

Structure Phase 1 – Further Analysis of Respondents’ Comments on ED-1, Issues and Task Force Proposals

How the Project Serves the Public Interest

Through the development of a restructured Code, the project serves the public interest by:

- Enhancing understandability of the Code, thereby facilitating compliance and enforcement; and
- Improving the usability of the Code, thereby facilitating adoption, effective implementation and consistent application.

How this Paper is Organized

This paper addresses the following topics:

I: Restructuring

A Background

B Draft Restructured Code – Highlights of Proposed Changes

- Recurring Requirements and Introductory Language
- Ordering of Requirements and Application Material
- Clarity of Responsibility for Compliance with the Code
- Suggestions to Avoid Possible Changes of Meaning
- Other Drafting Suggestions

II: Other Matters

- Matters for Board Attention

III Next Steps

- Electronic Enhancements
- Forward Timetable

I: The Progress of the Restructuring

A. Background

1. The Task Force has considered all the input received from respondents to December 2015 [Exposure Draft: Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1](#) (Structure ED-1), input from the Board at its June 2016 meeting and from the IESBA Consultative Advisory Group (the IESBA CAG). The Task Force has developed proposed revised text (see **Agenda Item 3-B**) that is intended to address concerns about possible changes in meaning, and other changes to reflect respondents’ wording suggestions that the Task Force believes improve the draft restructured Code.
2. Updated drafting guidelines have been provided to the other task forces working on restructuring. The Task Force continues its close liaison with the other task forces to develop a restructured Code that reflects a consistent approach designed to achieve the objectives of the Structure project.

B. Draft Restructured Code – Highlights of Proposed Changes

3. Certain preliminary structural proposals were discussed and agreed in principle at the Board's June 2016 meeting. The agenda papers for that meeting ([Agenda Item 2-A](#)) included a summary of feedback regarding structural matters. The Task Force reflected on the Board's input and also on responses received. These preliminary proposals are listed for information in Appendix 1 with reference to Structure ED-1 and the proposed revised text in **Agenda Item 3-B**.

Recurring Requirements and Introductory Language

4. At its June 2016 meeting the Board deliberated and provided input on the Task Force's preliminary proposals to:
 - (a) Adjust the restructured code in such a way that the introductory language clarifies the need to for professional accountants to:
 - (i) Comply with the fundamental principles;
 - (ii) Maintain independence when required to be independent;
 - (iii) Apply the conceptual framework – the overarching requirements. Specific requirements and application material support compliance with the fundamental principles and, in the independence sections, the requirement to be independent; and
 - (b) Reflect further on Structure ED-1's proposed repetition in each section of a requirement that the conceptual framework be applied.
5. During its discussion the Board asked that the Task Force revise the introductory material to improve the focus on the fundamental principles, and where appropriate, include a requirement to be independent as a way of enhancing the Structure ED-1 proposals.
6. The proposed revised text in **Agenda Item 3-B**) increases the prominence of the message that compliance with the fundamental principles, and the application of the conceptual framework is intended to apply throughout the Code, including when applying a specific requirement. In particular:
 - (a) The Task Force has deleted many of the recurring requirements to apply the conceptual framework to avoid the risk of it being ignored through being used too frequently. The overarching requirement to apply the conceptual framework and the description of the conceptual framework has been retained in Section 120.¹ A requirement to apply the conceptual framework set out in Section 120 has also been retained in the general sections for professional accountants in business (Section 200²), professional accountants in public practice (Section 300³), international independence standards for audits and reviews (Section 400⁴) and international independence standards for other assurance engagements (Section 900⁵). A requirement to be independent has been included in the general independence

¹ Section 120, *The Conceptual Framework*

² Section 200, *Applying the Conceptual Framework – Professional Accountants in Business*

³ Section 300, *Applying the Conceptual Framework – Professional Accountants in Public Practice*

⁴ Section 400, *Applying the Conceptual Framework to Independence for Audits and Reviews*

⁵ Section 900, *Applying the Conceptual Framework to Independence for Other Assurance Engagements*

sections (i.e., Sections 400 and 900).

- (b) In the sections that address a particular topic (for example, Sections 210,⁶ 310,⁷ 510,⁸ and 910,⁹ and in the related subsections) a reference to the location of the requirement to comply with the fundamental principles and to apply the conceptual framework has been added to the introduction, rather repeating the requirement. This is to avoid implying that it is not relevant to specific requirements.
- (c) In addition, in the independence sections (for example, 410,¹⁰ 510, and 910) the Task Force has included for clarification a reference to the requirement to be independent.

Ordering of Requirements and Application Material

7. Following the Board's June 2016 Structure and Safeguards discussions the Task Forces have continued their reflections on the ordering of the material, including its flow, which is paramount. The ordering of the Code has been influenced by the overall applicability of the Code's principles-based approach. Respondents to the November 2014 Consultation Paper, [*Improving the Structure of the Code for Professional Accountants*](#) and to Structure ED-1 emphasized the importance of a principles-based approach and the overarching requirements to comply with the fundamental principles and, where applicable, to be independent. Respondents were concerned that the Code should not be structured in a way that might imply specific requirements could be applied without consideration of these overarching requirements. The Task Force is aware that some respondents to Safeguards ED-1 emphasized the importance of prominent prohibitions. The draft restructured text highlights all requirements, including prohibitions, and is combined with a more robust conceptual framework developed by the Safeguards Task Force. The Task Force believes that this restructuring and revision gives prominence to: prohibitions and the overarching requirement to comply with the fundamental principles; be independent where appropriate; and apply the conceptual framework. Its proposals carefully respond to the issues raised by respondents by striking an appropriate balance between the prominence of the prohibitions and the importance of the underlying principles, including the provisions in the conceptual framework that form the basis of the Code.
8. **Agenda Item 3-B** illustrates the proposed order of the requirements and application material for the proposed restructured Code. In particular:
 - The requirements and application material related to applying the conceptual framework is set out first, followed by specific requirements.
 - Recognizing the need for scalability, requirements that apply to public interest entities are located after requirements that apply to other entities.
 - Application material that is specific to a particular requirement follows the related requirement as closely as possible.

⁶ Section 210, *Conflicts of Interest*

⁷ Section 310, *Responding to Non-compliance with Laws and Regulations*

⁸ Section 510, *Loans and Guarantees*

⁹ Section 910, *Financial Interests*

¹⁰ Section 410, *Compensation and Evaluation Policies*

Matter for IESBA Consideration

1. IESBA members are asked for views about the Task Force’s proposals for:
 - (a) The recurring requirements and introductory language; and
 - (b) The ordering of material.

Clarity of Responsibility for Compliance with the Code

9. In its June 2016 issues paper the Task Force proposed that the explanation of the use of the term “firm” with regard to responsibility, presented in paragraph 400.7 in ED-1, be retained and moved closer to the beginning of Section 400 to raise its profile. The Task Force also proposed that, for greater clarity, Section 120 now includes a section titled, *Considerations for Audits, Reviews and Other Assurance Engagements* that explains that:
 - (i) The conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles applies in the same way to compliance with independence requirements;
 - (ii) *International Independence Standards (Parts 4A and 4B)* of the Code set out requirements and application material on how to apply the conceptual framework to maintain independence when performing audits, review or other assurance engagements, as the case may be; and
 - (iii) Professional accountants and firms are required to comply with these standards in order to be independent in relation to audits, reviews and other assurance engagements a reference to the use of the term “firm.” This new proposed text is included in **Agenda Item 3-B**.
10. At its June 2016 meeting, the Board was of the view that it would be helpful to further clarify and emphasize that an individual professional accountant remains responsible for complying with the independence provisions that apply to that accountant’s activities, interests or relationships. The Task Force has updated its proposals to incorporate this input and in doing so has also more closely aligned the language in the proposed restructured Code’s to the relevant language in ISQC 1.¹¹ The Task Force has reflected this proposed change in its proposed revised text in paragraph 400.5 of **Agenda Item 3-B**.

Matter for IESBA Consideration

2. IESBA members are asked for views on the clarity of professional accountants’ responsibility with respect to compliance with the Code, including the requirements pertaining to independence.

Highlights of Suggestions to Avoid Possible Changes of Meaning

11. Part of the Structure of the Code’s project scope is to restructure the extant Code without making any inadvertent changes in meaning. A number of respondents to Structure ED-1 made comments regarding possible changes of meaning. Details of these comments and the Task Force’s responses are included and illustrated in **Supplement 1 to Agenda Item 3**.

¹¹ International Standard on Quality Control (ISQC) 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*

12. The Task Force gave careful consideration to each of the comments. The Task Force has proposed revisions where it believes that the Structure ED-1 proposals might have inadvertently changed the meaning of the Code and/or respondents' suggestions improve the clarity of the restructured text. In certain cases the Task Force reverted to the language of the extant Code. Comments addressed, among other things, the following topics:

(a) General Matters

- (i) Use of the term “network firm” – In response to specific drafting suggestions from respondents to Structure ED-1, and a further review of the ED-1 text by the Task Force, references to the term “network firm” have been added to the proposed restructured Code presented in **Agenda Item 3-B**.

The additions are in: the preambles of paragraphs R510.7; R521.7;¹² the introductory paragraph 511.1;¹³ and also in Section 524.¹⁴ The additions have been made for clarity and in the case of Section 524 to conform the draft restructured Code to the extant Code. Where the extant Code uses the word “firm” other than in the context of “the financial statements on which the firm will express an opinion” a reference is made to network firms.

- (ii) Removal of repetition – Respondents commented on areas of the Code where the repetition of elements of the conceptual framework, which exists in the extant Code, have been removed. During the restructuring the Task Force has been consistent in making the central principles of the Code in Section 120 clear and keeping them in one place rather than perpetuating the repetition in the extant Code.
- (iii) Use of “firm” as opposed to “professional accountant” – see paragraphs 9–10 of this paper.
- (iv) Use of the term “oversight authority” – Structure ED-1 did not distinguish an oversight authority from a regulator. The Task Force is suggesting that references to “oversight authority” in the extant Code be restored to the draft restructured Code.

(b) Matters Specific to Certain Paragraph Numbers

*Respondents' comments below are in regular font and Task Force response is presented in italic font. The paragraph references in italics are to the revised restructured Code in **Agenda Item 3-B**.*

- (i) R100.4^{15, 16}– The extant Code in paragraph 100.10 provides two avenues to responding to a breach: it refers first to the independence provisions and second, the requirements of a professional accountant if they identify a breach of another section of the Code. Proposed paragraph R100.4 expands the current requirement, making the professional accountant who identifies any breach of the Code responsible for the actions to be taken. *Text modified in R100.4 of **Agenda Item 3-B** to clarify the difference between the provisions that apply to*

¹² Section 521, *Family and Personal Relationships*

¹³ Section 511, *Loans and Guarantees*

¹⁴ Section 524, *Employment with an audit client*

¹⁵ **Firm** DTTL

¹⁶ Section 100, *Compliance with the Code*

independence breaches and other breaches and reversion to the language of the extant Code.

- (ii) 110.1(b)¹⁷ and R112.1^{18, 19} – The new provision 110.1(b) which is repeated as a requirement in R112.1 did not accurately reflect the extant Code’s reference to bias and the undue influence of others. *The possible meaning change has been addressed by reverting to extant Code language in 110.1(b) and R112.1 of **Agenda Item 3-B**.*
- (iii) 112.3 A1 and 112.3 A2²⁰– These paragraphs should not be mentioned under “objectivity” as independence only relates to audit, review, and other assurance engagements and it is now not clear the content only relates to audit, review and other assurance. *These paragraphs have been deleted.*
- (iv) R113.1^{21,22} In certain places text has been added which sharpens the extant obligation. For example, considerable new text appears to have been added in para. R113.1, beyond the extant Code: “...attain and maintain professional knowledge and skill ... based on current developments in practice, legislation and techniques ...” The detail added may change the obligation, which is beyond the remit of this project. *Text modified in R113.1 of **Agenda Item 3-B**.*
- (v) R114.1^{23,24}– Change regarding with whom confidential information can be discussed. *The text has been modified in R114.1 of **Agenda Item 3-B** to reflect the language of the extant Code.*
- (vi) 114.1 A2 Confidentiality²⁵– The use of ‘might’ is inappropriate if a professional accountant is required to disclose confidential information by law. *The text has been modified in 114.2 A1 of **Agenda Item 3-B** to use “are or might be required to disclose”*
- (vii) R300.2²⁶ Alternative wording suggested by a respondent is included in *Section 115 of **Agenda Item 3-B**.*²⁷
- (viii) 320.3²⁸ A1 Deletion of “if known.” *The text has been modified in 320.3 A1 of **Agenda Item 3-B** and “if known” reinstated.*

¹⁷ Section 110, *The Fundamental Principles*

¹⁸ **Firm EYG Other Prof Org** IDW

¹⁹ Subsection 112, *Objectivity*

²⁰ **Other Prof Orgs** FEE and SMPC (IFAC)

²¹ **Other Prof Org** IDW

²² Subsection 113, *Professional Competence and Due Care*

²³ **Regulator and Oversight Authority** IRBA

²⁴ Subsection 114, *Confidentiality*

²⁵ **National Standard Setter** APESB

²⁶ **Regulator and Oversight Authority** IRBA

²⁷ Subsection 115, *Professional Behavior*

²⁸ Section 320, *Professional Appointment*

- (ix) 320.3 A4²⁹) The strength of the statement is lost as it has not been classified as a requirement, even though the extant Code makes use of the word “obligation”. *The text has been modified in 320.3 A4 of **Agenda Item 3-B** to add “cannot.”*
- (x) R321.5^{30,31} The reworded and reorganized paragraphs are not as clear as the extant Section 230.³² The succession of paragraphs in Section 230 handles the issue of Second Opinions more logically. *The phrasing used in this paragraph has been adjusted in R321.2 of **Agenda Item 3-B**.*
- (xi) 330.3 A1^{33,34} The amendment proposed was to amend the phrase “.....However, fee quotations create a threat to professional competence.....” to “.....However, the level of fees quoted create a threat to professional competence.....” *Text has been modified to reflect the suggested language in 330.2 A2 of **Agenda Item 3-B**.*
- (xii) 340.2^{35,36}Based on the way this is written, it appears the examples are the only instances that would be the cause of a threat to complying with the fundamental principles. The respondent made a wording suggestion. *The text was modified to accept this suggestion in 340.2 A1 of **Agenda Item 3-B**.*
- (xiii) 350.3 A1^{37,38} Complying with laws and regulations is a requirement in the extant Code, but is only guidance in Structure ED-1. This should be a requirement and perhaps combined with R350.4 of **Agenda Item 3-B**. *Section 350 has been redrafted to address duplication consistent with the comment.*
- (xiv) 400.1 Independence)³⁹ – In the definition of “Independence of mind” and “Independence of appearance” reference is made to integrity, objectivity and professional skepticism. There seem to be two different approaches when linking Independence and the fundamental principles. *The Task Force deleted the statement that independence is a measure of objectivity to avoid any inconsistency in linkage in 400.1 of **Agenda Item 3-B**.*
- (xv) R400.12 Engagement period⁴⁰– Although the term “engagement period” has been included in the definitions section of the Glossary, it should be repeated in the body of the Code. *The text has been modified in R400.30 of **Agenda Item 3-B** to reflect the suggestion in view of the importance of the definition.*

²⁹ **Regulator and Oversight Authority** IRBA

³⁰ **Other Prof Org** Assirevi

³¹ Section 321 *Second Opinions*

³² Extant Section 230 *Second Opinions*

³³ **Other Prof Org** ISCA

³⁴ Section 330 *Fees and Other Types of Remuneration*

³⁵ **Firm** DTTL

³⁶ Section 340 *Gifts and Hospitality*

³⁷ **Firm** DTTL

³⁸ Section 350 *Custody of Client Assets*

³⁹ **Regulator and Oversight Authority** IRBA

⁴⁰ **Regulator and Oversight Authority** IRBA

Matter for IESBA Consideration

3. IESBA members are asked for views about the revisions that have been made to avoid possible changes of meaning.

Other Drafting Suggestions

13. Other drafting suggestions accepted by the Task Force included suggestions addressed to: reducing duplication of material; further opportunities to improve the flow and readability of the text; and addressing matters raised in the June 2016 issues paper. Some of the drafting suggestions related to areas of text that are in the scope of other task forces and were referred to those other task forces. The Task Force has considered carefully each of the matters raised and it has included its rationale for these preliminary conclusions (see **Supplement 2 to Agenda Item 3**).
14. In deciding whether to make a change to the text of Structure ED-1 the Task Force first considered the change in the light of the Task Force’s drafting guidelines and whether the proposed text improved the readability of the draft restructured Code, for example by: shortening the text; reordering material for a better flow; clarifying matters that respondents suggested were unclear; and removing footnotes for greater emphasis of material within the text.
15. Since the June 2016 meeting the Task Force has also reflected on structural matters relating to threats and how they are articulated in the recurring introductory and requirement language. Section 120 describes how the Code uses the terms “threat” or “threats” to refer to a threat or threats to the fundamental principles and to independence. In many cases, the Code refers to a “threat” or “threats” with no descriptive or other qualifying language. However, the Task Force is proposing that the terms “threat” or “threats” are also used with descriptive or qualifying language as described below:
- (i) The requirement to apply the conceptual framework in Sections 200 and 300 refers to threats to compliance with the fundamental principles. The requirement to apply the conceptual framework in Sections 400 and 900 refers to threats to independence.
 - (ii) In the recurring introductory language and application material paragraphs in Sections 200 to 999 the Task Force has included a description of how threats normally might arise and also included a description of the category of threat (for example, a “self-interest” or “familiarity” threat).
 - (iii) In the *International Independence Standards*, (Parts 4A and 4B, Sections 400 to 999) the recurring introductory language refers to “threats to independence.” In these Standards the Task Force has focused on the requirement to be independent but has articulated that there is a linkage between independence and the fundamental principles.
16. The Task Force grouped certain paragraphs in Section 400 (Related Entities, the Period During which Independence is Required, Communication with Those Charged with Governance and General Documentation, Network Firm, Mergers and Acquisitions and Breaches) to remove the subsections which the Task Force concluded might be distracting.
17. In response to feedback from respondents to Structure ED-1 and Task Force deliberations, revisions have been made to the Glossary.

Matter for IESBA Consideration

4. IESBA members are asked to express views on how the Task Force has responded to other drafting suggestions.

II: Other Matters

Matters for Board Attention

18. A summary of all matters, outside the scope of the Structure and Safeguards project, noted for Board attention over the course of the project will be presented to the IESBA at its September 2016 meeting. This summary will be considered as the Board considers the development of its 2019-2022 Strategy and Work Plan.

III: Next steps

Electronic Enhancements

19. It is anticipated that future electronic enhancements will include the ability to expand the section headings in the Code's Table of Contents to show subheadings as well as headings. The Task Force believes that it would be too cumbersome to include the subheadings in the Code's overall Table of Contents in the printed version. However, it intends to include a more detailed table of contents at the beginning of each Part.

Forward Timetable

20. Following the September 2016 Board meeting, in addition to addressing input received from the Board and CAG in September, the Task Force and Staff plans to continue to work closely with the other task forces involved in the restructuring to perform a detailed consistency review. This will include a consideration of editorial matters and restructuring the consequential and conforming changes from the July 2016 Final Pronouncement [Responding to Non-Compliance with Laws and Regulations](#).
21. The Task Force remains on course to obtain agreement in principle for Phase 1 at the Board's December 2016 meeting and issuance of Structure ED-2 after the Board's December 2016 meeting. Structure ED-2 will include a hyperlink to a Staff-prepared compilation document that will include the full proposed restructured Code – including Phases 1 and 2 of the Structure of the Code and the Safeguards projects. **Agenda Item 3-H** is an initial draft of this compilation document.
22. It is planned that an updated version of the December 2015 IESBA Update, [Restructuring the Code of Ethics for Professional Accountants](#) will be released with Structure ED-2. **Agenda Item 3-G**, Forward Timelines – Structure Related Work Streams will form the basis for developing this updated document.

Matter for IESBA Consideration

5. IESBA members are asked for views on next steps, and any other matters pertaining to the Structure of the Code project.

Appendix 1
 (Para. 3)

Summary of Changes to Structure ED-1, June 2016 IESBA Discussions, and Updated Proposals

	Nature of Change	<u>June 2016 IESBA Issues Paper</u> para. #	<u>Structure ED-1</u> Reference	Revised Structure ED-1 (Agenda Item 3-B) para. #
1.	Introductory language in each section from 200 on containing a reminder to comply with the fundamental principles, be independent (where appropriate) and apply the conceptual framework.	9 and 11	Not included in ED-1	For example paragraph 300.1.
2.	Banner no longer proposed	9	Top of each page of ED-1 page 20 onwards. onwards	-
3.	The statement that “independence is a measure of objectivity” has been removed.	12	112.3 A1/400.1	-
4.	Section112 references to independence removed from the discussion of objectivity	13	112.3 A1/112.3 A2	-
5.	Linkage between independence and the fundamental principles clarified in S.120 by including the independence definition.	14	Not included in ED-1	Paragraph 120.10 A1
6.	Application of the conceptual framework to independence clarified in Section120.	15	Not included in ED-1	Section 120 generally.
7.	Section120 enhanced roadmap.	17	Not included in ED-1	Paragraph120.3 A1
8.	Exceptions to requirements. As suggested by Board members at its June 2016 meeting requirements with exceptions include the words “subject to”	20	Not included in ED-1	E.g., paragraph R524.5.
9.	Section100.3 clarification of the importance of application material	26	Guide paragraph 8	Paragraph 100.2
10.	Section100 clarification of disproportionate outcomes.	26	Guide paragraph 10.	Paragraph 100.4 A2.

	Nature of Change	<u>June 2016 IESBA Issues Paper para. #</u>	<u>Structure ED-1 Reference</u>	Revised Structure ED-1 (Agenda Item 3-B) para. #
11.	Section 110 clarification of ethical conflict resolution.	26	Guide paragraphs 11 and 12	Paragraphs R110.3-110.3 A6
12.	Professional accountant v firm moved closer to the beginning of Section 400 mentioned in Section 120.	31	Not included in Section 120 in ED-1 Paragraph 400.7.	Paragraphs 120.10 A2 and 400.5
13.	That the word “audit” has equal application to reviews is stated in the body of the Code.	33	Not included in ED-1	Paragraph 400.2.
14.	Title of the Code.	37	In Preface between Table of contents and the Guide.	Page before the Guide.
15.	Guide separated from the Code but be included with the Code for exposure and publication. (To be printed as a separate document in the Handbook of the Code.)	40	-	-
16.	Change to title to Part A by removing the word “introduction.”	43	Title above paragraph 100.1	Title above paragraph 100.1
17.	Removed the letters describing the “Parts” of the Code and substituted numbers to avoid confusion associated with switching the order of Parts B and C and used titles which reflected the content of the various sections of the Code. This followed from the comments on “C1” and “C2.”	43	See Table of Contents (immediately before the Preface)	See Table of Contents (immediately following the Guide)
18.	Substituted the terms <i>Independence for Audits and Reviews</i> and <i>Independence for Other Assurance Engagements</i> for the descriptions C1 and C2 because the terms are descriptive of the content of those sections.	43 and 49	See Table of Contents (immediately before the Preface)	See Table of Contents (immediately following the Guide)
19.	Numbering including subsections Retained Structure ED-1 numbering system. All sections increase by	50	See Table of Contents	ADD

Structure Phase 1– Further Analysis of Respondents Comments on ED-1, Issues and Task Force Proposals
 IESBA Meeting (September 2016)

	Nature of Change	<u>June 2016 IESBA Issues Paper para. #</u>	<u>Structure ED-1 Reference</u>	Revised Structure ED-1 (Agenda Item 3-B) para. #
	increments of ten. (Possible introduction of increments of five for December’s final read text to reduce the possibility of running out of sequential section numbers.)		text of ED-1.	
20.	Visibility of requirements – retained “R” and “A” approach because digitally searchable.	51	Throughout ED-1	Throughout
21.	Glossary to remain at the end of the Code.	53	Followed paragraph R523.5.	Page 91
22.	Professional accountant v accountant (throughout Code).	57	No change. First example paragraph 100.1.	No change. First example paragraph 100.1.