

Review of Part C of the Code— Pressure to Engage in Unethical or Illegal Acts (“Pressure”)

A. Introduction

1. The project proposal approved by the IESBA in March 2013 with regard to Section 340¹ stated:

Consideration should be given to whether the motivations of professional accountants in business (PAIBs) as addressed in Section 340 should be expanded beyond financial interests. These motivations are closely linked to the pressure to act inappropriately in Section 320,² and in extant Section 310³ (which will be replaced by the revised provisions on conflicts of interest). Dealing with these motivations under one heading related to pressure may make the Code clearer. This could include threats and safeguards to help the PAIB who is being pressured to act inappropriately by those in a superior position.

A senior PAIB may pressure a subordinate in relation to an accounting irregularity. Paragraph 300.5 refers to the importance of encouraging an ethics-based culture, but there is no other requirement for a senior PAIB not to inappropriately pressure subordinates. Consideration should be given to whether the Code should require a senior PAIB not to inappropriately pressure subordinates.

A Revised Structure for Section 340

2. It was noted in the project proposal that extant Section 340 is too narrowly described in relation to Pressure and the references to Pressure in extant Section 310 are being deleted as part of the Conflicts of Interest project. Therefore it was proposed that Section 340 is deleted and replaced with a revised wording on “Pressure.”
3. Revised Section 310⁴ is consistent with the Code’s Conceptual Framework and provides guidance to PAIBs. It was proposed that the revised Section 340 should follow the structure used in revised Section 310, thus providing a framework which is consistent with the underlying Code. The structure would be:
 1. Description of pressure and linkage to fundamental principle(s)
 2. Examples of pressure
 3. Identification of threats to compliance
 4. Evaluation of threats
 5. Application of safeguards

¹ Section 340, *Financial Interests*

² Section 320, *Preparation and Reporting of Information*

³ Section 310, *Potential Conflicts*

⁴ Revised Section 310, *Conflicts of Interest*

4. The Suspected Illegal Acts (SIA) Task Force has proposed two paragraphs as amendments to Section 300.⁵ These were accepted by the Board at the time because it was unclear when or whether section 300 would be the subject of a project. Since the finalization of the SIA project has been pushed back given the significant concerns raised on the exposure draft (with a probable re-exposure of the proposed Section 360),⁶ the Part C Task Force (TF) considered whether it should recommend that the proposed amendments to Section 300 be “transferred” to this project and agreed that it should liaise with the SIA Task Force and be kept informed of any proposed changes to Part C. As the projects are proceeding in parallel, the TF believes any changes to Part C should be synchronized to the extent possible.
5. There are also changes to Section 340, resulting from the Conflicts of Interest project, which have been approved by the IESBA but are not effective until July 2014. The TF worked on the revised version of Section 340.

June 2013 IESBA Discussion

6. The TF’s preliminary thoughts on Pressure were presented to the IESBA at its meeting in June 2013. There was support for the TF view that because inappropriate pressure is subjective, a threats and safeguards approach is tentatively more appropriate than a bright line requirement/prohibition approach. There was also support for the five-part structure outlined above.
7. In addition, there were suggestions at the June 2013 meeting that a new section on Pressure should not replace the revised Section 340, as proposed in the project proposal, but that there should be an additional section on Pressure.

B. One Section (340) vs. Two Sections (340 and 3x0)

8. Following the June 2013 Board meeting, the TF considered the merits of having one section on Pressure as originally contemplated in the project proposal or having an additional section on Pressure. For the reasons articulated below, the TF is proposing that Section 340 be retained and a new Section 3x0 be developed, consistent with the suggestions from some IESBA members at the June 2013 Board meeting.
9. Section 340 addresses circumstances that may create self-interest, familiarity and self-review threats to act unethically due to the motive of *personal* (financial) gain. It is limited and does not address other forms of pressure and motives other than financial gain. It therefore does not provide sufficient guidance for the PAIB facing pressure.
10. From a practical standpoint, an additional section would minimize the changes to section 340 which, as noted above, has been recently revised as a result of the Conflicts of Interest project but which is not yet effective.
11. Section 340 focuses on a critically important ethical issue, i.e., that the potential for financial gains of the PAIB and/or financial gains of others may create a threat to complying with the fundamental

⁵ Section 300, *Introduction*

⁶ Proposed Section 360, *Responding to a Suspected Illegal Act*

principles. The TF proposes that Section 340 remain focused on a specific major problem in accounting.

12. The TF proposes that new Section 3x0 apply to all situations in which pressure from a *superior or colleague (or other party)* to engage in an unethical or illegal act threatens compliance with the fundamental principles. This includes situations specifically addressed by other sections of Part C in which pressure is an additional factor. The TF believes this is the simplest and most straightforward way of producing a section that focuses on pressure of all kinds from others, which was the major issue identified in the Part C Working Group’s surveys that ultimately led to the project proposal. In addition, this new section would fit with the other sections in Part C, in that it would provide guidance on all kinds of situations, including:
 - Undertaking a professional activity for two parties whose interests are in conflict and one or both parties are pressuring the PAIB to act in their best interest (pressure not explicitly addressed in Section 310).
 - Situations in which a PAIB is pressured to engage in unethical or illegal reporting (not related to financial gain of that other person, e.g., because it might be “good” for the business (pressure mentioned in 320).
 - Situations in which a PAIB is pressured by superiors to perform a task without sufficient skills or training or without sufficient time (pressure not explicitly mentioned in Section 330).⁷
 - Situations in which the PAIB might be pressured by a superior or colleague to manipulate reports for their financial gain (pressure mentioned in Section 340).
 - Situations in which the PAIB may be pressured to participate in a bribe (pressure mentioned in Section 350).⁸
13. As indicated, other sections in Part C recognize the possible existence of pressure as an additional factor in the situations addressed in those other sections. However, they do not deal with the pressure in a substantive way. A separate section (3x0) on pressure recognizes that in situations that are addressed in the other sections, pressure may be an additional factor. The Code would then provide guidance to address the ethical matters specific to Sections 310, 320, 330, 340, and 350, and guidance in the new Section 3x0 to address Pressure.
14. The TF is of the view that rewriting Section 340 to address pressures of all kinds as well as the special case of personal gain relating to reporting would be difficult and complex, and might produce a standard that would be very difficult to follow.
15. The TF believes that a new Section 3x0 would enable more detailed guidance to be provided in a clearer way, including a process to follow, relating to Pressure specifically. This would contrast with one section dealing with Pressure and financial interests, compensation and incentives linked to financial reporting and decision making.

⁷ Section 330, *Acting with Sufficient Expertise*

⁸ Section 350, *Inducements*

Structure of Two Sections

16. If there are to be two sections, it is necessary to decide how the new Section 3x0 would fit with the recently amended Section 340, the references to pressure in the superseded version of Section 310 (as a result of the Conflicts of Interest project), the yet to be revised Section 320 and Section 350. Doing so will ensure that the wide range of pressures faced by PAIBs is captured while avoiding sections overlapping.
17. The TF analyzed references to Pressure in Part C using the conceptual framework in order to align pressures to be addressed in Section 3x0 with pressure in other sections in Part C. The Conceptual Framework states that “when a relationship or circumstance creates a threat, such a threat could compromise...compliance with the fundamental principles”. To fit the conceptual framework, “pressure” is the circumstance that creates the threat. Pressure itself is not the threat. Part C, as recently revised, includes the following references to Pressure.

	Circumstance	Threat	Compromise
Section 320 (Preparation and reporting of information)	Pressure	Intimidation	To become associated with misleading information
Section 320	Personal Gain	Self Interest	To become associated with misleading information
Section 340 (Financial Interests, Compensation and Incentives to Linked Financial Reporting and Decision Making)	Financial Interests	Self Interest or self-interest of others	To manipulate price sensitive information
Section 340	Pressure	Intimidation	To manipulate information
Section 350 (Inducements)	Pressure	Intimidation	To offer inducements

18. In addition, extant Section 310 contains the following references to pressure that will soon be superseded as a result of the revision to Section 310 under the Conflicts of Interest project:

	Circumstance	Threat	Compromise
Section 310 (Potential Conflicts)	Pressure	Intimidation	To act contrary to law or professional standards, facilitate unethical earnings management strategies, become associated with misleading reports,

19. The TF examined a number of ways to differentiate matters addressed in Section 340 from a new Section 3x0. The TF considered using the type of threat to differentiate the Sections but agreed that the Code does not generally allocate a particular “relationship or circumstance” to a particular type of threat. Section 340 is focused on financial interests and financial gain. The TF considered whether Section 3x0 could address non-financial pressures, but agreed that although non-financial pressures exist, non-financial pressures would not capture all circumstances.
20. Accordingly, the TF proposes to leave, or revise, Section 340 to address all personal financial gain relating to financial reporting, and to address in a new Section 3x0 all pressures from others (including pressures to achieve financial results). The TF will also determine whether it would be appropriate to move any of the existing guidance from the Sections listed in the table above to Section 3x0 to avoid duplication of guidance.
21. The straw man wording has been developed with the “two-section” approach.

Matters for Consideration

1. Does the Board agree that Pressure should be addressed as a new Section 3x0 in addition to Section 340, rather than replacing it?
2. Does the Board agree that a new section 3x0 should address pressures from others, and that Section 340 be retained to focus on financial gains relating to financial reporting and decision making?

C. Proposed Section 3x0 – Straw Man

22. The TF developed the straw man wording in Agenda Paper 7-B for a new Section 3x0 based on the five-part structure outlined in paragraph 3 above.

Description of Pressure to Engage in Unethical or Illegal Acts

23. The draft guidance is focused on “pressure to engage in unethical or illegal activities” rather than “undue or inappropriate pressure.” This is preferred because the former is less subjective and does not result in having to define what would be considered “undue” or “inappropriate.” Secondly, undue pressure may include imposing an unreasonable workload on subordinates, which might not be an ethical matter to be dealt with in the Code.
24. Additionally, illegal activities are objective in the sense that a legal standard exists for judging possible illegality. The straw man uses wording from the June 2013 SIA straw man to describe what is illegal.
25. Judging whether an activity is unethical is subjective because of the lack of such a standard. The Code does not define “unethical activities.” The TF proposes the following definition:

An unethical activity is one that breaches any of the fundamental principles contained in Part A of the Code and the interpretative guidance contained in Part C.
26. The project proposal stated that the TF would address pressure to act inappropriately by those in a superior position and also the issue of a PAIB placing pressure on others. The latter does not appear to be a matter for a threats and safeguards/guidance approach because there should be no circumstances in which it is acceptable to exert pressure to engage in unethical or illegal activities.

Because this would be a requirement, it is dealt with once in the Section while the remainder of the Section provides guidance on dealing with pressure being placed on the PAIB.

27. The TF considered whether, assuming downward pressure is prohibited in Section 3x0, any safeguard could be included in respect of the downward pressure. The TF noted that the Code prescribes safeguards only to eliminate threats or reduce them to an acceptable level. Requirements and prohibitions are used in the Code where safeguards are not available to address the threats. The TF also noted that paragraph 300.5 states the following:

A professional accountant in business may hold a senior position within an organization. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A professional accountant in business is expected, therefore, to encourage an ethics-based culture in an employing organization that emphasizes the importance that senior management places on ethical behavior.

28. The TF is considering the implications of this paragraph in relation to whether PAIBs in senior positions may have a responsibility to make their best efforts to ensure that the employing organization has mechanisms (such as internal controls) in place in order to eliminate pressures that may exist in the organization as a whole to engage in unethical or illegal activities, or to reduce the threats caused by such pressure to an acceptable level.

Matters for Consideration

3. Does the Board agree that the guidance should address “unethical and illegal activities” rather than “undue or inappropriate pressure?”
4. Does the Board agree with how the TF has described unethical and illegal activities?
5. Does the Board agree that a PAIB placing pressure on others to engage in unethical or illegal activities should be prohibited, rather than being addressed in a threats and safeguards approach?
6. Does the Board have a view on whether senior PAIBs should have a responsibility to make their best efforts to ensure that mechanisms are in place to eliminate or reduce pressures that may exist in the organization as a whole to engage in unethical or illegal activities?

Examples of Pressure

29. The TF intends the list of examples to be practical and include a variety of situations that PAIBs will recognize. Because the definition of PAIB is broad and includes, for example, professional accountants in the public sector, the TF proposes to include an example for professional accountants in the public sector, and examples that will resonate with professional accountants working in small- and medium-sized entities.

Matter for Consideration

7. Does the Board have any comments on the list of examples?

Identification of Threats to Compliance

30. The Conceptual Framework states that “when a relationship or circumstance creates a threat, such a threat could compromise...compliance with the fundamental principles.” To fit the conceptual

framework, “pressure” is the circumstance that creates the threat. Pressure itself is not the threat. Having provided examples of pressure, the TF has elaborated on the types of threat that a PAIB may face, in order to help the PAIB identify the threat before evaluating it.

31. The TF examined each of the five threats in paragraph 100.12 of the Code. The TF is of the view that pressure is a “push” motive and is different from the self-interest “pull” motives in Section 340. Therefore the types of threats that pressure creates are most likely to be intimidation, and possibly familiarity. In this regard, the TF proposes four examples of threats that it believes are typically faced by a PAIB.
32. Paragraph 310.3 (Conflicts of Interest) includes the reasonable and informed third party test when identifying and evaluating whether a conflict of interest exists or could compromise compliance with the principles. The TF does not believe this works for purposes of identifying and evaluating threats created by pressure. For example, does it make sense to state that the PAIB should “...be alert to all pressures that a reasonable and informed third party...would be likely to conclude might result in unethical or illegal activities” or rather, “...might compromise compliance with the fundamental principles”? While one could argue it might be appropriate to consider the views of a reasonable and informed third party in considering whether an activity is unethical, it does not appear to make sense with respect to an illegal activity. The TF discussed this issue and tentatively concluded that the reasonable and informed third party concept does not work with the issue of pressure.
33. A PAIB may be employed by an organization, and over time adopt the cultural norms of the organization. The TF proposes to make reference to this to alert the PAIB to this risk.

Matter for Consideration

8. Does the Board agree that the reasonable and informed third party test is not appropriate in relation to pressure?

Evaluation of Threats

34. The TF noted that PAIBs will always be faced with pressure. Because it is subjective, the concept of “unreasonable or undue pressure” is unworkable for inclusion in a standard on pressure. A number of examples were cited where pressure was needed to achieve an objective, which was reasonable in the perception of the organization or manager but potentially unreasonable in the perception of the individual. The conceptual framework avoids this difficulty by evaluating the threat and not evaluating the pressure. The threat is identified at the identification stage. The TF proposes guidance to the PAIB by providing examples of factors that will determine whether the threat is significant.
35. The TF is aware that culture can play a role in evaluating threats caused by pressure. Some industries and some jurisdictions are more aggressively competitive than others. The TF is considering making reference to this to alert the PAIB to recognize that the environment in which the PAIB works may affect the chance that the PAIB faces pressure to engage in unethical or illegal acts (see paragraph 10 of the straw man). However, because illegal and unethical acts are not acceptable in any environment, the TF plans to consider this further because it could be read to allow activities that are accepted in a given industry where unethical practices are common.
36. Unlike professional accountants in public practice, the PAIB may not be surrounded by colleagues who are also subject to the Code’s ethical values. Therefore, it may be difficult to obtain the advice

of a suitable third party who may assist in evaluating the threat. Depending on the organization, seeking guidance from within the employing organization may be appropriate. In other circumstances, going outside the organization may be appropriate. The TF proposes to use wording from elsewhere in the Code to provide a list of possible suitable third parties.

Matter for Consideration

9. Is it appropriate to acknowledge, in the Code, the diversity of ethical norms between organizations, industries and countries in order to alert PAIBs to the threats that such circumstances exist?

Application of Safeguards

37. The TF believes that because this Section is intended to provide additional guidance to PAIBs in responding to pressure, the proposed paragraph on safeguards is potentially the most important one. Therefore an extensive list of possible safeguards is provided.
38. Some IESBA CAG representatives reminded the TF to include the public sector in its review of Part C. The TF is of the opinion that in many cases the pressures faced by PAIBs are similar in the public and private sectors; however it looked for any safeguards that may be specifically relevant to the public sector. Those identified to date include (disclosing the matter to) a government ombudsman, government agencies, anti-corruption commission, or auditors general.
39. In many organizations, the PAIB is the only professional staff member and may be isolated and have few available safeguards. The TF agrees that consulting with an appropriate person is an important safeguard but recognizes the risk of inadvertently breaching confidentiality when consulting with third parties, even on an anonymous basis.

Matter for Consideration

10. Does the Board agree that the lists of third parties with whom a PAIB could consult or disclose pressure is appropriate, given the fundamental principle of confidentiality?