

**Meeting:** IESBA CAG

**Meeting Location:** Madrid, Spain

**Meeting Date:** September 13, 2017

## Agenda Item

# D

### Review of Part C of the Code

#### Objectives of Agenda Item

1. To report back on the March 2017 CAG discussions relating to the revision of inducement provisions in the extant Code, and related proposed conforming amendments (inducements provisions).
2. To discuss the summary of significant comments on the Exposure Draft (ED), [\*Proposed Revisions to Clarify the Applicability of Provisions in Part C of the Extant Code to Professional Accountants in Public Practice\*](#) (Applicability ED) and seek input from CAG representatives.

#### Project Status and Timeline

3. In 2012, IESBA commenced work with the aim of exploring whether the strengthening of Part C is needed to better promote ethical behavior by professional accountants in business (PAIBs). In March 2013, the IESBA approved the Review of Part C<sup>1</sup> of the Code Project (Part C project) to revise Part C of the extant Code in two phases:
  - (a) Phase 1, which addressed mainly the topics of pressure to breach the fundamental principles, and the preparation and presentation of information. The IESBA completed Phase 1 in December 2015 with the approval of the close-off document [\*Changes to Part C of the Code Addressing Preparation and Presentation of Information, and Pressure to Breach the Fundamental Principles\*](#) (Part C close-off document). This includes revisions to Section 320<sup>2</sup>, a new Section 370<sup>3</sup> and conforming amendments to other sections of Part C. Those revisions were drafted in accordance with the structure and drafting conventions of the extant Code.
  - (b) Phase 2 which involves a review of the provisions relating to inducements in the extant Code.

#### Phase 1

##### Restructuring

4. As part of its project to restructure the Code for greater understandability and usability (the Structure of the Code project), the IESBA issued for exposure in January 2017, *inter alia*, the proposed restructured text for the Part C close-off document. These proposals are included in the January 2017, Exposure Draft (ED), [\*Improving the Structure of the Code of Ethics for Professional\*](#)

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<sup>1</sup> Extant Part C – Professional Accountants in Business

<sup>2</sup> Extant Part C, Section 320, *Preparation and Reporting of Information*

<sup>3</sup> Extant Part C, Section 370, *Pressure to Breach the Fundamental Principles*

[Accountants – Phase 2](#) (Structure ED-2). The proposals in Structure ED-2 also include proposed conforming amendments arising from the IESBA's Safeguards project (see ED, [Proposed Revisions Pertaining to Safeguards in the Code—Phase 2 and Related Conforming Amendments](#) (Safeguards ED-2)). The restructuring of the Code is not intended to change its meaning. The comment period for Structure ED-2 closed on May 25, 2017. The Structure Task Force will present the significant matters arising from the comments received on Structure ED-2 at the September 2017 CAG meeting.

5. The IESBA has determined that the revisions relating to Phase 1 of the Part C project will become effective at the same time as the proposed restructured Code.

#### Applicability ED of Extant Part C to PAPPs

6. As part of its review of extant Part C, the IESBA resolved to address questions that arose during its deliberations in Phase 1 of the project about the applicability of the provisions in Part C to PAPPs, i.e., professional accountants in firms who provide professional services to clients. In January 2017, IESBA released the Applicability ED which includes proposals to add certain “applicability paragraphs” to the Code to clarify the circumstances in which the revised Phase 1 provisions should also apply to PAPPs. The deadline for comments on the Applicability ED was April 25, 2017.
7. Agenda Item D-1 summarizes the significant matters arising from the respondents’ comments on the Applicability ED and related Task Force proposals.

#### Phase 2

8. Taking into account the input received from the CAG, at its June 2017 meeting, the IESBA approved for exposure proposed revisions to the extant Code regarding:
  - (a) The offering and accepting of inducements by professional accountants in business<sup>4</sup> (PAIBs) and professional accountants in public practice<sup>5</sup> (PAPPs); and
  - (b) Related conforming amendments to the independence provisions relating to gifts and hospitality.<sup>6</sup>
9. The Exposure Draft, *Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements* will be released in due course and an electronic copy will be circulated to the CAG in advance of the September 2017 meeting.
10. Appendix 1 provides the project history for the Part C project.

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<sup>4</sup> Extant Part C, Section 350, *Inducements*

<sup>5</sup> Extant Part B – Professional Accountants in Public Practice, Section 260, *Gifts and Hospitality*

<sup>6</sup> Extant Part B, Section 290, *Independence – Audit and Review Engagements*, paragraph 290.225 and Section 291, *Independence – Other Assurance Engagements*, paragraph 291.155

## Report Back on March 2017 CAG Discussion

11. Below are extracts from the draft minutes of the March 2017 CAG meeting<sup>7</sup> and an indication of how the project Task Force and/or IESBA has responded to the CAG's comments.

Matters Raised	Task Force/IESBA Response
BRIBERY AND CORRUPTION	
<p><i>In Favor of a Definition of Bribery and Corruption</i></p> <ul style="list-style-type: none"> <li>Mr. James felt that the IESBA, as a global standard setter, has a responsibility to attempt to devise a definition of bribery and corruption. He felt the Task Force's concern that a definition in the Code could conflict with national definitions was unwarranted as the Code differed from local laws and regulations in several aspects. When such a conflict arises, there is an expectation for PAs to follow national legislation. He suggested that while a perfect definition might not be feasible, an "aspirational" definition could be included within the proposals, with an emphasis on jurisdictions to address any conflicts that this definition might create with national laws and regulations.</li> <li>Messrs. Inuma, Thompson, van der Ende, and Yurdakul expressed agreement with Mr. James that the IESBA should take the lead in devising a definition. Mr. van der Ende noted that the Basel Committee had included caveats to address conflicts between its standards and national standards.</li> </ul> <p><i>Against a Definition of Bribery and Corruption</i></p> <ul style="list-style-type: none"> <li>Messrs. Baumann, Bradbury, Dalkin, Fortin and Sobel, and Mss. Borgerth, Elliott, Lang, Molyneux, Perera, Robert and Singh felt that</li> </ul>	<p>Points taken into account.</p> <p>The IESBA deliberated the need to define bribery and corruption and concluded that the inclusion of an "intent" test in the proposals obviates the need to define such terms. The IESBA is of the view that the inclusion of an "intent" test in the proposals significant raises the bar of acceptable ethical behavior by professional accountants, and more so than attempting to define bribery and corruption. For instance, the offering of any inducement that is intended to improperly influence the behavior of a professional accountant, even if not prohibited by law or regulation, would be prohibited under the proposals.</p> <p>It is also noted that the definitions of illegal bribery and corruption may vary from jurisdiction to jurisdiction. As such, establishing a definition of these terms in a global Code could create confusion in how it should be applied in a local setting. Accordingly, the IESBA agreed that such a definition is not warranted.</p> <p>Albeit a moot point, the IESBA considered whether to include a reference to external definitions of bribery and corruption. The IESBA concluded that this option was not feasible as there does not appear to be any globally accepted definitions of these terms.</p>

<sup>7</sup> The draft March 2017 minutes will be approved at the September 2017 IESBA CAG meeting.

Matters Raised	Task Force/IESBA Response
<p>a definition was unnecessary. The following comments were noted:</p> <ul style="list-style-type: none"> <li>• Mr. Dalkin believed there was no need for a definition given possible problems arising from conflicts with national definitions. Ms. Robert supported this view.</li> <li>• Ms. Borgerth felt that since bribery and corruption are known terms, even from a non-native English speaker's perspective, a definition would not add any value.</li> <li>• Ms. Elliott supported the inclusion within the proposals of references to the NOCLAR standard and jurisdictional definitions of bribery and corruption.</li> <li>• Ms. Robert felt that it would not be within the IESBA's mandate to write legislation.</li> <li>• Ms. Molyneux queried the scope of the OECD definition of bribery and corruption. Ms. Elliott indicated that the OECD definition related specifically to bribery of foreign public officials.</li> </ul>	
<b>USE OF TERM "INDUCEMENTS"</b>	
<ul style="list-style-type: none"> <li>• Ms. Molyneux conveyed some surprise regarding the use of "inducement" as a neutral term. She felt that the term has a negative connotation and is used to instigate unethical behavior.</li> <li>• Ms. Lang also believed that "inducement" has a negative connotation. However, she added that the classification was irrelevant as the real issue is whether an inducement is being made with an intent to adversely influence another individual. Ms. Robert and Mr. Sobel agreed.</li> </ul>	<p>Points taken into account.</p> <p>The IESBA noted a concern among some about using the word "inducements". There was a view that the term is understood by some as having a negative connotation. The IESBA believes that this concern could be addressed by providing a broad and neutral description of "inducements." Accordingly, the proposed application material clarifies that an inducement:</p> <ul style="list-style-type: none"> <li>• Is an object, situation or action that is used as a means to influence another individual's behavior.</li> <li>• Is not necessarily used with the intent to improperly influence an individual's behavior.</li> <li>• Can range from minor acts of hospitality between business colleagues to acts that</li> </ul>

Matters Raised	Task Force/IESBA Response
	<p>result in non-compliance with laws and regulation.</p> <p>Upon deliberations, the IESBA maintained its view that the term “inducement” in the context of the Code should be broad and neutral and should not necessarily refer to situations when there is an intent to improperly influence the behavior of another person. Whilst acknowledging that the term is often used in contexts that have negative connotations, the IESBA is of the view that an inducement can also be used to influence another person to act in a manner that is not unethical.</p>
INTENT AND REASONABLE AND INFORMED THIRD PARTY (RITP) TESTS	
<i>General</i>	
<ul style="list-style-type: none"> <li>Mr. Inuma suggested the need for additional guidance to judge the materiality of any threat to compliance with the fundamental principles that might accompany an inducement.</li> </ul>	<p>Point noted.</p> <p>The conceptual framework set out in Section 120 of the proposed restructured Code includes application material to explain that evaluating the level of threats involves a consideration of both qualitative and quantitative factors.</p> <p>The topic of materiality is included in the IESBA <a href="#">2017 IESBA Strategy Survey</a> document.</p>
<ul style="list-style-type: none"> <li>Ms. Lang suggested consideration of whether an inducement might appreciate over time and how the increased value might affect any perceived intent.</li> </ul>	<p>Point taken into account.</p> <p>Guidance material in the inducements Exposure Draft provides that the nature, frequency and value of an inducement is a relevant factor to be taken into consideration when determining the intent behind that inducement.</p> <p>Further, Section 120 requires a professional accountant to re-evaluate and address a threat when he or she becomes aware of new information or changes in facts and circumstances might impact whether a threat has been eliminated or reduced to an acceptable level.</p>

Matters Raised	Task Force/IESBA Response
<i>Use of the RITP Test</i>	
<ul style="list-style-type: none"> <li>Mr. Fortin felt that the RITP test should be used to assess whether an inducement might affect the PA's ability to perform his or her duties impartially, regardless of the actual or perceived intent.</li> </ul>	<p>Point accepted.</p> <p>Section 120 of the proposed restructured Code requires a professional accountant to use the RITP test when identifying, evaluating and addressing threats to compliance with the fundamental principles.</p> <p>Therefore, in evaluating the level of threats to fundamental principles created by the offering or accepting of an inducement, a professional accountant must apply the RITP test.</p>
<ul style="list-style-type: none"> <li>Ms. McGeachy-Colby and Mr. Dalkin also expressed support for the RITP test.</li> </ul>	<p>Support noted.</p>
<i>Intent Test</i>	
<ul style="list-style-type: none"> <li>Ms. Robert was of the view that since the factors to assess intent and to evaluate threats were the same, intent could be classified as a threat and evaluated along with the other threats.</li> <li>Mr. James expressed the view that the need to assess the intent behind an inducement related to the decision to treat inducement as neutral. If an inducement were viewed negatively, there would automatically be a need to consider threats to compliance with the fundamental principles. He noted that other sections within the Code commenced with a negative proposition regarding the ethical dilemma followed by guidance to address threats that might be created by the situation.</li> </ul>	<p>Pointed taken into account.</p> <p>The IESBA has clarified the proposals from the draft which was presented to the CAG to clarify that:</p> <ul style="list-style-type: none"> <li>(a) When a professional accountant encounters circumstances of inducement that might involve bribery or corruption, the professional accountant is required to understand and comply with relevant laws and regulations that relate to bribery and corruption.</li> <li>(b) Where an inducement is illegal, the professional accountant should:                         <ul style="list-style-type: none"> <li>(i) Determine whether there is actual or perceived intent to improperly influence the behavior of the recipient. If there is such actual or perceived intent, the Code would prohibit offering or accepting the inducement even if it is</li> </ul> </li> </ul>

Matters Raised	Task Force/IESBA Response
	<p>trivial and inconsequential.</p> <p>(ii) In the absence of actual or perceived intent to improperly influence behavior and unless the inducement is trivial and inconsequential, apply the conceptual framework set out in Section 120 to identify, evaluate and address any threats to compliance with the fundamental principles that might be created.</p> <p>To avoid repetition, the IESBA proposes to address the offering and accepting of inducements simultaneously within the provisions.</p>
TRIVIAL AND INCONSEQUENTIAL	
<p>Mr. Inuma noted that from his non-native English speaker's perspective, the words "trivial" and "inconsequential" were essentially the same.</p>	<p>Point taken into account.</p> <p>The phrase "trivial and inconsequential" is not a new phrase and has longstanding history in the extant Code in relation to the guidance material on receiving gifts and hospitality.</p>
IMMEDIATE OR CLOSE FAMILY MEMBER (ICFM)	
<ul style="list-style-type: none"> <li>Ms. Molyneux suggested that it might be beneficial for the IESBA to consider whether the current glossary definitions for "immediate family" and "close family" are too narrow. She elaborated that in certain regions of the world, relatives who would not fall within the current definitions of "immediate family" and "close family" would still be considered ICFMs.</li> </ul>	<p>Point noted.</p> <p>The determination of whether to define the terms "close family" and "immediate family" requires broader consideration and is therefore out of scope for the Part C project. For example, the Part C Task Force believes that any changes to the definitions of these terms may have significant impact on the International Independence Standards and must be duly considered.</p>
<ul style="list-style-type: none"> <li>Mr. Koktvedgaard wondered whether the OECD guidance contained definitions for ICFM. Ms. Elliott indicated that she was not aware of any definitions. Ms. Molyneux noted that the IAS 24<sup>8</sup> definition of immediate family</li> </ul>	

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<sup>8</sup> International Accounting Standard (IAS) 24, *Related Party Disclosures*

Matters Raised	Task Force/IESBA Response
member is used as a starting point for the ICGN's principles. Even then, however, she viewed that definition as quite narrow.	

12. The CAG Representatives are asked to note the report back and share any reactions.

### Material Presented

Agenda Item D-1      Revision of Part C of the Code, Applicability — Issues and Task Force Proposals

### Material Presented – FOR IESBA CAG REFERENCE PURPOSES ONLY

[link to be provided]      Exposure Draft, *Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements*



## Appendix 1

### Project History

#### Project: Review of Part C of the Code

##### Summary

	CAG Meeting	IESBA Meeting
Project commencement		<a href="#">March 2013</a>
Development of proposed international pronouncement (up to exposure)	<a href="#">April 2013</a>	<a href="#">January 2015</a>
1. Review of Part C Phase 1	<a href="#">September 2014</a>	<a href="#">April 2015</a>
2. Review of Part C Phase 2	<a href="#">September 2016</a>	<a href="#">June 2016</a>
• Applicability	<a href="#">March 2017</a>	<a href="#">September 2016</a>
• Inducements		<a href="#">December 2016</a>
		<a href="#">March 2017</a>
		<a href="#">May 2017</a>
		<a href="#">June 2017</a>