

Drafting Conventions

IESBA February Meeting Update

Background

At its meeting on February 23-25, 2009, the IESBA discussed the Task Force's proposals and provided input. The Task Force's proposals are set out in Agenda Paper B-2 and should be read before this Agenda Paper. The Task Force met directly after the meeting to address the comments received. Agenda Paper B-5 contains the revisions proposed by the Task Force.

Issues

Exception Clause

At its December meeting, the IESBA, as suggested by the CAG, considered three categories of exceptions:

- Catastrophic events – such as a natural disaster or a terrorist act;
- Acquisitions and mergers; and
- Other situations.

At its February meeting, the IESBA discussed the Task Force's proposal to address mergers and acquisitions (see further discussion below). With respect to catastrophic events and other situations, the IESBA was of the view that a professional accountant might find it useful to consult with a member body or relevant regulator. The IESBA, therefore, proposes the following addition to the Code (tentatively in paragraph 100.12):

“When a professional accountant encounters circumstances that are so unusual that the application of a specific requirement of the Code would result in a disproportionate outcome or an outcome that may not be in the public interest, the professional accountant is recommended to consult with a member body or the relevant regulator.”

CAG Question

CAG members are asked to consider whether they agree with the proposal.

Mergers and Acquisitions

The IESBA agreed with the Task Force's recommendation to include guidance in the Code to assist firms in dealing with the independence implications of a client merger or acquisition.

The IESBA agreed that the guidance should:

- Stress the importance of the firm taking the steps that are necessary to bring it in compliance with the Code by the effective date of the merger or acquisition;
- Recognize that sometimes it will not be reasonably possible to terminate all relevant interests and relationships by the effective date and, in such circumstances, require:
 - The interest or relationship to be terminated as soon as reasonably possible and, in all cases, within six months of the merger or acquisition;
 - Members of the engagement team and the individual responsible for the engagement quality control review to be free of such interests or relationships, and also not to be involved with a continuing prohibited non-assurance service; and
 - Application of transitional measures as necessary.
- Recognize that those charged with governance might request the firm to continue as auditor for a short period of time and only until the next audit report is issued and, in such circumstances, require:
 - Members of the engagement team and the individual responsible for the engagement quality control review to be free of such interests or relationships, and also not to be involved with a continuing prohibited non-assurance service; and
 - Application of transitional measures as necessary.
- Require discussion with those charged with governance and documentation.
- Require the firm to consider whether, even if all the requirements above are met, the threats created by previous and current interests and relationships are so significant that the firm cannot remain as auditor.

After discussion at the IESBA meeting, the Task Force revised the guidance it had developed. The revised guidance can be found in paragraph 290.28 (Agenda Paper B-5).

CAG Question

CAG members are asked to consider whether they agree with the proposal.

Re-exposure

IESBA Terms of Reference requires that, after approving the revised content of an exposure draft, the IESBA assesses whether there has been substantive change to the exposed document that may warrant re-exposure. Situations that constitute potential grounds for a decision to re-expose may include, for example, substantial change to a proposal arising from matters not aired in the exposure draft such that commentators have not had an opportunity to make their views known to the IESBA before it reaches a final conclusion, substantial changes arising from matters not previously deliberated by the IESBA, or substantial change to the substance of a proposed pronouncement.

The March CAG meeting is the last opportunity for CAG members to discuss the document before its planned approval at the April IESBA meeting. The IESBA,

therefore, has had a preliminary discussion on whether the changes to the document warrant re-exposure.

Exposure draft respondents were supportive of the proposed change from “should” to “shall” and retaining the current structure of the Code. Respondents were also generally supportive of the elimination of the concept of threats that were “other than clearly insignificant” and the definition of an acceptable level.

The area that generated most discussion was the exception clause. The exposure draft contained a provision that would have permitted a temporary departure from a requirement in the Code provided that certain conditions were met. The departure would have been permitted in exceptional and unforeseen circumstances that were outside of the control of the professional accountant, the firm or employing organization and the client. While the majority of the respondents to the exposure draft were supportive of the approach proposed, a significant minority of respondents disagreed with the exception clause, expressing the view that it would weaken the Code and undermine its requirements. The exposure draft asked respondents whether there were any other circumstances where departure from a requirement in the Code would be acceptable. Thirteen of forty-seven respondents expressed the view that the Code should address independence issues created by client mergers and acquisitions.

After considering exposure draft comments and input from CAG members, the IESBA concluded, as discussed above, that the Code should not contain a clause permitting a temporary departure. It should however, address mergers and acquisitions and encourage an accountant to consult with a member body or relevant regulator if faced with an unusual circumstance.

The IESBA’s preliminary discussion on whether re-exposure is warranted focused on the new mergers and acquisition clause. Several Board members expressed the view that re-exposure is not warranted for the following reasons:

- Many respondents to the exposure draft expressed the view that the Code should address mergers and acquisitions;
- The IESBA’s understanding is that in most cases firms are able to terminate relevant interests and relationships by the effective date, therefore, it is expected that in many mergers and acquisitions the clause will not be used; and
- The proposal provides pragmatic guidance for situations that are often faced by firms and in many cases codifies existing best practice.

No Board member expressed the view that re-exposure is warranted.

CAG Question

CAG members are asked to consider whether they agree with the IESBA’s preliminary thinking that the changes to the document do not warrant re-exposure.