

**Review of Part C of the Code – Phase 2
Section 350, Inducements¹****Background and Introduction**

1. In addition to considering the applicability of the provisions in Part C to professional accountants in public practice (PAPPs), Phase 2 of the project also requires a review of extant Section 350.
2. The approved Part C project proposal highlighted some issues that the Task Force should consider under Phase 2 of the project:
 - Whether additional guidance is needed to assist the professional accountant in business (PAIB) when encountering the making of offers of inducements and how this might overlap with Section 360,² especially as relates to bribery, corruption and facilitation payments.
 - Whether additional guidance that acknowledges the diversity of cultures would be helpful to PAIBs working across different cultures and jurisdictions.
 - Whether proposed changes to Section 350 will require conforming changes to Section 260,³ as PAIBs and PAPPs would be expected to abide by the same ethical standards.
3. The Task Force began work on Section 350 at its November 2014 meeting, where representatives of Transparency International UK (TI) were invited to present on the nature of TI's work to the Task Force. The TI representatives gave a similar presentation at the January 2015 IESBA meeting. In addition, the Task Force reviewed literature and guidance from other organizations regarding the offering and accepting of inducements to ascertain how these organizations had approached the topic.
4. The Task Force then reviewed the extant wording of Section 350 and considered where enhancements might be needed. An agenda paper was presented at the January 2015 IESBA meeting proposing various revisions to Section 350. IESBA's response to these proposals included the following:
 - The scope of Section 350 needs to be more clearly defined. In this regard, consideration should be given to a GAP analysis to identify areas in Section 350 where improvements could be made.
 - Given the plethora and complexity of rules and regulations relating to bribery and corruption, it would not be advisable to seek to develop guidance on how to follow these rules or how to address each one of them individually. Instead, the Code should emphasize the need to understand and abide by applicable laws and regulations and guide the PAIB on how best to act ethically in the circumstances.
5. The Task Force presented the requested GAP analysis to the Board at its April 2015 meeting. Subsequently, work on Phase 2 was deferred pending completion of Phase 1 of the project.
6. With Phase 1 now completed, the Task Force refocused on Phase 2 at its May 2016 meeting where,

¹ All paragraph and section references within this agenda paper are to extant guidance, unless otherwise stated.

² Section 360, *Non-Compliance with Laws and Regulations (NOCLAR)*

³ Section 260, *Gifts and Hospitality*

based on Board feedback on the GAP analysis, the Task Force considered enhancements that could be made to Section 350.

Summary of Recent Task Force Deliberations and Conclusions Reached

7. The remit of the IESBA's work is to provide ethical guidance to professional accountants (PAs). The main objective of this part of the project is therefore to provide guidance to PAs on how to address the offering and receiving of gifts and hospitality while respecting the fundamental principles, especially integrity and objectivity. Another objective is to raise awareness of the offering and receiving of gifts and hospitality and the potential implications that failure to comply with the fundamental principles might have on the public's trust in PAs and the profession in general.
8. Bribery and corruption are significant problems in many jurisdictions and carry major public interest issues. Similarly, there is a growing consensus that facilitation payments are a form of bribery and should not be differentiated from other forms of corruption. It is the view of the Task Force that Section 350 should deal with ethical behavior and not with illegal acts. However, the Task Force believes that it is important that the Code clarifies that by acting unethically in these areas, and not respecting the fundamental principles, there is a risk that the PA might commit an illegal act, with bribery and corruption being the most likely. Based on this, the Task Force believes that Section 350 should contain a reminder that PAs must abide by applicable laws and regulations along with a mention to consider guidance in Section 360 and Section 370⁴ if necessary.
9. Consequently, it is also the Task Force's view that the Code should not specifically focus on facilitation payments. If facilitation payments are illegal in a jurisdiction they will be covered by legislation. If they are not illegal, the principles-based guidance in Section 350 should be written in a manner that would provide guidance to a PA in assessing whether offering or receiving a facilitation payment is unethical. The same view would apply to political lobbying. Legislation relating to political lobbying will vary by jurisdiction and hence PAs should follow applicable legislation where appropriate. The PA should then utilize the guidance within Section 350 for situations that are not covered by legislation but contain potential ethical dilemmas.
10. The Task Force also believes that specific guidance on commission payments was not needed in Section 350. As with facilitation payments, a principles-based approach would result in guidance being drafted in a manner that it would also be applicable to commission payments that could be unethical.
11. Views on what would be considered an acceptable or unacceptable gift or hospitality vary between different cultures and jurisdictions, with cultural norms and expectations potentially influencing the offering and acceptance of gifts and hospitality. However, this fact is not new and would likely have been considered when Section 350 was first introduced into the Code. The Task Force believes this issue can only be addressed using a principles-based approach. The Task Force proposes that the Board maintain this approach in Section 350. In light of this, Task Force deliberations over factors that a PA should consider when evaluating a threat created by an inducement has taken into account cultural differences.

⁴ Section 370, *Pressure to Breach the Fundamental Principles*

12. Ethical guidance on how to address gifts and hospitality should be consistent regardless of whether the PA is a PAIB or a PAPP. The intent of the Task Force is to initially address the Board's views on proposed amendments to Section 350 before proposing conforming changes to Part B, primarily to Section 260.

Matters for Consideration

1. Members are asked for their views on the Task Force's suggestions on how to address the following in the Code:
 - (a) Bribery and corruption.
 - (b) Cultural differences.
 - (c) Conforming changes to Section 260.

Preliminary Task Force Proposals "Straw Man"

13. In order to present a framework on how to revise Section 350 and thereby also clarify the scope of this phase of the project, the Task Force has considered the following straw man:

TITLE OF SECTION 350

14. The suitability of the current heading of Section 350, "Inducements," has been questioned on several occasions, both within the Task Force and within the Board. Notably, concerns relating to the word "inducement" included the following:
 - While it has a clear definition in English, it might be difficult to translate.
 - It has a negative connotation.
 - It is unlikely to be the search term used when looking for guidance in the Code.
15. Several alternatives have been discussed, including "gifts and hospitality," "benefits," "incentives" and "advantages." From these, the Task Force's preference is to replace "inducements" with "gifts and hospitality." The Task Force acknowledges that the proposed wording might appear to narrow the scope of situations that the section covers, but felt that the value of using these words would be to make the scope clearer. In addition, the phrase "gifts and hospitality" is consistent with terminology used in Section 260.
16. Guidance in Section 350 relates to common, frequently occurring situations in which a PA is being offered or is offering an inducement, with the proposed title better relating to such situations. It would also likely increase the attention given to this section as PAs utilizing an electronic code would more likely search the words "gifts" and "hospitality."
17. The phrase "gifts and hospitality" is also more neutral and therefore implies that the Code provides guidance on situations that are both acceptable and unacceptable. In addition, after reviewing similar codes and the title of Section 260, the term appears to be a fairly standard way of introducing this subject.

Matters for Consideration

2. Members are asked for their views on replacing “inducements” with “gifts and hospitality.”

INTRODUCTORY PARAGRAPHS

18. The Task Force proposes a paragraph to establish the context of the guidance by referring to the conceptual framework and by stating the objective of the section; namely to provide ethical guidance to PAs, or their immediate or close family, in the offering and receiving of gifts and hospitality.
19. The introductory guidance should be linked to the fundamental principles of integrity and objectivity and include a reminder of the responsibility of a PA to abide by applicable laws and regulations, explicitly as they relate to bribery and corruption.
20. While guidance in Section 350 is written using a principles-based approach, to account for jurisdictional and cultural differences, PAs should be encouraged to supplement the guidance in this section with more specific policies and procedures from within their employing organizations.

TYPES OF GIFTS AND HOSPITALITY

21. The Task Force was of the view that any revised guidance should address the various types of gifts and hospitality that may be offered along with possible examples. Different types of gifts and hospitality might include:
- Cash gifts and hospitality that can easily be converted into cash.
 - Non-cash gifts, such as corporate hospitality, entertainment, vacation or use of third party property.
 - Specific types of gifts or hospitality such as favors, charitable or political donations.

OFFERING AND RECEIVING GIFTS AND HOSPITALITY

22. In order not to be unnecessarily repetitive, the Task Force proposes that the offering and receiving of gifts and hospitality should be dealt with simultaneously. However, it should also be noted that the majority of guidance will invariably concern the PA receiving gifts or hospitality, as is the case in the extant Code.

IDENTIFYING THREATS

23. The GAP analysis considered that guidance in Section 350 relating to threats to the fundamental principles could be enhanced. The Task Force is thus of the view that the paragraphs proposed above should be followed by guidance on “Identifying Threats.” This would align with the restructured Section 300.⁵

⁵ Section 300, *Introduction*

24. Guidance here would need to consider the nature of threats that would be applicable to these issues along with examples. The Task Force considered that the following would enhance the guidance:

- Self-interest threats: The Task Force is of the view that self-interest threats could arise due to the offering and receiving of gifts and hospitality, as the gift or hospitality could be made with the ulterior intention of gaining an otherwise unavailable advantage.

Possible examples of a self-interest threat could be:

- *A PA offers a gift or hospitality to an individual in order to persuade him or her to make a business decision, such as purchasing from a certain supplier that would directly or indirectly benefit the PA.*
- *A PA offers a gift to a colleague in order for him or her to accept a specific accounting position, such as an accounting treatment that influences the financial statements to the benefit of the employing organization which then indirectly also benefits the PA.*
- Familiarity threats: Section 350 does not address familiarity threats. The Task Force is of the view that a familiarity threat might arise if the offering or receiving of a gift or hospitality results in the relationship between the PA and another individual, such as a vendor or customer, becoming too close, whether on a professional or personal level, and thus affecting the PA's professional judgement.

The frequency of the gift or hospitality would be a key factor in how the relationship between the PA and another individual is affected by the gift or hospitality. If the frequency is sufficient to make the relationship too close, it could impact the objectivity of the PA.

In addition, the Task Force believes that it would be better if an example of a familiarity threat involved the offering or receiving of hospitality rather than a gift. Hospitality would likely involve more personal interaction between the individual offering or receiving the hospitality and the PA and hence increase the likelihood that it will affect the nature of the relationship.

- Intimidation threats: The Task Force considered that the extant guidance⁶ on intimidation threats is acceptable but could be further enhanced by providing clarity in certain areas. For example, a reminder could be added to clarify that the PA could inadvertently misinterpret the intent behind a gift or hospitality. Therefore, the PA could place himself or herself in a position of being exposed to an intimidation threat in the future should the PA be expected to return the favor, or be threatened that disclosure of the gift or hospitality will be made, at a later date.

25. The Task Force also considered whether self-review or advocacy threats might arise due to the offering or receiving of gifts and hospitality. It was unable to conclude on a plausible situation in which a self-review threat or pure advocacy threat would occur. The Task Force felt that any situation where an advocacy threat might occur would overlap with self-interest threats and hence not need specific guidance.

⁶ Extract from paragraph 350.2: Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the professional accountant in business or an immediate or close family member.

EVALUATING THREATS

26. Once the type of threat linked to the gift or hospitality has been established, guidance is needed on evaluating the level of the threat to compliance with the fundamental principles. Such guidance should provide factors that a PA should consider when being offered or offering such a gift or hospitality in order to conclude whether the offer creates a threat. This can include:
- The intent behind the gift or hospitality.
 - The value, frequency and nature of the gifts or hospitality. Guidance should note that gifts or hospitality received or offered on a regular basis, especially to or from the same party, could result in the PA becoming less mindful to the fact that such gifts and hospitality, in totality, could create a threat.
 - The occasion that has given rise to the gift or hospitality, such as a religious holiday or wedding.
 - Whether the acceptance of the gift or hospitality can be directly associated with the active conduct of business.
 - Whether the gift or hospitality is specific to an individual or available to a broader group. The broader group might be internal to the employing organization or external to the employing organization, such as other customers or vendors.
 - The roles and positions of the individuals offering and being offered the gift or hospitality.
 - The significance or materiality of the gift or hospitality to the individual(s) offering and being offered the gift or hospitality.
 - Policies and procedures of the employing organization of the individual offering or receiving the gift or hospitality.

ADDRESSING THREATS

27. Once the PA has established that the gift or hospitality creates a threat to compliance with the fundamental principles, guidance is needed on how to address this threat. The Task Force considered that the extant guidance does not contain examples of safeguards and could be enhanced with the addition of examples. These could include:
- Registering the gift or hospitality in a log.
 - Obtaining permission from senior management of the employing organization or those charged with governance when a gift or hospitality is offered.
 - Consulting with a senior colleague or professional organization on the gift or hospitality.
 - Recusing from making any business-related decisions relating to the individual or organization, such as a customer or vendor, to whom the PA offered or received the gift or hospitality.
 - Secondary reviews of any work performed or decisions made by the PA with respect to the individual or organization from which the PA received or offered the gift or hospitality.

28. Revised guidance would clarify that during the entire process of receiving or offering gifts and hospitality the PA is expected to apply appropriate professional judgement. The Task Force felt that use of the reasonable and informed third party test would be appropriate in this context.
29. The Task Force noted that some of the terms in the extant guidance, such as “insignificant and not intended to encourage unethical behavior” and “normal course of business”, could be considered unclear and the guidance could be enhanced if such terms were clarified.
30. This section would also include a reminder that situations may exist where the threat cannot be reduced to an acceptable level. In those situations, the PA must decline offering or receiving the gift or hospitality.
31. The Task Force is of the view Section 350 should require the PA not to offer a gift or hospitality with the intention of improperly influencing the professional judgement of another individual or organization, as doing so would breach the fundamental principles of integrity and objectivity.

Matters for Consideration

3. IESBA members are asked for views on the Task Force’s preliminary proposals or “straw man”.