control or ability to influence investment decisions.

Inducement	An object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour. Inducements can range from minor acts of hospitality between business colleagues (for professional accountants in business), or between professional accountants and existing or prospective clients (for professional accountants in public practice), to acts that result in non-compliance with laws and regulations. An inducement can take many different forms, for example: • Gifts. • Hospitality. • Entertainment. • Political or charitable donations. • Appeals to friendship and loyalty. • Employment or other commercial opportunities. • Preferential treatment, rights or privileges.
Key audit partner	The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgments on significant matters with respect to the audit of the financial statements on which the firm will express an opinion. Depending upon the circumstances and the role of the individuals on the audit, "other audit partners" might include, for example, audit partners responsible for significant subsidiaries or divisions.
Listed entity	An entity whose shares, stock or debt are quoted or listed on a recognised stock exchange, or are marketed under the regulations of a recognised stock exchange or other equivalent body.
May	This term is used in the Code to denote permission to take a particular action in certain circumstances, including as an exception to a requirement. It is not used to denote possibility.
Member	*For the purposed of the Code: a member of the Institute, an affiliate, an employee of a member firm or affiliate, a student of the Institute.*
Member firm	*a) A member engaged in public practice as a sole practitioner; or* *b) A partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by members; or* *c) A limited liability partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by members; or* *d) Any body corporate (other than a limited liability partnership) engaged in public practice of which:* *i. 50 per cent or more of the directors are members; and* *ii. more than 50 per cent of the nominal value of the voting shares is held by members; and* *iii. more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held by members.* *e) A firm registered for audit in accordance with the Audit Regualtions and Guidance, authorised for investment business in accordance with the Investment Business Regulations and Guidance or licensed in accordance with the Designated Professional Body Handbook.* *f) A firm using the description 'Chartered Accountants' in accordance with the provisions of Bye-Law 40 (c).*

Might	This term is used in the Code to denote the possibility of a matter arising, an event occurring or a course of action being taken. The term does not ascribe any particular level of possibility or likelihood when used in conjunction with a threat, as the evaluation of the level of a threat depends on the facts and circumstances of any particular matter, event or course of action.
Network	A larger structure: a) That is aimed at co-operation; and b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.
Network firm	A firm or entity that belongs to a network. For further information, see paragraphs 400.50 A1 to 400.54 A1.
Non-compliance with laws and regulations (Professional Accountants in Business)	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: 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. This term is described in paragraph 260.5 A1.
Non-compliance with laws and regulations (Professional Accountants in Public Practice)	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: 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. This term is described in paragraph 360.5 A1.
Office	A distinct sub-group, whether organised on geographical or practice lines.
Partner or principal	*References to a partner or principal of a firm include the following:* *• A partner/principal;* *• A sole-practitioner;* *• A director of a corporate firm;* *• A member of a limited liability partnership;* *• An employee of a corporate firm who is:* *• A responsible individual within the meaning of the Audit Regulations;* *• A licensed insolvency practitioner; or* *• Defined as such in circumstances determined by Council.*
Predecessor accountant	A professional accountant in public practice who most recently held an audit appointment or carried out accounting, tax, consulting or similar professional services for a client, where there is no existing accountant.

Professional accountant	An individual who is a member of an IFAC member body. In Part 1, the term "professional accountant" refers to individual professional accountants in business and to professional accountants in public practice and their firms. In Part 2, the term "professional accountant" refers to professional accountants in business. In Parts 3, 4A and 4B, the term "professional accountant" refers to professional accountants in public practice and their firms.
Professional accountant in business	A professional accountant working in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or in regulatory or professional bodies, who might be an employee, contractor, partner, director (executive or nonexecutive), owner-manager or volunteer.
Professional accountant in public practice	A professional accountant, irrespective of functional classification (for example, audit, tax or consulting) in a firm that provides professional services. The term "professional accountant in public practice" is also used to refer to a firm of professional accountants in public practice.
Professional activity	An activity requiring accountancy or related skills undertaken by a professional accountant, including accounting, auditing, tax, management consulting, and financial management.
Professional services	Professional activities performed for clients.
Proposed accountant	A professional accountant in public practice who is considering accepting an audit appointment or an engagement to perform accounting, tax, consulting or similar professional services for a prospective client (or in some cases, an existing client).
Public interest entity	a) A listed entity; or b) An entity: i. Defined by regulation or legislation as a public interest entity; or ii. For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation might be promulgated by any relevant regulator, including an audit regulator. Other entities might also be considered to be public interest entities, as set out in paragraph 400.8.
Reasonable and informed third party Reasonable and informed third party test	The reasonable and informed third party test is a consideration by the professional accountant about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the accountant knows, or could reasonably be expected to know, at the time that the conclusions are made. The reasonable and informed third party does not need to be an accountant, but would possess the relevant knowledge and experience to understand and evaluate the appropriateness of the accountant's conclusions in an impartial manner. These terms are described in paragraph R120.5 A4.

Related entity	An entity that has any of the following relationships with the client: a) An entity that has direct or indirect control over the client if the client is material to such entity; b) An entity with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity; c) An entity over which the client has direct or indirect control; d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and e) An entity which is under common control with the client (a "sister entity") if the sister entity and the client are both material to the entity that controls both the client and sister entity.
Review client	An entity in respect of which a firm conducts a review engagement
Review engagement	An assurance engagement, conducted in accordance with International Standards on Review Engagements or equivalent, in which a professional accountant in public practice expresses a conclusion on whether, on the basis of the procedures which do not provide all the evidence that would be required in an audit, anything has come to the accountant's attention that causes the accountant to believe that the financial statements are not prepared, in all material respects, in accordance with an applicable financial reporting framework.
Review team	a) All members of the engagement team for the review engagement; and b) All others within a firm who can directly influence the outcome of the review engagement, including: i. Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the review engagement, including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent); ii. Those who provide consultation regarding technical or industry specific issues, transactions or events for the engagement; and iii. Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and c) All those within a network firm who can directly influence the outcome of the review engagement.
Safeguards	Safeguards are actions, individually or in combination, that the professional accountant takes that effectively reduce threats to compliance with the fundamental principles to an acceptable level. This term is described in paragraph 120.10 A2.
Senior professional accountant in business	Senior professional accountants in business 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. This term is described in paragraph 260.11 A1.

Special purpose financial statements	Financial statements prepared in accordance with a financial reporting framework designed to meet the financial information needs of specified users.
Substantial harm	This term is described in paragraphs 260.5 A3 and 360.5 A3.
Those charged with governance	The person(s) or organization(s) (for example, a corporate trustee) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. For some entities in some jurisdictions, those charged with governance might include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.
Threats	This term is described in paragraph 120.6 A3 and includes the following categories: Self-interest 120.6 A3(a) Self-review 120.6 A3(b) Advocacy 120.6 A3(c) Familiarity 120.6 A3(d) Intimidation 120.6 A3(e)
Time-on period	This term is described in paragraph R540.5.

LISTS OF ABBREVIATIONS AND STANDARDS REFERRED TO IN THE CODE

List of abbreviations

Abbreviation	Explanation
Assurance Framework	International Framework for Assurance Engagements
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CoCo	Chartered Professional Accountants of Canada Criteria of Control
IAASA	*Irish Auditing and Accounting Supervisory Authority*
IAASB	International Auditing and Assurance Standards Board
Institute	*The Institute of Chartered Accountants in Ireland (operating as Chartered Accountants Ireland)*
IESBA	International Ethics Standards Board for Accountants
IFAC	International Federation of Accountants
ISAs	International Standards on Auditing
ISAEs	International Standards on Assurance Engagements
ISQCs	International Standards on Quality Control
ISREs	International Standards on Review Engagements

List of standards referred to in the Code

Standard	Full Title
FRC ES	*Financial Reporting Council Ethical Standard*
IAASA ES	*Irish Auditing and Accounting Supervisory Authority Ethical Standard (Ireland)*
ISA320	Materiality In Planning and Performing an Audit
ISA 610 (Revised 2013)	Using the Work of Internal Auditors
ISAE 3000 (Revised)	Assurance Engagements Other than Audits or Reviews of Historical Financial Information
ISQC 1	Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements
ISRE 2400 (Revised)	Engagements to Review Historical Financial Statements

The Chartered Accountants Ireland Code of Ethics is based on and substantially reproduces the Handbook of the International Code of Ethics for Professional Accountants, 2018 Edition, of the International Ethics Standards Board ofr Accountants ('IESBA'), published by the International Federation of Accountants ('IFAC').

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CHARTERED ACCOUNTANTS IRELAND CODE OF ETHICS

PART 5 – INSOLVENCY PRACTITIONERS
EFFECTIVE FROM 8 JUNE 2020

Underlined words in this Part are defined or explained further in the Definitions and interpretation.

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The Practice of Insolvency

Introduction

2000.1 This Code sets out the obligations of insolvency practitioners to meet the ethical requirements expected of them.

2000.2 An authorising body must, so far as is reasonably practicable, act in a way which protects and promotes the public interest. This Code forms part of the framework used to meet this objective.

Requirements and Application Material

2000.3 A1 Requirements and application material are to be read and applied with the objective of complying with the fundamental principles and applying the conceptual framework.

Requirements

2000.3 A2 Requirements are designated with the letter “R” and, in most cases, include the word “shall.” The word “shall” in the Code imposes an obligation on an insolvency practitioner to comply with the specific provision in which “shall” has been used.

2000.3 A3 In some situations, the Code provides a specific exception to a requirement. In such a situation, the provision is designated with the letter “R” but uses “may” or conditional wording.

2000.3 A4 When the word “may” is used in the Code, it denotes permission to take a particular action in certain circumstances, including as an exception to a requirement. It is not used to denote possibility.

2000.3 A5 When the word “might” is used in the Code, it denotes the possibility of a matter arising, an event occurring or a course of action being taken. The term does not ascribe any particular level of possibility or likelihood when used in conjunction with a threat, as the evaluation of the level of a threat depends on the facts and circumstances of any particular matter, event or course of action.

Application Material

2000.4 A1 In addition to requirements, the Code contains application material that provides context relevant to a proper understanding of the Code. In particular, the application material is intended to help an insolvency practitioner to understand how to apply the conceptual framework to a particular set of circumstances and to understand and comply with a specific requirement. While such application material does not of itself impose a requirement, consideration of the material is necessary to the proper application of the requirements of the Code, including application of the conceptual framework. Application material is designated with the letter “A.”

2000.4 A2 Where application material includes lists of examples these lists are not intended to be exhaustive.

R2000.5 In order to protect and promote the public interest, an insolvency practitioner shall observe and comply with this Code. If an insolvency practitioner is prohibited from complying with certain parts of this Code by law or regulation, the insolvency practitioner shall comply with all other parts of this Code.

2000.5.A1 The Code establishes the fundamental principles of professional ethics for insolvency practitioners and provides a framework for insolvency practitioners to:

a) identify threats to compliance with the fundamental principles;

b) evaluate the significance of the threats identified; and

c) apply safeguards, where available and capable of being applied, to reduce the threats to a level at which an insolvency practitioner using the reasonable and informed third party test would likely conclude that the insolvency practitioner complies with the fundamental principles.

R2000.6 An insolvency practitioner shall use professional judgment in applying this framework.

2000.6 A1 The Code also describes how the ethical framework applies in certain situations. It provides examples of actions that might be appropriate to address threats to compliance with the fundamental principles. It also describes situations where no action can address the threats, and consequently, the circumstance or relationship creating the threats needs to be avoided.

Scope

R2000.7 Insolvency practitioners shall ensure that the Code is applied at all times in relation to the conduct of an insolvency appointment or circumstances which might lead to an insolvency appointment.

R2000.8 Insolvency practitioners shall follow the fundamental principles, apply the conceptual framework and specific requirements of the Code in all their professional and business activities whether carried out with or without reward and in other circumstances where to fail to do so would bring discredit to the insolvency profession.

R2000.9 Insolvency practitioners shall be guided not merely by the terms but also by the spirit of the Code.

2000.9 A1 The Code provides examples of matters to take into account when insolvency practitioners are considering their position, but ethical considerations are not limited to the examples. It is necessary for insolvency practitioners to take into account how their conduct might be perceived by a reasonable and informed third party.

R2000.10 Although, an insolvency appointment will be personal to the insolvency practitioner rather than their firm or employing organisation, insolvency practitioners shall ensure that work for which they are responsible, which is undertaken by members of the insolvency team on their behalf, is carried out in accordance with the requirements of this Code.

FUNDAMENTAL PRINCIPLES

General

2100.1 A1 There are five fundamental principles of ethics for insolvency practitioners:

a) Integrity – to be straightforward and honest in all professional and business relationships.

b) Objectivity – not to compromise professional or business judgments because of bias, conflict of interest or undue influence of others.

c) Professional Competence and Due Care – to:

   i. Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and

   ii. Act diligently and in accordance with applicable technical and professional standards.

d) Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships.

e) Professional Behaviour – to comply with relevant laws and regulations and avoid any conduct that the insolvency practitioner knows or should know might discredit the profession.

R2100.2 An insolvency practitioner shall comply with each of the fundamental principles.

2100.2 A1 The fundamental principles of ethics establish the standard of behaviour expected of an insolvency practitioner. The conceptual framework establishes the approach which an insolvency practitioner is required to apply to assist in complying with those fundamental principles. Paragraphs R2101.1 to R2105.1 A2 set out requirements and application material related to each of the fundamental principles.

2100.2 A2 An insolvency practitioner might face a situation in which complying with one fundamental principle conflicts with complying with one or more other fundamental principles. In such a situation, the insolvency practitioner might consider consulting, on an anonymous basis if necessary, with:

- others within the firm or employing organisation.
- those charged with governance.
- another insolvency practitioner from a different firm.
- a professional body.
- an authorising body.
- legal counsel.

However, such consultation does not relieve the insolvency practitioner from the responsibility to exercise professional judgment to resolve the conflict or, if necessary, and unless prohibited by law or regulation, disassociate from the matter creating the conflict.

INTEGRITY

R2101.1 An insolvency practitioner shall comply with the principle of integrity, which requires an insolvency practitioner to be straightforward and honest in all professional and business relationships.

2101.1 A1 Integrity implies fair dealing and truthfulness.

R2101.2 An insolvency practitioner shall not knowingly be associated with reports, returns, communications or other information where the insolvency practitioner believes that the information:

(b) Contains a materially false or misleading statement;

(c) Contains statements or information provided recklessly; or

(d) Omits or obscures required information where such omission or obscurity would be misleading.

2101.2 A1 If an insolvency practitioner provides a modified report in respect of such a report, return, communication or other information, the insolvency practitioner is not in breach of paragraph R2101.2.

R2101.3 When an insolvency practitioner becomes aware of having been associated with information described in paragraph R2101.2, the insolvency practitioner shall take steps to be disassociated from that information.

OBJECTIVITY

R2102.1 An insolvency practitioner shall comply with the principle of objectivity, which requires an insolvency practitioner not to compromise professional or business judgment because of bias, conflict of interest or undue influence of others.

2102.1 A1 Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other.

R2102.2 An insolvency practitioner shall not undertake a professional activity if a circumstance or relationship unduly influences the insolvency practitioner's professional judgment regarding that activity.

PROFESSIONAL COMPETENCE AND DUE CARE

R2103.1 **An insolvency practitioner shall comply with the principle of professional competence and due care, which requires an insolvency practitioner to:**

(b) Attain and maintain professional knowledge and skill at the level required to ensure that a competent professional service is provided, based on current technical and professional standards and relevant legislation; and

b) Act diligently and in accordance with applicable technical and professional standards.

2103.1 A1 Professional competence requires the exercise of sound judgment in applying professional knowledge and skill when undertaking professional activities.

2103.1 A2 Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables an insolvency practitioner to develop and maintain the capabilities to perform competently within the professional environment

2103.1 A3 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

R2103.2 **In complying with the principle of professional competence and due care, an insolvency practitioner shall take reasonable steps to ensure that those working in a professional capacity under the insolvency practitioner's authority have appropriate training and supervision.**

R2103.3 **Where appropriate, an insolvency practitioner shall make users of the insolvency practitioner's services or activities or their employing organisation aware of the limitations inherent in the services or activities.**

CONFIDENTIALITY

2104.1 A1 The principle of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Whether information is confidential or not will depend on its nature.

R2104.2 **An insolvency practitioner in the role as office holder has a professional duty to report openly to those with an interest in the outcome of the insolvency. An insolvency practitioner shall always report on their acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable bearing in mind the expectations of others and what a reasonable and informed third party would consider appropriate.**

R2104.3 **An insolvency practitioner shall comply with the principle of confidentiality, which requires an insolvency practitioner to respect the confidentiality of information acquired as a result of professional and business relationships. An insolvency practitioner shall:**

a) Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member;

b) Maintain confidentiality of information within the firm or employing organisation;

c) Maintain confidentiality of information disclosed by the employing organisation;

d) Not disclose confidential information acquired as a result of professional and business relationships outside the firm or employing organisation without proper and specific authority, unless there is a legal or professional duty or right to disclose;

e) Not use confidential information acquired as a result of professional and business relationships for the personal advantage of the insolvency practitioner or for the advantage of a third party;

f) Not use or disclose any confidential information, either acquired or received as a result of a professional or business relationship, after that relationship has ended; and

g) Take reasonable steps to ensure that personnel under the insolvency practitioner's control, and individuals from whom advice and assistance are obtained, respect the insolvency practitioner's duty of confidentiality.

2104.3 A1 There are circumstances where insolvency practitioners are or might be required to disclose confidential information or when such disclosure might be appropriate:

a) Disclosure is required by law, for example:

(iii) producing statutory reports for the creditors of the insolvent;

(iv) submitting reports on the conduct of directors of an insolvent entity;

(v) production of documents or other provision of evidence in the course of legal proceedings; or

(vi) disclosure to the appropriate public authorities of infringements of the law that come to light;

b) Disclosure is permitted by law and is authorised by the employing organisation; and

c) There is a professional duty or right to disclose, when not prohibited by law:

i. To comply with the quality review of an authorising body;

ii. To respond to an inquiry or investigation by an authorising body or the oversight body;

iii. To protect the professional interests of an insolvency practitioner in legal proceedings; or

iv. To comply with technical and professional standards, including ethics requirements.

2104.3 A2 In deciding whether to disclose confidential information, factors to consider, depending on the circumstances, include:

- Whether the interests of any parties, including third parties whose interests might be affected, could be harmed if the client or employing organisation consents to the disclosure of information by the insolvency practitioner.
- Whether all the relevant information is known and substantiated, to the extent practicable. Factors affecting the decision to disclose include:
  - Unsubstantiated facts.
  - Incomplete information.
  - Unsubstantiated conclusions.
- The proposed type of communication, and to whom it is addressed.
- Whether the parties to whom the communication is addressed are appropriate recipients.

R2104.4 An insolvency practitioner shall continue to comply with the principle of confidentiality even after the end of the relationship between the insolvency practitioner and an employing organisation. When changing employment or accepting an insolvency appointment, the insolvency practitioner is entitled to use prior experience but shall not

use or disclose any confidential information acquired or received as a result of a professional or business relationship.

PROFESSIONAL BEHAVIOUR

R2105.1 **An insolvency practitioner shall comply with the principle of professional behaviour, which requires an insolvency practitioner to comply with relevant laws and regulations and avoid any conduct that the insolvency practitioner knows or should know might discredit the profession. An insolvency practitioner shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the insolvency profession, and as a result would be incompatible with the fundamental principles.**

2105.1 A1 Conduct that might discredit the insolvency profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

2105.1 A2 The concept of professional behaviour implies that it is appropriate for insolvency practitioners to conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

THE CONCEPTUAL FRAMEWORK

Introduction

2110.1 The circumstances in which insolvency practitioners operate might create threats to compliance with the fundamental principles. This section sets out requirements and application material, including a conceptual framework, to assist insolvency practitioners in complying with the fundamental principles and meeting their responsibility to act in the public interest. Such requirements and application material accommodate the wide range of facts and circumstances, including the various professional activities, interests and relationships, that create threats to compliance with the fundamental principles. In addition, they deter insolvency practitioners from concluding that a situation is permitted solely because that situation is not specifically prohibited by the Code.

2110.2 The conceptual framework specifies an approach for an insolvency practitioner to:

(d) identify threats to compliance with the fundamental principles;

(e) evaluate the threats identified; and

(f) address the threats by eliminating or reducing them to an acceptable level.

Requirements and Application Material

General

R2111.1 The insolvency practitioner shall apply the conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles set out in paragraphs 2100 to 2105.

R2111.2 An insolvency practitioner shall take particular care to identify the existence of threats that exist prior to or at the time of taking an insolvency appointment or which at that stage, it might reasonably be expected could arise during the course of the insolvency appointment.

R2111.3 In taking steps to identify any threats, an insolvency practitioner shall have regard to relationships whereby the firm is held out as being part of a network.

R2111.4 When dealing with an ethics issue, the insolvency practitioner shall consider the context in which the issue has arisen or might arise. Where an insolvency practitioner is performing professional activities pursuant to the insolvency practitioner's relationship with the firm, whether as a contractor, employee or owner, the individual shall comply with the provisions of this Code.

R2111.5 When applying the conceptual framework, the insolvency practitioner shall:

(d) exercise professional judgment;

(e) remain alert for new information and to changes in facts and circumstances; and

(f) use the reasonable and informed third party test described in paragraph 2113.1 A1.

Exercise of Professional Judgment

2112.1 A1 Professional judgment involves the application of relevant training, professional knowledge, skill and experience commensurate with the facts and circumstances, including the nature and scope of the particular professional activities, and the interests and relationships involved. In relation to undertaking professional activities, the exercise of professional judgment is required when the insolvency practitioner applies the conceptual framework in order to make informed decisions about the courses of actions available, and to determine whether such decisions are appropriate in the circumstances.

2112.1 A2 An understanding of known facts and circumstances is a prerequisite to the proper application of the conceptual framework. Determining the actions necessary to obtain this understanding and coming to a conclusion about whether the fundamental principles have been complied with also require the exercise of professional judgment.

2112.1 A3 In exercising professional judgment to obtain this understanding, the insolvency practitioner might consider, among other matters, whether:

- There is reason to be concerned that potentially relevant information might be missing from the facts and circumstances known to the insolvency practitioner.
- There is an inconsistency between the known facts and circumstances and the insolvency practitioner's expectations.
- The insolvency practitioner's expertise and experience are sufficient to reach a conclusion.
- There is a need to consult with others with relevant expertise or experience.
- The information provides a reasonable basis on which to reach a conclusion.
- The insolvency practitioner's own preconception or bias might be affecting the insolvency practitioner's exercise of professional judgment.
- There might be other reasonable conclusions that could be reached from the available information.

Reasonable and Informed Third Party

2113.1 A1 The reasonable and informed third party test is a consideration by the insolvency practitioner about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the insolvency practitioner knows, or could reasonably be expected to know, at the time the conclusions are made. The reasonable and informed third party does not need to be an insolvency practitioner, but would possess the relevant knowledge and experience to understand and evaluate the appropriateness of the insolvency practitioner's conclusions in an impartial manner.

Identifying Threats

R2114.1 The insolvency practitioner shall identify threats to compliance with the fundamental principles.

2114.1 A1 An understanding of the facts and circumstances, including any professional activities, interests and relationships that might compromise compliance with the fundamental principles, is a prerequisite to the insolvency practitioner's identification of threats to such compliance. The existence of certain conditions, policies and procedures established by the profession, legislation, regulation, the firm, or the employing organisation that can enhance the insolvency practitioner acting ethically might also help identify threats to compliance with the fundamental principles.

2114.1 A2 Below there are examples of such conditions, policies and procedures which are also factors that are relevant in evaluating the level of threats (see also Professional and personal relationships):

a) leadership of the firm that stresses the importance of compliance with the fundamental principles;

b) policies and procedures to implement and monitor quality control of engagements;

c) documented policies regarding the need to identify threats to compliance with the fundamental principles, evaluate the significance of those threats, and apply safeguards to eliminate or reduce the threats to an acceptable level;

d) documented internal policies and procedures requiring compliance with the fundamental principles;

e) policies and procedures to identify the existence of any threats to compliance with the fundamental principles before deciding whether to accept an insolvency appointment;

f) policies and procedures to identify interests or relationships between the firm or individuals within the firm and third parties;

g) policies and procedures to prohibit individuals who are not members of the insolvency team from inappropriately influencing the outcome of an insolvency appointment;

h) timely communication of a firm's policies and procedures, including any changes to them, to all individuals within the firm, and appropriate training and education on such policies and procedures;

i) designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's quality control system;

j) a disciplinary mechanism to promote compliance with policies and procedures;

k) published policies and procedures to encourage and empower individuals within the firm to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.

2114.1 A3 Threats to compliance with the fundamental principles might be created by a broad range of facts and circumstances. It is not possible to define every situation that creates threats. In addition, the nature of engagements and work assignments might differ and, consequently, different types of threats might be created.

2114.1 A4 Threats to compliance with the fundamental principles fall into one or more of the following categories:

(c) Self-interest threat – the threat that a financial or other interest of the firm, an individual within the firm or a close or immediate family member of an individual within the firm will inappropriately influence the insolvency practitioner's judgment or behaviour;

(d) Self-review threat – the threat that the insolvency practitioner will not appropriately evaluate the results of a previous judgment made or service performed by an individual within the firm, on which the insolvency practitioner will rely when forming a judgment as part of providing a current service;

(e) Advocacy threat – the threat that an individual within the firm will promote a position or opinion to the point that the insolvency practitioner's objectivity is compromised;

(f) Familiarity threat –the threat that due to a long or close relationship, an individual within the firm will be too sympathetic or antagonistic to the interests of others or too accepting of their work; and

(g) Intimidation threat – the threat that an insolvency practitioner will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the insolvency practitioner.

2114.1 A5 The following are examples of facts and circumstances within each category of threats that might create threats for an insolvency practitioner:

a) Examples of circumstances that might create self-interest threats for an insolvency practitioner include:

i. an individual within the firm having an interest in a creditor or potential creditor with a claim which requires subjective adjudication, or having an interest in a party to a transaction;

ii. an individual within the firm having a close business relationship with a creditor, potential creditor or a party to a transaction;

iii. the insolvency practitioner discovering a significant error when evaluating the results of a previous service performed by an individual within the firm;

iv. concern about the possibility of damaging a business relationship;

v. concern about future employment.

b) Examples of circumstances that might create self-review threats for an insolvency practitioner include:

i. accepting an insolvency appointment in respect of an entity where an individual within the firm has recently been employed by or seconded to that entity;

ii. an insolvency practitioner or the firm having previously carried out professional work of any description, including sequential insolvency appointments, for an entity.

c) Examples of circumstances that might create advocacy threats for an insolvency practitioner include:

i. acting in an advisory capacity for a creditor of the insolvent entity;

ii. acting in an advisory capacity to an entity prior to its insolvency;

iii. acting as an advocate for a client of the firm in litigation or a dispute with the insolvent entity.

d) Examples of circumstances that might create familiarity threats for an insolvency practitioner include:

i. an individual within the firm or a close or immediate family member having a close relationship with a director, officer, employee or any individual having a financial interest in the insolvent entity;

ii. an individual within the firm or a close or immediate family member having a close relationship with a potential purchaser of the insolvent entity's assets and/or business or any individual having a financial interest in the potential purchaser.

In this regard a close relationship includes both a close professional relationship and a close personal relationship.

e) Examples of circumstances that might create intimidation threats for an insolvency practitioner include:

i). an individual within the firm being threatened with dismissal or replacement;

ii). an individual within the firm being threatened with litigation, complaint or adverse publicity;

iii). an individual within the firm being threatened with violence or other reprisal.

2114.1 A6 A circumstance might create more than one threat, and a threat might affect compliance with more than one fundamental principle.

Evaluating Threats

R2115.1 When the insolvency practitioner identifies a threat to compliance with the fundamental principles, the insolvency practitioner shall evaluate whether such a threat is at an acceptable level.

Acceptable Level

2115.1 A1 An acceptable level is a level at which an insolvency practitioner using the reasonable and informed third party test would likely conclude that the insolvency practitioner complies with the fundamental principles.

Factors Relevant in Evaluating the Level of Threats

2115.2 A1 The consideration of qualitative as well as quantitative factors is relevant in the insolvency practitioner's evaluation of threats, as is the combined effect of multiple threats, if applicable.

2115.2 A2 The existence of conditions, policies and procedures described in paragraph 2114.1 A1 might also be factors that are relevant in evaluating the level of threats to compliance with fundamental principles. Examples of such conditions, policies and procedures include:

a) corporate governance requirements.

b) educational, training and experience requirements for the profession.

c) professional standards.

d) effective complaint systems which enable the insolvency practitioner and the general public to draw attention to unethical behaviour.

e) an explicitly stated duty to report breaches of ethics requirements.

f) professional or regulatory monitoring and disciplinary procedures.

g) external review by a legally empowered third party of the reports, returns, communications or information produced by the insolvency practitioner.

Consideration of New Information or Changes in Facts and Circumstances

R2115.3 If the insolvency practitioner becomes aware of new information or changes in facts and circumstances that might impact whether a threat has been eliminated or reduced to an acceptable level, the insolvency practitioner shall re-evaluate and address that threat accordingly.

2115.3 A1 Remaining alert throughout an insolvency appointment assists the insolvency practitioner in determining whether new information has emerged or changes in facts and circumstances have occurred that:

(c) impact the level of a threat; or

(d) affect the insolvency practitioner's conclusions about whether safeguards applied continue to be appropriate to address identified threats.

2115.3 A2 If new information results in the identification of a new threat, the insolvency practitioner is required to evaluate and, as appropriate, address this threat.

Addressing Threats

R2116.1 If the insolvency practitioner determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the insolvency practitioner shall address the threats by eliminating them or reducing them to an acceptable level. The insolvency practitioner shall do so by:

(d) eliminating the circumstances, including interests or relationships, that are creating the threats;

(e) applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level; or

(f) declining or ending the insolvency appointment.

Actions to Eliminate Threats

2116.1 A1 Depending on the facts and circumstances, a threat might be addressed by eliminating the circumstance creating the threat. However, there are some situations in which threats can only be addressed by declining or ending the insolvency appointment or resigning altogether from the firm or the employing organisation. This is because the circumstances that created the threats cannot be eliminated and safeguards are not capable of being applied to reduce the threat to an acceptable level.

Safeguards

2116.1 A2 Safeguards are actions, individually or in combination, that the insolvency practitioner takes that effectively reduce threats to compliance with the fundamental principles to an acceptable level.

2116.1. A3 Safeguards vary depending on the facts and circumstances. Examples of actions that in certain circumstances might be safeguards to address threats include:

- Assigning additional time and qualified personnel to required tasks when an insolvency appointment has been accepted might address a self-interest threat.
- Having an appropriate reviewer who was not a member of the team review the work performed or advise as necessary might address a self-review threat.
- Involving another insolvency practitioner to perform or re-perform part of the engagement might address self-interest, self-review, advocacy, familiarity or intimidation threats.
- Disclosing any referral fees or commission arrangements received for recommending services or products might address a self-interest threat.

Safeguards specific to an insolvency appointment are considered later in the Code.

Consideration of Significant Judgments Made and Overall Conclusions Reached

R2116.2 The insolvency practitioner shall form an overall conclusion about whether the actions that the insolvency practitioner takes, or intends to take, to address the threats created will eliminate those threats or reduce them to an acceptable level. In forming the overall conclusion, the insolvency practitioner shall:

(b) review any significant judgments made or conclusions reached; and

(c) use the reasonable and informed third party test.

Breaches of the Code

R2120.1 An insolvency practitioner who identifies a breach of any other provision of the Code shall evaluate the significance of the breach and its impact on the insolvency practitioner's ability to comply with the fundamental principles. The insolvency practitioner shall also:

a) take whatever actions might be available, as soon as possible, to address the consequences of the breach satisfactorily; and

b) determine whether to report the breach to the relevant parties.

2120.1 A1 Relevant parties to whom such a breach might be reported include those who might have been affected by it, or an authorising body.

Record keeping

2130.1 A1 It will always be for the insolvency practitioner to justify their actions. An insolvency practitioner will be expected to be able to demonstrate the steps that they took and the conclusions that they reached in identifying, evaluating and responding to any threats, both leading up to and during an insolvency appointment, by reference to written contemporaneous records.

R2130.2 The insolvency practitioner shall document:

(d) the facts.

(e) any communications with, and parties with whom the matters were discussed.

(f) the courses of action considered, the judgments made and the decisions that were taken.

(g) the safeguards applied to address the threats when applicable.

(h) how the matter was addressed.

(i) where relevant, why it was appropriate to accept or continue the insolvency appointment.

2130.2 A1 The records an insolvency practitioner maintains, in relation to the steps that they took and the conclusions that they reached, are expected to be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of their actions.

Ethical conflict resolution

2140.1 An insolvency practitioner might be required to resolve a conflict in complying with the fundamental principles.

2140.1 A1 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, might be relevant to the resolution process:

a) relevant facts

b) ethical issues involved

c) fundamental principles related to the matter in question

d) established internal procedures

e) alternative courses of action.

2140.1 A2 Having considered the relevant factors, it is necessary for an insolvency practitioner to determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the insolvency practitioner might wish to consult with other appropriate persons within the firm for help in obtaining resolution.

2140.1 A3 Where a matter involves a conflict with, or within, an entity, an insolvency practitioner will need to decide whether to consult with those charged with governance of the entity, such as the board of directors or senior management team.

R2140.2 The insolvency practitioner shall document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.

2140.2 A1 Reference should be made to Record Keeping (2130).

2140.2 A2 The insolvency practitioner is expected to be seen to act in such a way that threats to the fundamental principles are adequately addressed. Therefore, it is important that the insolvency practitioner considers disclosure, for example, to the court or to the creditors and other interested parties of the existence of any threat, together with the safeguards identified and applied.

2140.2 A3 If a significant conflict cannot be resolved, an insolvency practitioner might consider obtaining advice from their authorising body or from legal advisors. The insolvency practitioner generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with their authorising body on an anonymous basis or with a legal advisor under the protection of legal privilege.

R2140.3 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, an insolvency practitioner shall, where possible, refuse to remain associated with the matter creating the conflict. The insolvency practitioner shall determine whether, in the circumstances, it is appropriate to withdraw from the insolvency appointment, or to resign altogether from the firm or the employing organisation.

SPECIFIC APPLICATION OF THE CODE

Introduction

2200.1 This part of the Code describes how the framework applies in certain situations to insolvency practitioners. This part does not describe all of the circumstances and relationships that could be encountered by an insolvency practitioner that create or could create threats to compliance with the fundamental principles. Therefore, the insolvency practitioner is encouraged to be alert for such circumstances and relationships.

Requirements and application material

R2200.2 An insolvency practitioner shall not knowingly engage in any activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.

R2200.3 An insolvency practitioner shall exercise judgment to determine how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level or, where possible, by refusing to remain associated with the matter creating the conflict.

2200.3 A1 In exercising this judgment, an insolvency practitioner is expected to consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the insolvency practitioner at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of safeguards, such that compliance with the fundamental principles is not compromised.

2200.3 A2 In the work environment, safeguards will vary depending on the facts and circumstances. Work environment safeguards comprise safeguards existing across the firm and safeguards specific to an insolvency appointment.

2200.3 A3 Examples of actions that might be safeguards specific to an insolvency appointment include:

a) consulting an independent third party, such as an authorising body or another insolvency practitioner;

b) obtaining the views of a committee of creditors;

c) disclosing ethical issues to creditors and other interested parties;

d) involving another insolvency practitioner to perform or re-perform part of the engagement;

e) obtaining legal advice from a solicitor, barrister or advocate with appropriate experience and expertise.

General conduct

R2200.4 Where circumstances are dealt with by statute or secondary legislation, an insolvency practitioner shall comply with such provisions.

2200.5 The practice of insolvency is principally governed by statute and secondary legislation and in many cases is subject ultimately to the control of the court.

R2200.6 An insolvency practitioner shall also comply with any relevant judicial authority relating to their conduct and any directions given by the court.

R2200.7 An insolvency practitioner shall act in a manner appropriate to their position (as an officer of the court where applicable) and in accordance with any quasi-judicial, fiduciary or other duties that the insolvency practitioner might be under.

R2200.8 An insolvency practitioner shall comply with standards or regulations issued by their authorising body.

R2200.9 **An insolvency practitioner shall also have regard to guidance relevant to the conduct of an insolvency appointment or work that might lead to an insolvency appointment which is issued by their authorising body, the Insolvency Service and other appropriate organisations.**

INSOLVENCY APPOINTMENTS

Introduction

2210.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2210.2 Acceptance of an insolvency appointment might create a threat to compliance with one or more of the fundamental principles. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and application material

R2210.3 Before agreeing to accept any insolvency appointment (including a joint appointment), an insolvency practitioner shall determine whether acceptance would create any threats to compliance with the fundamental principles.

2210.3 A1 Of particular importance are threats to the fundamental principle of objectivity created by conflicts of interest. These are considered in more detail in the section on conflicts of interest (see paragraphs 2310 to 2311.2 A4).

2210.3 A2 When seeking to identify threats to the fundamental principles, an insolvency practitioner will need to identify and evaluate any professional or personal relationships that threaten compliance with the fundamental principles (see Acting with sufficient expertise, 2300 below). The insolvency practitioner will then need to determine the appropriate response to any threats arising from any such relationships, including the identifying and applying appropriate safeguards.

R2210.4 If the insolvency practitioner determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the insolvency practitioner shall address the threats by eliminating them or reducing them to an acceptable level. The insolvency practitioner shall do so by:

a) Eliminating the circumstances, including interests or relationships, that are creating the threats; or

b) Applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level.

R2210.5 An insolvency practitioner shall not accept an insolvency appointment where a threat to the fundamental principles has been identified unless the threat is eliminated or reduced to an acceptable level.

2210.5 A1 Factors that are relevant in evaluating the level of a threat include measures that prevent unauthorised disclosure of confidential information These measures include:

- The existence of separate practice areas for specialty functions within the firm, which might act as a barrier to the passing of confidential client information between practice areas.
- Policies and procedures to limit access to client files.
- Confidentiality agreements signed by personnel and partners of the firm.
- Separation of confidential information physically and electronically.
- Specific and dedicated training and communication.

2210.5 A2 Examples of actions that might be safeguards include:

a) involving another insolvency practitioner, either from within or outside the firm as appropriate to the circumstances, to review the work done, perform or re-perform part of the work or otherwise advise as necessary. This could include another insolvency practitioner taking a joint appointment;

b) changing members of the insolvency team or the use of separate staff;

c) terminating the financial or business relationship that gives rise to the threat;

d) seeking directions from the court.

2210.5 A3 It is important that, prior to the insolvency appointment, the insolvency practitioner considers disclosure, to the court or to the creditors on whose behalf the insolvency practitioner would be appointed to act, of the existence of any threat, together with the safeguards identified and applied, and that no objection is made to the insolvency practitioner being appointed.

2210.5 A4 Where an insolvency practitioner is specifically precluded by this Code from accepting an insolvency appointment as an individual, a joint appointment is not an appropriate safeguard and would not make accepting the insolvency appointment appropriate.

2210.5 A5 An insolvency practitioner will need to exercise professional judgment to determine the appropriate action when threats have been identified. In exercising their judgment, an insolvency practitioner is expected to take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the insolvency practitioner at the time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level, such that compliance with the fundamental principles is not compromised.

R2210.6 An insolvency practitioner might encounter situations in which the threats cannot be eliminated and safeguards are not capable of being applied to reduce the threats to an acceptable level. Where this is the case, the insolvency practitioner shall not accept the insolvency appointment.

R2210.7 Following the acceptance of an insolvency appointment, the insolvency practitioner shall keep under review any identified threats, and the insolvency practitioner shall be mindful that other threats to the fundamental principles could arise.

2210.7 A1 Remaining alert throughout the insolvency appointment will assist the insolvency practitioner in determining whether new information has emerged or changes in facts and circumstances have occurred that:

a) impact the level of a threat; or

b) affect the insolvency practitioner's conclusions about whether safeguards applied continue to be appropriate to address identified threats.

Mergers

2210.8 A1 If firms merge, after the merger, they are to be treated as one firm for the purposes of assessing threats to the fundamental principles.

R2210.9 At the time of the merger, the insolvency practitioner shall review existing insolvency appointments and identify any threats to the fundamental principles.

2210.9 A1 Principals and employees of the merged firm will become subject to common ethical constraints in relation to accepting new insolvency appointments to clients of either of the former firms. However existing insolvency appointments which are rendered in apparent breach of the Code by the merger need not be judged to be so automatically, provided that a considered review of the situation by the firm discloses no obvious and immediate ethical conflict.

R2210.10 Where an individual within the firm has, in any former capacity, undertaken work upon the affairs of an entity that is incompatible with an insolvency appointment of the new firm, the individual shall not work or be employed on that assignment.

ACTING WITH SUFFICIENT EXPERTISE

Introduction

2300.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2300.2 The fundamental principle of professional competence and due care requires that an insolvency practitioner only accepts an insolvency appointment when the insolvency practitioner has or can acquire sufficient expertise. For example, a self-interest threat to the fundamental principle of professional competence and due care is created if the insolvency practitioner or the insolvency team does not possess or cannot acquire the competencies necessary to carry out the insolvency appointment. Acquiring in this context includes obtaining the expertise from elsewhere by employing experts or additional resources. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

R2300.3 An insolvency practitioner shall not intentionally mislead an employing organisation as to the level of expertise or experience possessed.

2300.3 A1 The principle of professional competence and due care requires that an insolvency practitioner only undertake significant tasks for which the insolvency practitioner has, or can obtain, sufficient training or experience.

2300.3 A2 A self-interest threat to compliance with the principle of professional competence and due care might be created if an insolvency practitioner has:

- 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.

2300.3 A3 Factors that are relevant in evaluating the level of such a threat include:

- the extent to which the insolvency practitioner is working with others;
- the relative seniority of the insolvency practitioner in the firm;
- the level of supervision and review applied to the work.

2300.3 A4 Factors to be considered in evaluating expertise include:

a) an appropriate knowledge and understanding of the entity, its owners, managers and those responsible for its governance and business activities;

b) an appropriate understanding of the nature of the entity's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed;

c) knowledge of relevant industries and subject matters;

d) possessing or obtaining experience of relevant regulatory and reporting requirements;

e) availability of sufficient staff with the necessary competencies;

f) access to experts where necessary;

g) complying with quality control policies and procedures designed to provide reasonable

assurance that specific engagements are accepted only when they can be performed competently.

2300.3 A5 Maintaining and acquiring professional competence requires a continuing awareness and understanding of relevant technical and professional developments.

2300.3 A6 Examples of actions that might be safeguards to address such threats include:

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

R2300.4 If a threat to compliance with the principle of professional competence and due care cannot be addressed, an insolvency practitioner shall determine whether to decline to perform the duties in question or accept or continue the insolvency appointment. If the insolvency practitioner determines that declining to accept the insolvency appointment is appropriate, the insolvency practitioner shall communicate the reasons.

R2300.5 The insolvency practitioner shall keep under review the expertise required throughout the insolvency appointment

CONFLICTS OF INTEREST AND PROFESSIONAL AND PERSONAL RELATIONSHIPS

Introduction

2310.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2310.2 A conflict of interest creates threats to compliance with the principle of objectivity and might create threats to compliance with the other fundamental principles.

2310.3 Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance.

2310.4 This section sets out specific requirements and application material relevant to applying the conceptual framework to conflicts of interest.

Requirements and Application Material

General

R2311.1 An insolvency practitioner shall not allow a conflict of interest to compromise professional or business judgment.

R2311.2 An insolvency practitioner might encounter circumstances where a threat to the principle of objectivity or other fundamental principles cannot be eliminated and safeguards cannot be applied to reduce the threat to an acceptable level. Where this is the case the insolvency practitioner shall not accept the insolvency appointment.

2311.2 A1 Examples of circumstances that might create a conflict of interest include where a significant relationship has existed with the entity or someone connected with the entity, or where an insolvency practitioner:

- has to deal with conflicting or competing interests between entitles over whom they, or another insolvency practitioner in their firm, is appointed.
- or another insolvency practitioner in their firm has previously acted as an insolvency office holder to a company with a common director, or common directors. Where the insolvency practitioner has been appointed officeholder to a number of insolvent companies with the same director or directors, there will be an increased risk of a conflict of interest arising.
- has, or others in their firm have, previously carried out one or more assignments for an entity and / or its wider group and they are appointed as an insolvency office holder to the entity or its connected entities.
- has, or others in their firm have, previously carried out one or more assignments for an entity's charge holders or stakeholders and the insolvency practitioner is appointed as an insolvency office holder to the entity or its connected entities.
- is appointed administrator by a floating charge holder, under a recent charge, and the assets are sold to a purchaser and the purchaser is connected to the floating charge holder.
- is appointed to act as supervisor of a debtor's IVA or trustee in a debtor's bankruptcy or sequestration, and has, or another insolvency practitioner in the same firm, has been appointed as an insolvency officeholder to a company of which the debtor is a director, or was a director in the past three years.
- is appointed to deal with an insolvent individual's affairs, and the insolvency practitioner, or another individual in their firm, was involved in bringing about the individual's insolvency. There could be an increased risk of a conflict of interest where the insolvency practitioner has a claim for outstanding costs.

2311.2 A2 There will be an increased risk of a conflict arising where an insolvency practitioner or their firm has carried out a number of previous assignments for an entity, its group or its charge holders or stakeholders. There will also be an increased risk if the previous assignments took place over an extended period of time. The level of risk will also depend on the services that were provided and the nature of the work carried out.

2311.2 A3 There will be an increased risk where an insolvency practitioner has, or others in their firm have, carried out one or more pre-appointment engagements for the entity, and the insolvency practitioner is appointed as an insolvency officeholder, and they, or another insolvency practitioner in their firm is subsequently appointed officeholder in a further insolvency process.

2311.2 A4 The fact that an insolvency practitioner, or their firm, might not have been formally engaged to carry out an assignment, or might not have been paid for their work, does not negate the possibility of a conflict of interest arising.

Professional and personal relationships

Introduction

2312.1 The environment in which insolvency practitioners work and the relationships formed in their professional and personal lives can lead to threats to the fundamental principle of objectivity.

Requirements and Application Material

R2312.2 The principle of objectivity might be threatened if any individual within the firm, the close or immediate family of an individual within the firm or the firm itself, has or has had a professional or personal relationship which relates to the insolvency appointment being considered.

2312.2 A1 Relationships could include (but are not restricted to) relationships with: -

a) the entity;

b) senior management or any director or shadow director or former director or shadow director of the entity;

c) shareholders or Persons of Significant Control of the entity;

d) any principal or employee of the entity;

e) business partners of the entity;

f) companies or entities controlled by the entity;

g) companies which are under common control;

h) potential purchasers;

i) creditors;

j) funders, including shareholders, private equity houses and debenture holders of the entity;

k) debtors of the entity;

l) close or immediate family of the entity (if an individual) or its officers (if a corporate body);

m) others with commercial relationships with the firm or personal relationships with an individual within the firm.

2312.2 A2 The examples above are not exhaustive, and the substance of any relationship should be considered.

R2312.3 **An insolvency practitioner shall ensure that the firm has policies and procedures to identify relationships between individuals within the firm and third parties in a way that is proportionate and reasonable in relation to the insolvency appointment being considered.**

R2312.4 **Before accepting an insolvency appointment, an insolvency practitioner shall take reasonable steps to identify circumstances (including any relationships) 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:**

a) the nature of the relevant interests and relationships between all stakeholders; and

b) the nature, extent and timing of any prior work for the entity or connected entities and its implication for all stakeholders.

2312.4 A1 An effective conflict identification process assists an insolvency practitioner when taking reasonable steps to identify interests and relationships that might create an actual or potential conflict of interest, both before determining whether to accept an insolvency appointment and throughout the appointment. Such a process includes considering matters identified by external parties, for example directors of insolvent entities or insolvent individuals. The earlier an actual or potential conflict of interest is identified, the greater the likelihood of the accountant being able to address threats created by the conflict of interest.

2312.4 A2 An effective process to identify actual or potential conflicts of interest will take into account factors such as:

- the nature of any previous work carried out for the entity or connected entities
- the nature of the insolvency appointment
- the size of the firm
- the size and nature of the client base
- the structure of the firm, for example, the number and geographic location of offices.

R2312.5 **Where a professional or personal relationship of the type described in paragraph 2312.2 A1 has been identified the insolvency practitioner shall evaluate the impact of the relationship in the context of the insolvency appointment being sought or considered.**

2312.5 A1 Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles include the following:

a) The nature of the previous duties undertaken by a firm during an earlier relationship with the entity.

b) The impact of the work conducted by the firm on the financial state and/or the financial stability of the entity in respect of which the insolvency appointment is being considered.

c) Whether the fees for the work or the costs incurred is or was significant to the insolvency practitioner, the insolvency practitioner's department or the firm itself.

d) Whether the fee received for the work or the cost of the work was substantial.

e) How recently any professional work was carried out. It is likely that greater threats will arise (or could be seen to arise) where work has been carried out within the previous three years. However, there might still be instances where, in respect of non-audit work, any threat is at an acceptable level. Conversely, there might be situations whereby the nature of the work carried out was such that a considerably longer period will need to have elapsed before any threat can be reduced to an acceptable level.

f) Whether the insolvency appointment being considered involves consideration of any work previously undertaken by the firm for that entity.

g) The nature of any personal relationship and the proximity of the insolvency practitioner to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the entity in relation to which the insolvency appointment relates.

h) Whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists (e.g. an obligation to report on the conduct of directors and shadow directors of a company to which the insolvency appointment relates).

i) The nature of any previous duties undertaken by an individual within the firm during any earlier relationship with the entity.

j) The extent of the insolvency team's familiarity with the individuals connected with the entity.

2312.5 A2 When evaluating the nature of any previous work done, an insolvency practitioner is expected to take into account any work done, even if it was not subject to a formal engagement and / or did not generate a fee for the firm.

R2312.6 Having identified and evaluated a relationship that might create a threat to the fundamental principles, the insolvency practitioner shall consider their response including possible actions to reduce the threat to an acceptable level.

2312.6 A1 Examples of actions which might be safeguards to reduce the level of threat created by a professional or personal relationship to an acceptable level are considered in paragraph 2210.5 A2. Examples of other safeguards include:

a) terminating (where possible) the financial or business relationship giving rise to the threat.

b) disclosure of the relationship and any financial benefit received by the firm (whether directly or indirectly) to the entity or to those on whose behalf the insolvency practitioner would be appointed to act.

2312.6 A2 While an insolvency practitioner might not be able to withdraw from the team, the threat created by another individual's professional or personal relationship could be reduced to an acceptable level by that individual withdrawing from the insolvency team.

R 2312.7 An insolvency practitioner could encounter situations in which no action can be taken to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such situations, the relationship in question will constitute a significant professional relationship or a significant personal relationship. Where this is case the insolvency practitioner shall not accept the insolvency appointment.

R2312.8 An insolvency practitioner shall always consider the perception of others when deciding whether to accept an insolvency appointment.

2312.8 A1 While an insolvency practitioner might regard a relationship as not being significant to the insolvency appointment, the perception of others could differ and this might in some circumstances be sufficient to make the relationship significant. In considering perception, this needs to be considered on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the insolvency practitioner at that time.

R2312.9 The insolvency practitioner shall document:

a) the facts.

b) any communications with, and parties with whom the matters were discussed.

c) the courses of action considered, the judgments made and the decisions that were taken.

d) the safeguards applied to address the threats when applicable.

e) how the matter was addressed.

f) where relevant, why it was appropriate to accept or continue the insolvency appointment.

R2312.10 The records an insolvency practitioner maintains, in relation to the steps that they took and the conclusions that they reached, shall be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of their actions.

Changes in Circumstances

R2313.1 **An insolvency practitioner shall remain alert to changes over time in the nature of services, interests and relationships that might create a conflict of interest while acting as an insolvency office holder**.

2313.1 A1 The nature of interests and relationships might change during the appointment. This is particularly true when an insolvency practitioner is appointed in a situation that might become adversarial, even though the stakeholders might not initially be involved in a dispute. It could also be the case where a debt is sold or transferred during the appointment, where an insolvency practitioner is appointed as a replacement officeholder, where a liquidator in a members' voluntary liquidation is converting the winding up to a creditors' voluntary liquidation or where a creditor goes into an insolvency process.

Network Firms

R2314.1 If the firm is a member of a network, an insolvency practitioner shall consider conflicts of interest that the insolvency practitioner has reason to believe might exist or arise due to interests and relationships of a network firm.

2314.1 A1 Factors to consider when identifying interests and relationships involving a network firm include:

- the nature of the professional services provided
- the clients served by the network
- the geographic locations of all relevant parties

Threats Created by Conflicts of Interest

2315.1 In general, the more direct the connection between the professional service and the matter on which the parties' interests conflict, the more likely the level of the threat is not at an acceptable level.

2315.2 Factors that are relevant in evaluating the level of a threat created by a conflict of interest include measures that prevent unauthorized disclosure of confidential information when dealing with insolvency appointments for two or more insolvent entities whose interests with respect to that matter are in conflict. These measures include:

- the existence of separate practice areas for specialty functions within the firm, which might act as a barrier to the passing of confidential client information between practice areas;
- policies and procedures to limit access to case files;
- confidentiality agreements signed by personnel and partners of the firm;
- separation of confidential information physically and electronically;
- specific and dedicated training and communication.

2315.3 Examples of actions that might be safeguards to address threats created by a conflict of interest include:

- Having separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality.

- Having an appropriate reviewer, who is not involved in providing the service or otherwise affected by the conflict, review the work performed to assess whether the key judgments and conclusions are appropriate.

R2315.4 **An insolvency practitioner shall exercise professional judgment to determine whether the nature and significance of a conflict of interest are such that specific disclosure and explicit consent is necessary when addressing the threat created by the conflict of interest.**

2315.4 A1 Factors to consider when determining whether specific disclosure and explicit consent are necessary include:

- the circumstances creating the conflict of interest
- the parties that might be affected
- The nature of the issues that might arise
- The potential for the particular matter to develop in an unexpected manner.

2315.4 A2 Disclosure and consent might take different forms, for example:

- disclosure to the court on making an application to court for an administration or any other order
- obtaining consent from a creditors' committee
- obtaining consent from a secured lender
- disclosure to creditors

2315.4 A3 It is generally expected that any disclosure will include the circumstances of the particular conflict and how any threats created were addressed.

2315.4 A4 More information on accepting insolvency appointments is set out in Insolvency appointments (see paragraph 2210).

Confidentiality

General

R2316.1 **An insolvency practitioner shall remain alert to the principle of confidentiality, including when making disclosures or sharing information within the firm or network and seeking guidance from third parties.**

2316.1 A1 Paragraphs 2104.1 to 2104.4 set out requirements and application material relevant to situations that might create a threat to compliance with the principle of confidentiality.

Specialist advice and services

Introduction

2320.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2320.2 If an insolvency practitioner obtains specialist advice or services from others, this might create a self-interest threat to compliance with one or more of the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

R2320.3 When an insolvency practitioner intends to rely on the advice or work of another, from within the firm or by a third party, the insolvency practitioner shall evaluate whether such advice or work is warranted.

R2320.4 Any advice or work contracted shall reflect best value and service for the work undertaken.

2320.4 A Factors that are relevant in evaluating best value and service are:

- the cost of the service;
- the expertise and experience of the service provider;
- that the provider holds appropriate regulatory authorisations;
- the professional and ethical standards applicable to the service provider.

R2320.5 The Insolvency practitioner shall review arrangements periodically to ensure that best value and service continue to be obtained in relation to each insolvency appointment.

R2320.6 The insolvency practitioner shall document the reasons for choosing a particular service provider.

2320.6 A1 Threats to the fundamental principles (for example familiarity threats and self-interest threats) can arise if services are provided by a regular source within the firm or by a party with whom the insolvency practitioner, firm, or an individual within the firm, has a business or personal relationship.

2320.6 A2 Business or personal relationships might include the following:

- an immediate family member e.g. spouse, parent, child, sibling etc.
- a business partner;
- any company or business in which there are common shareholdings with the firm, or which have the same beneficial owner(s); or one of the companies or business controls or owns the other.

2320.6 A3 The examples above are not exhaustive, and the substance of the relationship between the insolvency practitioner, the firm or an individual within the firm and the provider of the service should be considered.

2320.6 A4 When taking steps to assess the nature of any such relationship, the insolvency practitioner should have regard to Conflicts of interest and professional and personal relationships.

2320.6 A5 While the insolvency practitioner might regard a relationship as not being a cause for concern, the perception of others could differ. In considering perception, it is expected that the insolvency

practitioner considers this on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the insolvency practitioner at that time.

2320.6 A6 Examples of actions that might be safeguards to address such threats include:

a) applying clear guidelines and policies within the firm on such relationships

b) disclosure of the relevant relationships and the process undertaken to evaluate best value and service to the general body of creditors or the creditors' committee if one exists

c) the benefit of negotiated commercial terms such as volume or settlement discounts being received in full by the insolvent estate.

2320.6 A7 Where the insolvency practitioner does not control decisions about the choice of the provider of specialist advice or service, to be able to comply with the requirements in this part the insolvency practitioner will need to obtain sufficient information to establish the nature of the relationship with the provider. Reference should also be made to The insolvency practitioner as an employee (see paragraph 2380).

AGENCIES AND REFERRALS

Introduction

2330.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2330.2 If an insolvency practitioner receives referred work, refers work to others, or establishes an agency arrangement, this might create a self-interest threat to compliance with one or more of the fundamental principles. A referral could be a formal request made in the course of a professional relationship, for advice on the selection of a potential professional adviser. A referral might also be an informal request, including where there is no existing relationship between the insolvency practitioner and the enquirer. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

2330.3 Attention is also drawn to the legislative provisions regarding the use of personal data.

2330.4 The requirements in respect of referral fees and commissions are detailed in Referral fees and commission (see paragraph 2340).

Requirements and Application Material

R2330.5 The insolvency practitioner shall consider the fitness for purpose of the third party to whom a referral is proposed or an agency arrangement is being considered, to address the needs of the recipient of the service.

2330.5 A1 Insolvency practitioners are expected to consider any factors they are aware of that would indicate the proposed third party is not fit for purpose in terms of the potential engagement. The insolvency practitioner needs to take into account what a reasonable person might expect an insolvency practitioner to know.

2330.5 A2 Examples of actions that might be safeguards to address threats created by any referral and agency arrangements include:

a) applying clear guidelines and policies within the firm on referrals and agency arrangements

b) disclosure of the process undertaken to evaluate best value and service and any relevant relationships to the general body of creditors or the creditors' committee if one exists.

2330.5 A3 In making that consideration of fitness for purpose, the insolvency practitioner is expected to take account of the professional or regulatory status of the third party.

R2330.6 Insolvency practitioners shall not, because of the self-interest threat, enter into any financial arrangements with another supplier either personally or through their firm which would prejudice the objectivity of themselves or their firm.

R2330.7 Before accepting or continuing an agency with another supplier, insolvency practitioners shall satisfy themselves that their ability to discharge their professional obligations are not compromised.

2330.7 A1 When referring work or establishing an agency, insolvency practitioners have a responsibility to ascertain that a referral is conducted in accordance with this Code because insolvency practitioners cannot do, or be seen to do, through others what they cannot not do themselves.

R2330.8 When insolvency practitioners or their firm are considering the establishment of an agency, the terms of the agency contract (actual or implied) shall not require exclusive referral regardless of suitability. This would make important safeguards inoperable.

R2330.9 An insolvency practitioner shall not make a referral to a third party, even with a disclaimer, if they know of a better alternative.

R2330.10 The insolvency practitioner shall document the reasons for establishing an agency with another supplier or recommending a particular provider.

R2330.11 When permitting the introduction of services or products, an insolvency practitioner shall address the threats to compliance with the fundamental principles.

2330.11 A1 When permitting the introduction of services or products to those who are the subject of an insolvency appointment, factors that are relevant to such introductions include:

- The level of knowledge and expertise of those who are subject to, or have a financial interest in, the insolvency appointment or prospective insolvency appointment.
- The ability of those who are subject to, or have a financial interest in, the insolvency appointment or prospective insolvency appointment, to question the information provided by or with the consent of the insolvency practitioner.
- Information provided to those who are subject to, or have had financial interest in, the insolvency appointment or prospective insolvency appointment to enable an informed decision to be made.
- Whether consent has been obtained from the individual subject to the insolvency appointment, or prospective insolvency appointment, for their personal information to be shared with the provider of the service or product.
- The cost of the service.
- The financial impact on those who are subject to, or have a financial interest in, the insolvency appointment or prospective insolvency appointment.
- The regulatory status of the provider of the service or product.
- Disclosing the nature of the referral or arrangement to those who are subject to, or have a financial interest in, the insolvency appointment or prospective insolvency appointment.

2330.11 A2 Being transparent about any referral or agency arrangements and setting out in writing to the individuals concerned the nature of the arrangement might be an appropriate safeguard (see paragraph 2330.5 A2 above).

2330.11 A3 When communicating information about any referral or agency arrangements the insolvency practitioner should provide the following information:

- the advantages and disadvantages of the service or product being provided;
- that similar services or products could be available from other providers at a different cost;
- any direct or indirect benefit that the insolvency practitioner or the firm might receive if a service or product is taken up;
- that seeking independent advice should be considered.

R2330.12 If the insolvency practitioner or the firm has a relationship with the third party, for example a family connection or an automatic referral arrangement, there are clear self-interest or familiarity threats and the connection shall be disclosed. The disclosure shall include any potential benefit, whether direct or indirect, they, or others will receive.

2330.12 A1 In addition to disclosure required by R2330.12, the insolvency practitioner should consider including the additional information listed in 2330.11 A3.

2330.12 A2 This is particularly important where an insolvency practitioner is considering recommending the products of another supplier with which there is an agency agreement or referral arrangement and the insolvency practitioner, firm, or an individual within the firm, has a business or personal relationship with the provider of the service.

2330.12 A3 Business or personal relationships might include the following:

- an immediate family member e.g. spouse, parent, child, sibling etc.
- a business partner;
- any company or business in which there are common shareholdings with the firm, or which have the same beneficial owner(s); or one of the companies or business controls or owns the other.

2330.12 A4 The examples above are not exhaustive, and the substance of the relationship between the insolvency practitioner, the firm or an individual within the firm and the provider of the service should be considered.

2330.12 A5 When taking steps to assess the nature of any such relationship, the insolvency practitioner should have regard to Conflicts of interest and professional and personal relationships.

2330.12 A6 While the insolvency practitioner might regard a relationship as not being a cause for concern, the perception of others could differ. It is necessary to consider perception on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the insolvency practitioner at that time.

2330.12 A7 The requirement to disclose includes situations where in substance there is a one-to-one relationship between the insolvency practitioner and the third party (for example, the insolvency practitioner is the only insolvency practitioner in the area and the third party is the only solicitor), as this implies automatic referral.

R2330.13 An insolvency practitioner shall not in any circumstances conduct their firm in such a manner as to give the impression that the insolvency practitioner is a principal rather than an agent.

2330.13 A1 This includes considering signs on premises, websites and any other outward signs or literature used.

2330.13.A2 Where the insolvency practitioner does not control decisions about referrals and agencies within the firm, to comply with the requirements in this part the insolvency practitioner will need to obtain sufficient information about any arrangements. Reference should also be made to – The insolvency practitioner as an employee (see paragraph 2380).

REFERRAL FEES AND COMMISSIONS[1]

Introduction

2340.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2340.2 Paying or receiving referral fees and commissions might create a self-interest threat to compliance with one or more of the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

2340.3 A self-interest threat to compliance with the principles of objectivity and professional competence and due care is created if an insolvency practitioner, the firm or an associate offers or pays a referral fee or commission.

R2340.4 An insolvency practitioner, the firm or an associate shall not make or offer to make any payment or commission for the introduction of an insolvency appointment.

2340.4 A1 Remuneration arising from an employer/employee relationship would not normally be included within the scope of payments referred to in R2340.4 above.

2340.4 A2 A self-interest threat to compliance with the principles of objectivity and professional competence and due care is created if an insolvency practitioner, the firm or an associate receives a referral fee or commission.

R2340.5 Where an engagement might lead to an insolvency appointment, insolvency practitioners shall not accept referral fees or commissions unless they take action to reduce the threats created by such fees or commissions to an acceptable level[2].

2340.5 A1 Examples of actions that might be safeguards to address such threats include:

a) disclosure in advance of any arrangements to the appointing body, creditors or any other relevant stakeholders,

b) obtaining the views of the creditors committee.

R2340.6 If after the receipt of any such payments by the insolvency practitioner, the firm or an associate, the insolvency practitioner accepts an insolvency appointment, the amount and any source of any fee or commission received shall be disclosed to creditors.

R2340.7 During an insolvency appointment, referral fees or commissions shall not be accepted by the insolvency practitioner, the firm or an associate unless they are paid into the insolvent estate. Any such payments shall be disclosed to creditors.

R2340.8 Where the insolvency practitioner or firm obtains preferential contractual terms from suppliers of goods and services obtained for an insolvency appointment, for example volume or settlement discounts, the benefit shall be received in full by the insolvent estate.

[1] As per Section 642 Companies Act 2014, referral fees and commission are strictly prohibited in the Republic of Ireland.

[2] Insolvency Practitioners operating in the Republic of Ireland or operating in respect of an Irish Company should not accept referral fees or commission under any circumstances (see footnote 1 above).

2340.8 A1 The term ‘associate’ of an insolvency practitioner or the firm includes the following:

- an immediate family member e.g. spouse, parent, child, sibling etc.
- a business partner;
- any company or business in which there are common shareholdings with the firm, or which have the same beneficial owner(s); or one of the companies or business controls or owns the other.

2340.8 A2 The examples of associates are not exhaustive, and the substance of the association between the insolvency practitioner and/or the firm and the recipient or payor of any referral fee or commission should be considered.

2340.8 A3 When taking steps to assess the nature of any such association, the insolvency practitioner is expected to have regard to the section on conflicts of interest (paragraphs 2310.1 to 2311.2 A4) of this Code – conflicts of interest and professional and personal relationships.

2340.8 A4 While the insolvency practitioner might regard an association as not being a cause for concern, the perception of others might differ. In considering perception, it is expected that be considered on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the insolvency practitioner at that time.

2340.8 A5 When referring work, insolvency practitioners have a responsibility to ascertain that a referral is conducted in accordance with this Code because insolvency practitioners cannot do, or be seen to do, through others what they cannot not do themselves.

2340.8 A6 Where the insolvency practitioner does not control decisions about referral and commission arrangements, to comply with the requirements in this section the insolvency practitioner will need to obtain sufficient information to establish the nature and purpose of any payments made or received. Reference should also be made to– The insolvency practitioner as an employee (see paragraph 2380).

Inducements, including gifts and hospitality

Introduction

2350.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2350.2 In relation to an insolvency appointment, offering or accepting inducements might create a self-interest, familiarity or intimidation threat to compliance with the fundamental principles, particularly the principles of integrity, objectivity and professional behaviour.

2350.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the offering and accepting of inducements when performing services that does not constitute non-compliance with laws and regulations. This section also requires an insolvency practitioner to comply with relevant laws and regulations when offering or accepting inducements.

Requirements and Application Material

General

2350.4 A1 An inducement is an object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour. Inducements can range from minor acts of hospitality, to acts that result in non-compliance with laws and regulations. An inducement can take many different forms, for example:

- gifts.
- hospitality.
- entertainment.
- political or charitable donations.
- appeals to friendship and loyalty.
- employment or other commercial opportunities.
- preferential treatment, rights or privileges.

2350.4 A2 An inducement might be offered to the firm, an individual within the firm or a close or immediate family member, as well as to the insolvency practitioner personally. Inducements offered to others will still give rise to threats to compliance with the fundamental principles.

Inducements Prohibited by Laws and Regulations

R2350.5 In many jurisdictions, there are laws and regulations, such as those related to bribery and corruption, that prohibit the offering or accepting of inducements in certain circumstances. The insolvency practitioner shall obtain an understanding of relevant laws and regulations and comply with them when the insolvency practitioner encounters such circumstances.

Inducements Not Prohibited by Laws and Regulations

2350.5 A1 The offering or accepting of inducements that is not prohibited by laws and regulations might still create threats to compliance with the fundamental principles.

Inducements with Intent to Improperly Influence Behaviour

R2350.6 An insolvency practitioner shall not offer, or encourage others to offer, any inducement that is made, or which the insolvency practitioner considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another.

R2350.7 **An insolvency practitioner shall not accept, or encourage others to accept, any inducement that the insolvency practitioner concludes is made, or considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another.**

2350.7 A1 An inducement is considered as improperly influencing an individual's behaviour if it causes the individual to act in an unethical manner. Such improper influence can be directed either towards the recipient or towards another individual entity or that has some relationship with the recipient. The fundamental principles are an appropriate frame of reference for an insolvency practitioner in considering what constitutes unethical behaviour on the part of the insolvency practitioner and, if necessary by analogy, others.

2350.7 A2 A breach of the fundamental principle of integrity arises when an insolvency practitioner offers or accepts, or encourages others to offer or accept, an inducement where the intent is to improperly influence the behaviour of the recipient or of another individual.

2350.7 A3 The determination of whether there is actual or perceived intent to improperly influence behaviour requires the exercise of professional judgment. Relevant factors to consider might include:

- The nature, frequency, value and cumulative effect of the inducement.
- Timing of when the inducement is offered relative to any action or decision that it might influence.
- Whether the inducement is a customary or cultural practice in the circumstances, for example, offering a gift on the occasion of a religious holiday or wedding.
- Whether the inducement is ancillary to the insolvency appointment, for example, offering or accepting lunch in connection with a business meeting.
- Whether the offer of the inducement is limited to an individual recipient or available to a broader group. The broader group might be internal or external to the firm, such as other suppliers to the provider of the inducement.
- The roles and positions of the individuals offering or being offered the inducement.
- Whether the insolvency practitioner knows, or has reason to believe, that accepting the inducement would breach the policies and procedures of the recipient.
- The degree of transparency with which the inducement is offered.
- Whether the inducement was required or requested by the recipient.
- The known previous behaviour or reputation of the offeror.

Consideration of Further Actions

2350.8 A1 If the insolvency practitioner becomes aware of an inducement offered with actual or perceived intent to improperly influence behaviour, threats to compliance with the fundamental principles might still be created even if the requirements in the paragraphs R2350.6 and R2350.7 are met.

2350.8 A2 Examples of actions that might be safeguards to address such threats include:

- informing senior management of the firm or those charged with governance of the offeror regarding the offer.
- amending or terminating the business relationship with the offeror.

Inducements with No Intent to Improperly Influence Behaviour

2350.9 A1 The requirements and application material set out in the conceptual framework apply when an insolvency practitioner has concluded there is no actual or perceived intent to improperly influence the behaviour of the recipient or of another.

2350.9 A2 If such an inducement is trivial and inconsequential, any threats created will be at an acceptable level.

2350.9 A3 Examples of circumstances where offering or accepting such an inducement might create threats even if the insolvency practitioner has concluded there is no actual or perceived intent to improperly influence behaviour include:

- Self-interest threats
    - An insolvency practitioner is offered hospitality from the prospective purchaser of an insolvent business.
- Familiarity threats
    - An insolvency practitioner regularly takes someone to an event.
- Intimidation threats
    - An insolvency practitioner accepts hospitality, the nature of which could be perceived to be inappropriate were it to be publicly disclosed.

2350.9 A4 Relevant factors in evaluating the level of such threats created by offering or accepting such an inducement include the same factors set out in paragraph 2350.7 A3 for determining intent.

2350.9 A5 Examples of actions that might eliminate threats created by offering or accepting such an inducement include:

- Declining or not offering the inducement.
- Transferring responsibility for the provision of professional services to another individual who the insolvency practitioner has no reason to believe would be, or would be perceived to be, improperly influenced when providing the services.

2350.9 A6 Examples of actions that might be safeguards to address such threats created by offering or accepting such an inducement include:

- Being transparent with senior management of the firm about offering or accepting an inducement.
- Registering the inducement in a log monitored by senior management of the firm or another individual responsible for the firm's ethics compliance or maintained by the recipient.
- Having an appropriate reviewer, who is not otherwise involved in the insolvency appointment, review any work performed or decisions made by the insolvency practitioner with respect to the provider of the inducement to the insolvency practitioner.
- Donating the inducement to charity after receipt and appropriately disclosing the donation, for example, to a member of senior management of the firm or of those who offered the inducement.
- Reimbursing the cost of the inducement, such as hospitality, received.
- As soon as possible, returning the inducement, such as a gift, after it was initially accepted.

R2350.10 If an insolvency practitioner encounters a situation in which no or no reasonable action can be taken to reduce a threat arising from offers of gifts or hospitality to an acceptable level the insolvency practitioner shall conclude that it is not appropriate to accept the offer.

R2350.11 An insolvency practitioner shall not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

Immediate or Close Family Members

R2350.12 An insolvency practitioner shall remain alert to potential threats to the insolvency practitioner's compliance with the fundamental principles created by the offering of an inducement by or to an immediate or close family member of the insolvency practitioner.

R2350.13 Where the insolvency practitioner becomes aware of an inducement being offered to or made by an immediate or close family member and concludes there is intent to improperly influence behaviour, or considers a reasonable and informed third party would be likely to conclude such intent exists, the insolvency practitioner shall advise the immediate or close family member not to offer or accept the inducement.

2350.13 A1 The factors set out in paragraph 2350.7 A3 are relevant in determining whether there is actual or perceived intent to improperly influence behaviour. Another factor that is relevant is the nature or closeness of the relationship, between:

a) the insolvency practitioner and the immediate or close family member;

b) the immediate or close family member and the other party; and

c) the insolvency practitioner and the other party.

For example, the offer of employment, outside of the normal recruitment process, to the spouse of the insolvency practitioner by a creditor in an insolvency might indicate such intent.

2350.13 A2 The application material in paragraph 2350.8 A2 is also relevant in addressing threats that might be created when there is actual or perceived intent to improperly influence behaviour even if the immediate or close family member has followed the advice given pursuant to paragraph R2350.13.

Application of the Conceptual Framework

2350.14 A1 Where the insolvency practitioner becomes aware of an inducement offered in the circumstances addressed in paragraph R2350.12, threats to compliance with the fundamental principles might be created where:

a) The immediate or close family member offers or accepts the inducement contrary to the advice of the insolvency practitioner pursuant to paragraph R2350.13; or

b) The insolvency practitioner does not have reason to believe an actual or perceived intent to improperly influence behaviour exists.

2350.14 A2 The application material in paragraphs 2350.9 A1 to 2350.9 A6 is relevant for the purposes of identifying, evaluating and addressing such threats. Factors that are relevant in evaluating the level of threats in these circumstances also include the nature or closeness of the relationships set out in paragraph 2350.13 A1.

Financial incentives for team members

2350.15 A1 An insolvency practitioner or members of the insolvency team might be offered an inducement by their employer to achieve certain targets relating to insolvency appointments. Such arrangements might create threats to compliance with the fundamental principles.

2350.15 A2 Examples of circumstances that might create a self-interest threat include situations in which the insolvency practitioner or members of the insolvency team:

a) Holds a direct or indirect financial interest in the employing organisation and the value of that financial interest might be directly affected by decisions made by the insolvency practitioner.

b) Is eligible for a profit-related bonus and the value of that bonus might be directly affected by decisions made by the insolvency practitioner.

c) Participates in arrangements which provide incentives to achieve targets.

ADVERTISING, MARKETING AND OTHER PROMOTIONAL ACTIVITIES

Introduction

2360.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2360.2 When an insolvency practitioner seeks an insolvency appointment or work that might lead to an insolvency appointment through advertising or other forms of marketing or promotional activity, there might be threats to compliance with the fundamental principles, including integrity and professional behaviour.

2360.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to advertising and marketing for insolvency appointments and includes the content of the websites and other promotional activities.

2360.4 Reference should also be made to Specialist advice and services (2320) and Referral fees and commissions (2340).

Requirements and Application Material

R2360.5 When undertaking marketing or promotional activities, an insolvency practitioner shall not bring the profession into disrepute. An insolvency practitioner shall be honest and truthful and shall not make:

a) exaggerated claims for the services offered by, or the qualifications or experience of, the insolvency practitioner; or

b) disparaging references or unsubstantiated comparisons to the work of others.

R2360.6 When considering whether to accept an insolvency appointment an insolvency practitioner shall be satisfied that any advertising, marketing or other form of promotional activity pursuant to which the insolvency appointment might have been obtained:

a) has been fair and not misleading

b) has avoided unsubstantiated or disparaging statements

c) has complied with relevant codes of practice and guidance in relation to advertising

d) has been clearly distinguishable as advertising or marketing material, and has been legal, decent, honest and truthful.

2360.6 A1 If reference is made in advertisements or other forms of marketing to fees or to the cost of the services to be provided, the insolvency practitioner needs to be satisfied that the basis of calculation and the range of services that the reference is intended to cover has been provided. The insolvency practitioner needs to take care to ensure that such references are clear as to the precise range of services and the time commitment that the reference is intended to cover.

2360.6 A2 If an insolvency practitioner is in doubt about whether a form of advertising or marketing is appropriate, the insolvency practitioner is encouraged to consult with their authorising body.

R 2360.7 Where an insolvency practitioner or the firm obtains work via a third party or a third party conducts marketing activities on behalf of the insolvency practitioner or the firm, the insolvency practitioner shall be responsible for ensuring that the third party follows the application material above.

2360.7 A1 When obtaining work via a third party or using a third party to conduct marketing activities insolvency practitioners have a responsibility to ascertain that a referral manner is in accordance with this Code because insolvency practitioners cannot do, or be seen to do, through others what they cannot not do themselves.

R2360.8 **Insolvency practitioners shall never promote or seek to promote their services, or the services of other insolvency practitioners, in such a way, or to such an extent, as to amount to harassment.**

Dealing with the assets of an entity

Introduction

2370.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2370.2 When an insolvency practitioner realises assets, this might create threats to compliance with one or more of the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

R2370.3 Except in circumstances which clearly do not impair the insolvency practitioner's objectivity, insolvency practitioners appointed to any insolvency appointment in relation to an entity, shall not themselves acquire, directly or indirectly, any of the assets of an entity, nor knowingly permit any individual within the firm, or any close or immediate family member of an individual within the firm, directly or indirectly, to do so.

2370.3 A1 Where the assets and business of an insolvent company are sold by an insolvency practitioner shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to objectivity. The sale could also be seen as a threat to objectivity by creditors or others not involved in the prior agreement.

2370.3 A2 Examples of actions that might be safeguards to address threats to objectivity include:

a) obtaining an independent valuation of the assets or business being sold;

b) considering other potential purchasers.

2370.3 A3 It is important for an insolvency practitioner to take care to ensure (where to do so does not conflict with any legal or professional obligation) that their decision-making processes are transparent, understandable and readily identifiable to all third parties who could be affected by a sale or proposed sale.

THE INSOLVENCY PRACTITIONER AS AN EMPLOYEE

Introduction

2380.1 All insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

2380.2 Where an insolvency practitioner is an employee of a firm, the insolvency practitioner might face particular threats to compliance with the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances. It does not describe all of the facts and circumstances, including professional activities, interests and relationships, that could be encountered by insolvency practitioner who is an employee, which create or might create threats to compliance with the fundamental principles. Therefore, the conceptual framework requires insolvency practitioners who are employees to be alert for such facts and circumstances.

2380.3 On occasion, where the insolvency practitioner is an employee or is considering accepting an offer of employment, the insolvency practitioner might be unable to address the threats to compliance with the fundamental principles. In those circumstances the insolvency practitioner will need to consider whether they can accept the offer of employment or resign from their current employment.

Requirements and Application Material

2380.4 An insolvency practitioner might be an employee, contractor, partner, or director within the firm. The legal form of the relationship of the insolvency practitioner with their employer has no bearing on the ethical responsibilities placed on the insolvency practitioner.

R2380.5 An insolvency practitioner who is an employee shall comply with the fundamental principles.

2380.5 A1 The insolvency practitioner who is an employee might have a reduced ability to control or influence matters within the firm which might affect the actions available as safeguards to address threats to compliance with the fundamental principles.

2380.5 A2 The following are examples of facts and circumstances that might create threats for an insolvency practitioner as an employee:

- being eligible for a bonus related to achieving targets or profits;
- having inadequate resources for the performance of an insolvency appointment;
- a lack of control over processes and internal governance;
- being threatened with dismissal or demotion over a disagreement about an insolvency appointment;
- an individual attempting to influence the decision-making process of the insolvency practitioner.

R2380.6 An insolvency practitioner shall consider whether there are appropriate safeguards available to ensure compliance with the fundamental principles before accepting an offer of employment.

2380.6 A1 Examples of actions that might be safeguards to address such threats prior to accepting an offer of employment include:

a) Appropriate provisions within any contract of employment or separate legal agreement with the employer acknowledging that the insolvency practitioner has a duty to comply with the Code of Ethics of their authorising body and that the insolvency practitioner will be able to take all necessary steps they deem necessary to comply with the fundamental principles.

b) Ensuring that policies and procedures are in place within the firm to prohibit individuals who are not members of the insolvency team from inappropriately influencing the conduct of an insolvency appointment.

c) Ensuring that the firm has published policies and procedures to encourage and empower individuals within the firm to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concern them.

d) Obtaining sufficient information to obtain an understanding of the structure and ownership of the firm.

2380.6 A2 If no actions are available to address these threats, it is expected that the insolvency practitioner consider whether it is appropriate to accept the offer of employment.

2380.6 A3 The existence of certain conditions, policies and procedures established by the profession, legislation, regulation, the firm, or the employing organization that can enhance the insolvency practitioner acting ethically might also help identify threats to compliance with the fundamental principles. In this context such factors could include:

a) Policies and procedures within the firm to prohibit individuals who are not members of the insolvency team from inappropriately influencing the conduct of an insolvency appointment.

b) Published policies and procedures to encourage and empower individuals within the firm to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concern them.

2380.6 A4 Examples of actions that might be safeguards to address threats at a particular time include:

a) reporting concerns to senior management within the firm

b) seeking legal advice or advice from their authorising body

c) reporting the concerns to their authorising body or the Complaints Gateway.

2380.6 A5 The more senior the position of the insolvency practitioner, 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 firm. To the extent that they are able to do so, taking into account their position and seniority in the organisation, insolvency practitioners are expected to encourage and promote an ethics-based culture in the organisation. Examples of actions that might be taken include the introduction, implementation and oversight of:

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

R2380.7 Where threats to compliance with the fundamental principles cannot be eliminated or reduced to an acceptable level then the insolvency practitioner shall not accept the insolvency appointment or refuse to remain associated with the matter creating the conflict.

2380.7 A1 In some circumstances this could mean taking steps to resign from the employment.

2380.7 A2 Reference should also be made to Obtaining specialist advice and services and Referral fees and commissions.

RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS

Introduction

2390.1 Insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework set to identify, evaluate and address threats.

2390.2 A self-interest or intimidation threat to compliance with the principles of integrity and professional behaviour is created when an insolvency practitioner becomes aware of non-compliance or suspected non-compliance with laws and regulations.

2390.3 An insolvency practitioner might encounter or be made aware of non-compliance or suspected non-compliance in the course of carrying out professional activities. This section guides the insolvency practitioner in assessing the implications of the matter and the possible courses of action when responding to non-compliance or suspected non-compliance with:

a) Laws and regulations generally recognised to have a direct effect on the conduct of an appointment.

b) Other laws and regulations that do not have a direct effect on the conduct of an appointment, but compliance with which might be fundamental to the outcome of an appointment.

c) Other laws and regulations that do not have a direct effect on the conduct of an appointment, but compliance with which might be fundamental to the operating aspects of the employing organisation's business, to its ability to continue its business, or to avoid material penalties.

Objectives of the insolvency practitioner in relation to non-compliance with laws and regulations

2390.4 A distinguishing mark of the insolvency 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 insolvency practitioner are:

a) To comply with the principles of integrity and professional behaviour;

b) By alerting management or, where appropriate, those charged with governance of the entity, 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) By alerting management or, where appropriate, those charged with governance of the employing organisation, to seek to:

   i. Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or

   ii. Deter the non-compliance where it has not yet occurred; and

d) To take such further action as appropriate in the public interest.

Requirements and Application Material

General

2390.5 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:

a) an entity over which the insolvency practitioner has been appointed;

b) those charged with governance of an entity;

c) management of an entity;

d) other individuals working for or under the direction of an entity;

e) the insolvency practitioner's employing organization;

f) those charged with governance of the employing organization;

g) management of the employing organization;

h) other individuals working for or under the direction of the employing organisation.

2390.5 A2 Examples of laws and regulations which this section addresses include those that deal with:

- insolvency processes and procedures.
- 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.

2390.5 A3 Non-compliance might result in fines, litigation or other consequences for the entity or employing organisation, potentially materially affecting its financial statements. Importantly, such non-compliance might have wider public interest implications in terms of potentially substantial harm to creditors, employees, investors 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 breaches of environmental laws and regulations endangering the health or safety of employees or the public and perpetration of fraud against appointment estates resulting in significant financial loss to creditors.

R2390.6 In some jurisdictions, there are legal or regulatory provisions governing how insolvency practitioners should address non-compliance or suspected non-compliance. These legal or regulatory provisions might differ from or go beyond the provisions in this section, for example, anti-money laundering legislation. When encountering such non-compliance or suspected non-compliance, the insolvency practitioner 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 relevant party.

2390.6 A1 A prohibition on alerting the relevant party might arise, for example, pursuant to anti-money laundering legislation.

2390.6 A2 An insolvency practitioner who encounters or is made aware of matters that are clearly inconsequential is not required to comply with this section unless other laws or regulations require it. For example, an insolvency practitioner in the UK needs to comply with Anti-Money Laundering legislation which contains no de minimis threshold for reporting. Whether a matter is clearly inconsequential is to be judged with respect to its nature and its impact, financial or otherwise, on the entity or employing organisation, its stakeholders and the general public.

2390.6 A3 This section does not address:

a) Personal misconduct unrelated to the business activities of the entity or employing organisation; and

b) Unless required by other laws or regulations, non-compliance by parties other than those specified in paragraph 2390.5 A1. This includes, for example, circumstances

where an insolvency practitioner 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 creditor.

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

Responsibilities of Management and Those Charged with Governance

2390.7 A1 Management of an entity or employing organisation, with the oversight of those charged with governance, is responsible for ensuring that the entity'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:

a) the entity or employing organisation;

b) an individual charged with governance of the entity or employing organisation;

c) a member of management; or

d) other individuals working for or under the direction of the entity or the employing organisation.

Responsibilities of all insolvency practitioners

R2390.8 If protocols and procedures exist within the insolvency practitioner's employing organisation to address non-compliance or suspected non-compliance, the insolvency practitioner shall consider them in determining how to respond to such non-compliance.

2390.8 A1 Many employing organisations 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.

R2390.9 Where an insolvency practitioner becomes aware of a matter to which this section applies, the steps that the insolvency practitioner takes to comply with this section shall be taken on a timely basis. In taking timely steps, the insolvency practitioner shall have regard to the nature of the matter and the potential harm to the interests of the entity, creditors, employees, investors, or the general public.

2390.9 A1 Insolvency practitioners are reminded especially of the guidance in paragraph R2390.6 above in relation to over-riding laws and regulations.

Obtaining an understanding of the matter and addressing It with management and those charged with governance

R2390.10 If an insolvency practitioner becomes aware of information concerning non-compliance or suspected non-compliance, the insolvency practitioner shall seek to obtain an understanding of the matter. This understanding shall include the nature of the non-compliance or suspected non-compliance and the circumstances in which it has occurred or might be about to occur.

2390.10 A1 The insolvency practitioner is expected to apply knowledge and expertise, and exercise professional judgment. However, the insolvency practitioner is not expected to have a level of understanding of laws and regulations beyond that which is required for the appointment. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

2390.10 A2 Depending on the nature and significance of the matter, the insolvency practitioner might consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

2390.10 A3 The insolvency practitioner is reminded especially of the guidance in paragraph R2390.6 above in relation to over-riding laws and regulations.

R2390.11 If the insolvency practitioner identifies or suspects that non-compliance has occurred or might occur, the insolvency practitioner shall discuss the matter with the appropriate level of management. If the insolvency practitioner has access to those charged with governance, the insolvency practitioner shall also discuss the matter with them where appropriate.

2390.11 A1 The purpose of the discussion is to clarify the insolvency practitioner'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.

2390.11 A2 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:

- 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

R2390.12 If the insolvency practitioner is liquidator in a members voluntary liquidation for:

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 insolvency practitioner shall consider whether to communicate the non-compliance or suspected non-compliance within the firm or to the network firm, as appropriate. Where the communication is made, it shall be made in accordance with the firm's or network's protocols or procedures. In the absence of such protocols and procedures, it shall be made directly to the audit engagement partner.

R2390.13 If the insolvency practitioner is supervisor of a Company Voluntary Arrangement the insolvency practitioner shall consider whether to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if any.

Relevant factors to consider

2390.13 A1 Factors relevant to considering the communication in accordance with paragraphs R2390.12 and R2390.13 include:

- 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 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.

Purpose of Communication

2390.13 A2 In the circumstances addressed in paragraphs R2390.12 to R2390.13, 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.

Considering whether further action is needed

R2390.14 The insolvency practitioner shall also consider whether further action is needed in the public interest.

2390.14 A1 Whether further action is needed, and the nature and extent of it, will depend on factors such as:

- 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.

2390.14 A2 Further action by the insolvency practitioner might include:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Resigning from the appointment where permitted by law or regulation.

2390.14 A3 In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

- 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.

R2390.15 If the insolvency practitioner determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, that disclosure is permitted pursuant to paragraph R2104.3(d) of the Code. When making such disclosure, the insolvency practitioner shall act in good faith and exercise caution when making statements and assertions. The insolvency practitioner shall also consider whether it is appropriate to inform the entity of the insolvency practitioner's intentions before disclosing the matter.

Imminent breach

R2390.16 In exceptional circumstances, the insolvency practitioner might become aware of actual or intended conduct that the insolvency practitioner 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. Having first considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the insolvency practitioner shall exercise professional judgment and determine whether to disclose the matter immediately to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. If disclosure is made, that disclosure is permitted pursuant to paragraph R2104.3(d) of the Code.

Seeking advice

2390.16 A1 The insolvency practitioner might consider:

- 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 regulatory body or their authorising body.

Documentation

2390.16 A2 In relation to non-compliance or suspected non-compliance that falls within the scope of this section, the insolvency practitioner is encouraged to document:

- the matter;
- the results of discussion with management and, where applicable, those charged with governance and other parties;
- how management and, where applicable, those charged with governance have responded to the matter;
- the courses of action the insolvency practitioner considered, the judgments made and the decisions that were taken;
- how the insolvency practitioner is satisfied that the insolvency practitioner has fulfilled the responsibility set out in paragraph R2390.14.

2390.16 A3 The insolvency practitioner is encouraged to consider whether there is a need for any such documentation to be filed separately.

Responsibilities of members of the insolvency team

R2390.17 If, in the course of carrying out professional activities, a member of the insolvency team becomes aware of information concerning non-compliance or suspected non-compliance, the team member shall seek to obtain an understanding of the matter. This understanding shall include the nature of the non-compliance or suspected non-compliance and the circumstances in which it has occurred or might occur.

2390.17 A1 The team member is expected to apply knowledge and expertise, and exercise professional judgment. However, the team member is not expected to have a level of understanding of laws and regulations greater than that which is required for the team member's role within the employing organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

2390.17 A2 Depending on the nature and significance of the matter, the team member might consult on a confidential basis with others within the employing organisation or an authorising body, or with legal counsel.

R2390.18 If the team member identifies or suspects that non-compliance has occurred or might occur, the team shall, subject to paragraph R2390.17, inform an immediate superior to enable the superior to take appropriate action. If the team member's immediate superior appears to be involved in the matter, the team member shall inform the next higher level of authority within the employing organisation.

R2390.19 In exceptional circumstances, the team member may determine that disclosure of the matter to an appropriate authority is an appropriate course of action. If the team member does so pursuant to paragraphs 2390.17 A2 and A3, that disclosure is permitted pursuant to paragraph R2104.3(d) of the Code. When making such disclosure, the team member shall act in good faith and exercise caution when making statements and assertions.

Documentation

2390.20 A1 In relation to non-compliance or suspected non-compliance that falls within the scope of this section, the team member is encouraged to have the following matters documented:

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

2390.20 A2 The team member is encouraged to consider whether there is a need for any such documentation to be filed separately.

THE APPLICATION OF THE FRAMEWORK TO SPECIFIC SITUATIONS

Introduction to specific situations

2500.1 The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples are intended to assist an insolvency practitioner and the members of the insolvency team to assess the implications of similar, but different, circumstances and relationships.

2500.2 The examples are included in four sections. Section 2510 contains examples which do not relate to a previous or existing insolvency appointment. Section 2520 contains examples that do relate to a previous or existing insolvency appointment. Section 2530 contains some examples under Scottish law. Section 2540 contains examples relevant to the Republic of Ireland.

2500.3 The examples included in this section are not exhaustive, and the substance of the circumstances and relationships should be considered.

2500.4 When considering specific situations, insolvency practitioners should refer to the section on professional and personal relationships and changes in circumstances. As interests and relationships might change during an appointment, a significant professional relationship can arise as a result of an insolvency practitioner acting as an officeholder in a prior insolvency. An insolvency practitioner is expected to consider both pre-appointment engagements, and / or prior insolvency appointments when assessing whether they have a significant professional relationship. Insolvency practitioners are also expected to document their considerations and conclusions when assessing specific situations.

Section 2510 - Examples that do not relate to a previous or existing insolvency appointment

2510.1 Insolvency appointment following audit related work

Previous relationship: The firm or an individual within the firm has completed audit related work.

Response: A Significant Professional Relationship will normally arise where the audit related work was completed within the previous 3 years. An insolvency practitioner shall not take the insolvency appointment as it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level.

Where audit related work was completed more than 3 years before the proposed date of the appointment of the insolvency practitioner a threat to compliance with the fundamental principles could still arise. The insolvency practitioner shall evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the use of safeguards.

This restriction does not apply where the insolvency appointment is in a members' voluntary liquidation; an insolvency practitioner may normally take an appointment as liquidator. However, the insolvency practitioner shall consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles. Further, the insolvency practitioner shall satisfy them self that the directors' declaration of solvency is likely to be substantiated by events.

2510.2 Appointment as Investigating Accountant at the instigation of a creditor

Previous relationship: The firm or an individual within the firm was instructed by, or at the instigation of, a creditor or other party having a financial interest in an entity, to investigate, monitor or advise on its affairs.

Response: A Significant Professional Relationship would not normally arise in these circumstances provided that: -

a) there has not been a direct involvement by an individual within the firm in the management of the entity; and

b) the firm had its principal client relationship with the creditor or other party, rather than with the company or proprietor of the business; and

c) the entity was aware of this.

An insolvency practitioner shall however consider all the circumstances before accepting an insolvency appointment, including the effect of any discussions or lack of discussions about the financial affairs of the company with its directors, and whether such circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Where such an investigation was conducted at the request of, or at the instigation of, a secured creditor who then requests an insolvency practitioner to accept an insolvency appointment as an administrator or administrative receiver, the insolvency practitioner shall satisfy them self that the company, acting by its board of directors, does not object to them taking such an insolvency appointment. If the secured creditor does not give prior warning of the insolvency appointment to the company or if such warning is given and the company objects but the secured creditor still wishes to appoint the insolvency practitioner, the insolvency practitioner shall consider whether the circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Section 2520 - Examples relating to previous or existing insolvency appointments

2520.1 Insolvency appointment following an appointment as administrative or other receiver

Previous appointment: An individual within the firm has been administrative or other receiver.

Proposed appointment: Any insolvency appointment.

Response: It is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level. An insolvency practitioner shall not accept any insolvency appointment.

This restriction does not, however, apply where the individual within the firm was appointed a receiver by the court. In such circumstances, the insolvency practitioner shall however consider whether there are any other circumstances which give rise to an unacceptable threat to compliance with the fundamental principles.

2520.2 Administration or Liquidation following appointment as supervisor of a voluntary arrangement

Previous appointment: An individual within the firm has been supervisor of a company voluntary arrangement.

Proposed appointment: Administrator or liquidator.

Response: An insolvency practitioner may normally accept an appointment as administrator or liquidator. However, the insolvency practitioner shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

2520.3 Liquidation following appointment as administrator

Previous Appointment: An individual within the firm has been administrator.

Proposed Appointment: Liquidator.

Response: An insolvency practitioner may normally accept an appointment as liquidator provided the insolvency practitioner has complied with the relevant legislative requirements. However, the insolvency practitioner shall also consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

2520.4 Conversion of members' voluntary liquation into creditors' voluntary liquidation

Previous appointment: An individual within the firm has been the liquidator of a company in a members' voluntary liquidation.

Proposed appointment: Liquidator in a creditors' voluntary liquidation, where it is necessary to seek a nomination from the company's creditors.

Response: Where there has been a Significant Professional Relationship, an insolvency practitioner may continue or accept an appointment (subject to creditors' decision or deemed consent) only if the insolvency practitioner concludes that the company will eventually be able to pay its debts in full, together with interest.

However, the insolvency practitioner shall consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

2520.5 Bankruptcy following appointment as supervisor of an individual voluntary arrangement

Previous appointment: An individual within the firm has been supervisor of an individual voluntary arrangement.

Proposed Appointment: Trustee in bankruptcy.

Response: An insolvency practitioner may normally accept an appointment as trustee in bankruptcy. However, the insolvency practitioner shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

Section 2530 - Examples in respect of cases conducted under Scots Law

2530.1 Sequestration following appointment as trustee under a trust deed for creditors

Previous appointment: An individual within the firm has been trustee under a trust deed for creditors.

Proposed appointment: Interim trustee or trustee in a sequestration.

Response An insolvency practitioner may normally accept an appointment as an interim trustee or trustee in the sequestration. However, the insolvency practitioner shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

2530.2 Sequestration where the Accountant in Bankruptcy is trustee following appointment as trustee under a trust deed for creditors

Previous appointment: An individual within the firm has been trustee under a trust deed for creditors.

Proposed appointment: Administering the sequestration under a contract for insolvency services with the Accountant in Bankruptcy.

Response: The firm may normally accept an appointment under the contract for insolvency services with the Accountant in Bankruptcy. However, an individual within the firm shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

2530.2 Sequestration or trust deed trustee following appointment as continuing money adviser under a Debt Arrangement Scheme

Previous appointment: An individual within the firm has been a continuing money advisor under a revoked Debt Arrangement Scheme relating to the debtor.

Proposed appointment: Trustee in a sequestration or a trust deed

Response: An insolvency practitioner may normally accept an appointment as a trustee under a trust deed or as a trustee in a sequestration. However, the insolvency practitioner shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

Section 2540 - Application in the Republic of Ireland

2540.1 In relation to insolvency practice within the Republic of Ireland, the following amended definitions shall apply:

Authorising body	A prescribed accountancy body under any legislation governing the administration of insolvency in the Republic of Ireland; A Supervisory Authority established under legislation governing insolvency in the Republic of Ireland; or The Insolvency Service of Ireland established pursuant to section 8 of the Personal Insolvency Act 2012.
Insolvency appointment	A formal appointment under any legislation in the Republic of Ireland which must be undertaken by an insolvency practitioner.
Insolvency practitioner	An individual who is qualified to act as a liquidator under the Companies Act 2014 in the Republic of Ireland or a person that is appointed as a receiver to a company or the assets of a company in Ireland.

2540.2 Insolvency practitioners shall comply with the requirements of this Code in relation to insolvency practice within the Republic of Ireland. Referral Fees and Commissions notes that the payment of such fees and commissions to any creditor or members is prohibited and gives rise to a Category 2 offence pursuant to Section 642 of the Companies Act 2014.

2540.3 The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples are intended to assist an insolvency practitioner and the members of the insolvency team to assess the implications of similar, but different, circumstances and relationships.

2540.4 Liquidation following appointment as a receiver

Previous appointment: An individual within the firm has been receiver of any assets of a company or any company within a group with which it is associated.

Proposed appointment: Liquidator

Response: Where the receivership was completed within the previous 3 years, an insolvency practitioner or an individual within the firm shall not accept an appointment as liquidator as it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level.

Where the receivership was completed more than 3 years before the proposed date of winding up a threat to compliance with the fundamental principles might still arise. The Insolvency practitioner or individual within the firm shall evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the use of safeguards.

2540.5 An appointment following a significant professional relationship

Previous appointment: The firm or an individual within the firm has had a significant professional relationship with a company or any company within a group with which it is associated.

Proposed appointment: Any insolvency appointment

Response: Where the significant professional relationship was present within the previous 3 years, an insolvency practitioner or an individual within the firm shall not accept an insolvency appointment as it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level.

Where the significant prior relationship was terminated more than 3 years before the proposed date of the insolvency appointment a threat to compliance with the fundamental principles might still arise. The insolvency practitioner or individual within the firm shall evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by use of safeguards.

2540.6 Liquidation following examination

Previous appointment: An individual within the firm has been examiner and the examiner is unable to formulate proposals for the survival of the company or where the court fails to confirm the examiner's proposals for the survival of the company, and the company subsequently goes into liquidation (either voluntarily or by order of the court).

Response: An insolvency practitioner may normally accept an appointment as liquidator provided the insolvency practitioner has complied with the relevant legislative requirements. However, the insolvency practitioner shall also consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

2540.7 Receivership following examinership

Previous appointment: The firm or an individual within the firm has been examiner and the examiner is unable to formulate proposals for the survival of the company or the court fails to confirm the examiner's proposals for the survival of the company, and the company subsequently goes into liquidation (either voluntarily or by order of the court) or a secured lender appoints a receiver.

Response: An insolvency practitioner may normally accept an appointment as receiver provided the insolvency practitioner has complied with the relevant legislative requirements. However, the insolvency practitioner shall also consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

2540.8 Insolvency appointment following audit related work

Previous relationship: The firm or an individual within the firm has completed audit related work.

Response: A significant professional relationship will normally arise where the audit related work was completed within the previous 3 years. An individual within a firm shall not take the insolvency appointment as it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level.

Where audit related work was completed more than 3 years before the proposed date of the appointment of the insolvency practitioner a threat to compliance with the fundamental principles might still arise. The insolvency practitioner shall evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the use of safeguards.

Note - Section 635 of the Companies Act 2014 prohibits an auditor from acting as a liquidator when they are or have been in the previous twenty-four months prior to the date of commencement of the insolvency appointment, auditor to any client, even a solvent one.

Definitions and interpretation

Authorising body	A body declared to be a recognised professional body under any legislation governing the administration of insolvency in the United Kingdom.
Close or immediate family	A spouse, civil partner (or equivalent), dependant, parent, child or sibling.
Employee	A person subject to a contract of employment or a contract for services with an insolvency practitioner or a firm.
Entity	Any natural or legal person or any group of such persons, including a partnership.
Firm	The firm (a sole practitioner, partnership, limited liability partnership or corporation) in which the insolvency practitioner practises together with: a) an entity that controls the firm, through ownership, management or other means b) an entity controlled by the firm, through ownership, management or other means c) an entity with which the firm is under common control through ownership, management or other means.
Individual within the firm	The insolvency practitioner, any principals in the firm and any employees of the firm.
Insolvency appointment	A formal appointment under the terms of legislation in the United Kingdom, which must be undertaken by an insolvency practitioner.
Insolvency practitioner	An individual who is authorised or recognised as an insolvency practitioner in the United Kingdom by an authorising body.
Insolvency team	All persons under the control or direction of an insolvency practitioner.
Network	A larger structure: a) that is aimed at co-operation; and b) that is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand name, or a significant part of professional resources.
Principal	In respect of a firm: a) which is a company: a director b) which is a partnership: a partner c) which is a limited liability partnership: a member d) which is comprised of a sole practitioner: that person.

Alternatively, any person within the firm who is held out as being a director, partner or member.