

## **PRELIMINARY DRAFT WORDING**

### *Conflicts of Interest*

- 100.17 A professional accountant may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to other fundamental principles. Such threats may be created by:
- Conflicts between the interests of two or more parties for whom the professional accountant undertakes professional activities; or
  - Conflicts between the interests of the professional accountant and the interests of a party for whom the professional accountant undertakes a professional activity.
- 100.18 Parts B and C of this Code discuss conflicts of interest for professional accountants in public practice and professional accountants in business, respectively.

## **SECTION 220**

### **Conflicts of Interest**

- 220.1 A professional accountant in public practice, including a firm, may be faced with a conflict of interest when performing a professional service for a client. A conflict of interest creates a threat to objectivity and may create threats to other fundamental principles. Such threats may be created by:
- Conflicts between the interests of two or more clients; or
  - Conflicts between the interests of the professional accountant in public practice and the interests of a client.
- 220.2 Examples of situations in which a conflict of interest may arise include:
- Preparing a valuation of assets for each spouse in a divorce proceeding;
  - Performing litigation services for the plaintiff in connection with a lawsuit filed against a client of the professional accountant's firm;
  - Representing two clients who are trying to acquire the same target company;
  - Representing two clients who are in a dispute with each other, for example, two shareholders who are disputing the distribution of assets on the dissolution of their company;
  - Possessing information about one client obtained under a duty of confidentiality that is important to the fulfillment of an assurance engagement for another client;
  - Recommending that a client invest in a business in which the professional accountant in public practice or firm has a financial interest; and
  - Advising a client on the purchase of an information system while having a license agreement with a potential software vendor.
- 220.3 A professional accountant in public practice, including a firm, shall take reasonable steps to identify circumstances that might give rise to a conflict of interest both when accepting

a new engagement and during the course of an engagement. It is possible that the nature of an engagement may change during the course of the engagement. This is particularly true when a professional accountant in public practice is asked to conduct an engagement that is potentially adversarial, even though the parties who engage the firm may not initially be in contention.

- 220.4 When identifying and evaluating interests and relationships that might give rise to a conflict of interest and implementing safeguards, when necessary, the professional accountant in public practice shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that compliance with the fundamental principles was compromised.
- 220.5 In identifying and evaluating whether a conflict of interest may be created, and in particular before accepting a new client relationship, engagement, or business relationship, a professional accountant in public practice, including a firm, shall:
- Understand the nature of the relationships between the parties involved and any relevant interests;
  - Understand the nature of the service and its implication to relevant parties;
  - Evaluate the significance or materiality of relevant interests or relationships;
  - Evaluate the extent to which any professional service performed for more than one client subject to a conflicting interest is related to that interest. In general, the more direct the relationship between the professional service and the matter on which the clients' interests are in conflict, the more significant are the threats that arise; and
  - Evaluate any potential conflicts of interest that the professional accountant has reason to believe are created by network firm interests and relationships.

The professional accountant in public practice shall be alert to potential conflicts of interest that may arise during the course of an engagement.

- 220.6 An effective conflict identification process assists a professional accountant in public practice to identify potential conflicts prior to accepting an engagement and throughout an engagement. The earlier a potential conflict is identified, the greater the chance the professional accountant in public practice will be able to implement safeguards to eliminate the threat or reduce it to an acceptable level. The process by which a firm shares information in order to identify conflicts of interest will vary and depends on such factors as:
- The nature of the professional services provided;
  - The size of the firm;
  - The size and nature of the client base; and
  - The structure of the firm, for example, the number of office locations, whether the firm is a member of a network, and whether the firm is multi-national.

When sharing information within the firm or network about relationships and interests, the professional accountant in public practice shall be mindful of the fundamental principle of confidentiality.

- 220.7 A professional accountant in public practice shall evaluate the significance of the threat to objectivity and any threat to compliance with other fundamental principles created by a conflict of interest and shall apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. A safeguard that is generally necessary is to disclose the nature of the conflict to the client and all known relevant parties and to obtain consent from the client and such other parties to perform the professional service. If the consent is obtained verbally, the professional accountant is encouraged to document such consent. In certain circumstances, the consent obtained from any relevant party may be implied by the party's conduct in keeping with common commercial practice. When making any such disclosure, the professional accountant in public practice shall be mindful of the fundamental principle of confidentiality.

Examples of other safeguards include:

- Use of separate engagement teams when performing professional services for two or more clients with conflicting interests;
- Structuring engagements so as to benefit from any institutional mechanisms already existing within a firm that are designed to prevent unauthorized disclosure of information when performing professional services for two or more clients with conflicting interests. Alternatively, such barriers might be specially created for the purposes of particular conflicting engagements. In either case, such barriers might include:
  - Maintaining or establishing policies and procedures to limit access to client files;
  - Securing confidential client information by physical and/or electronic means;
  - The use of confidentiality agreements signed by employees and partners of the firm; and
  - Designating a senior individual within the firm, not involved in any conflicting engagement, to oversee the operation of the barriers.
- Seeking guidance of third parties, such as consulting with a professional regulatory body or another professional accountant. When seeking advice, the professional accountant in public practice shall be mindful of the fundamental principle of confidentiality.

- 220.8 Where a conflict of interest creates a threat to one or more of the fundamental principles that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant in public practice shall:

- Decline to perform or discontinue professional services that could result in the conflict of interest; or
- Terminate certain relationships or interests to eliminate the conflict.

## SECTION 310

### Conflicts of Interest

310.1 A professional accountant in business may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to other fundamental principles. Such threats may be created by:

- Conflicts between the interests of two or more parties, including an employing organization, a vendor, a customer, a lender, a shareholder, or another party, for whom the professional accountant in business undertakes professional activities; or
- Conflicts between the interests of the professional accountant in business and the interests of a party, including an employing organization, a vendor, a customer, a lender, a shareholder, or another party, for whom the professional accountant in business undertakes a professional activity.

310.2 Examples of situations in which conflicts of interest may arise include:

- A professional accountant in business serves on the Board of Directors of two companies and is privy to confidential information of one company that impairs the professional accountant's ability to make decisions objectively with respect to the other company due to the fact that such information could be used by the professional accountant to the advantage or disadvantage of the other company;
- A professional accountant in business undertakes a professional activity for each of two parties to assist them to dissolve their partnership;
- A professional accountant in business is asked to prepare financial information for certain members of management who are seeking to undertake a management buy-out;
- A professional accountant in business is responsible for selecting a vendor for the accountant's employing organization and an immediate family member of the professional accountant owns one of the potential vendors; and
- A professional accountant in business serves on a Board of Directors that is approving certain investments for the company. If the Board approves a specific investment it will increase the value of the professional accountant's own personal investment portfolio.

310.3 When identifying and evaluating the interests and relationships that might give rise to a conflict of interest and implementing conflict management techniques, where necessary, the professional accountant in business shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that compliance with the fundamental principles was compromised.

310.4 In identifying and evaluating whether a conflict of interest may exist, the professional accountant shall:

- Understand the nature of the relationships between the parties involved and their relevant interests;
- Evaluate the significance or materiality of relevant interests or relationships;

- Evaluate the extent to which the professional activity is relevant to the competing or conflicting interests. In general, the more direct the relationship between the professional activity and the matter on which the parties' interests are competing or in conflict, the greater the threats created.

When identifying and evaluating a conflict of interest, the professional accountant in business may wish to consult with others such as another professional accountant or a member body.

310.5 The professional accountant in business shall evaluate the significance of any threat to objectivity or compliance with other fundamental principles created by a conflict of interest and shall apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. The professional accountant in business shall determine whether to discuss the nature of the conflict of interest at the appropriate level within the employing organization, where relevant, and may consult with others, such as another professional accountant or a member body. Depending on the circumstances giving rise to the conflict of interest, application of one or more of the following conflict management techniques may serve as an appropriate safeguard:

- (a) Disclosing the nature of the conflict of interest to the relevant parties and obtaining their consent to undertake the professional activity. In certain circumstances consent may be implied by a party's conduct; or
- (b) Structuring certain responsibilities and duties to reduce the threat to an acceptable level. This could include segregation of duties or obtaining appropriate oversight.

When implementing appropriate conflict management techniques the professional accountant in business shall be mindful of the fundamental principle of confidentiality.

310.6 If safeguards cannot eliminate or reduce the threat to an acceptable level, professional accountants in business shall not undertake the professional activity or terminate the interest or relationship that would create the conflict of interest.