

Agenda Item 5-B.1 (Updated)

Inducements – Proposed Text (Sections 250 and 420 Only - Mark-up from Posted Version)

PART 2 – PROFESSIONAL ACCOUNTANTS IN BUSINESS

Section 250

Inducements, Including Gifts and Hospitality

Introduction

- 250.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.
- 250.2 Offering or accepting inducements might create a self-interest, familiarity or intimidation threat to compliance with the fundamental principles, particularly the principles of integrity, objectivity and professional behavior.
- 250.3 Section 250 sets out requirements and application material relevant to applying the conceptual framework in relation to the offering and accepting of inducements when undertaking professional activities that does not constitute non-compliance with laws and regulations. This section also requires a professional accountant to comply with relevant laws and regulations when offering or accepting inducements.

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Requirements and Application Material

General

- 250.4 A1 An inducement is an object, situation, or action that is used as a means to influence, either positively or negatively, another individual's behavior, but not necessarily with the intent to improperly influence that individual's behavior. Inducements can range from minor acts of hospitality between business colleagues to acts that result in non-compliance with laws and regulations. An inducement can take many different forms, for example:

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- Gifts.
- Hospitality.
- Entertainment.
- Political or charitable donations.
- Appeals to friendship and loyalty.
- Employment or other commercial opportunities.
- Preferential treatment, rights or privileges.
- ~~Facilitation payments.~~

- 250.4 A2 In considering inducements, this section sets out requirements and application material in relation to:

- Firstly, inducements prohibited by laws and regulations
- Secondly, inducements that are intended to improperly influence behavior; and
- Thirdly, other inducements

An inducement is considered as improperly influencing an individual's behavior if it causes the individual, whether a professional accountant or not, to act in a manner that breaches the fundamental principles.

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Inducements Prohibited by Laws and Regulations

R250.5 In many jurisdictions, there are laws and regulations, such as those related to bribery and corruption, that prohibit the offering or accepting of inducements in certain circumstances. The professional accountant shall obtain an understanding of relevant laws and regulations and comply with them when the accountant encounters such circumstances.

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Inducements Not Prohibited by Laws and Regulations

250.6 A1 The offering or accepting of inducements that is not prohibited by laws and regulations might still create threats to compliance with the fundamental principles.

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Inducements with Intent to Improperly Influence Behavior

R250.7 A professional accountant shall not offer, or encourage others to offer, any inducement that is made, or which the accountant considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behavior of the recipient or of another individual.

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R250.8 A professional accountant shall not accept, or encourage others to accept, any inducement that the accountant concludes is made, or considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behavior of the recipient or of another individual.

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250.9 A1 An inducement is considered as improperly influencing an individual's behavior if it causes the individual, to act in an unethical manner. The fundamental principles are an appropriate framework for the professional accountant to apply in considering what is ethical behavior, both in relation to professional accountants and, if necessary by analogy, to other individuals.

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250.9 A21 A professional accountant offering or accepting or offering, or encouraging others to offer or accept, an inducement by a professional accountant where the intent is to improperly influence the behavior of the accountant or another individual is a breach of the fundamental principle of integrity. Such improper influence can be directed either towards the recipient or towards another individual who has some relationship with the recipient.

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250.940_A34 The determination of whether there is actual or perceived intent to improperly influence behavior requires the exercise of professional judgment. Relevant factors to consider might include:

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- The nature, frequency, and value and cumulative effect of the inducement.

- Timing of when the inducement is offered relative to any action or decision that it might influence.
- Whether the inducement is a customary or cultural practice in the circumstances, for example, offering a gift on the occasion of a religious holiday or wedding.
- Whether the inducement is an ancillary part of a professional activity, for example, accepting lunch in connection with a business meeting.
- Whether the offer of the inducement is limited to the individual recipient or available to a broader group. The broader group might be internal or external to the employing organization, such as other customers or vendors.
- The roles and positions of the individuals offering or being offered the inducement.
- Whether the professional accountant knows, or has reason to believe, that accepting the inducement would breach the policies and procedures of the counterparty's employing organization.
- The degree of transparency with which the inducement is offered.
- ~~The cumulative effect of inducements offered or received.~~
- Whether the inducement was required or requested by the recipient.
- The known previous behavior or reputation of the offeror.

Consideration of Further Actions

~~R-250.104 A1~~ If the professional accountant becomes aware of an inducement offered with actual or perceived intent to improperly influence behavior, then threats to compliance with the fundamental principles may be created even if the requirements in paragraphs R250.7 and R250.8 are complied with, the accountant shall consider what other actions might be taken in addition to complying with the requirements set out in paragraphs R250.7 and R250.8.

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~~250.104 A12~~ Examples of other actions that might be taken by a professional accountant to address such threats include:

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- Informing senior management or those charged with governance of the employing organization of the professional accountant or the offeror regarding the offer.
- Considering the implications for the ongoing business relationship with the offeror.

Inducements with No Intent to Improperly Influence Behavior

R250.112 The requirements and application material set out in the conceptual framework apply when in circumstances where a professional accountant has concluded there is no actual or perceived intent to improperly influence the behavior of the recipient or another individual, the accountant shall then apply the conceptual framework set out in Section 120 to the offering or accepting of an inducement.

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250.112 A1 ~~If such an inducement is trivial and inconsequential, it does not usually create any threats that are not created, will be at an acceptable level.~~

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250.112 A2 Examples of circumstances where offering or accepting such an inducement might create threats even if the professional accountant has concluded there is no actual or perceived intent to improperly influence behavior include:

(a) Self-interest threats

- A professional accountant is offered part-time employment by a vendor.

(b) Familiarity threats

- A professional accountant regularly takes a customer or supplier to sporting events.

(c) Intimidation threats

- A professional accountant accepts hospitality, the nature of which could be perceived to be inappropriate were it to be publicly disclosed.

250.112 A3 Relevant factors in evaluating the level of such threats created by offering or accepting such an inducement include the same factors set out in paragraph 250.940 A34 for determining intent.

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250.112 A4 Examples of actions that might eliminate threats created by offering or accepting such an inducement include:

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- Declining or not offering the inducement.
- Transferring responsibility for any business-related decision involving the counterparty to another individual who the professional accountant has no reason to believe would be, or would be perceived to be, improperly influenced in making the decision.

250.112 A5 Examples of actions that might be safeguards to address such threats created by offering or accepting such an inducement include:

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- Being transparent with senior management or those charged with governance of the employing organization of the professional accountant or of the counterparty about offering or accepting an inducement, for example,
- Registering the inducement in a log monitored by senior management.
- Having an appropriate reviewer, who is not otherwise involved in undertaking the professional activity, review any work performed or decisions made by the professional accountant with respect to the individual or organization from which the accountant accepted the inducement.
- Donating the inducement to charity after receipt and appropriately disclosing the donation, for example, to those charged with governance or the individual who offered the inducement.
- Reimbursing the cost of the inducement, such as hospitality, received.

- As soon as possible, ~~R~~returning the inducement, such as a gift, ~~to the offerer~~ after it was initially accepted.

Immediate or Close Family Members

R250.123 A professional accountant shall remain alert to potential threats to the accountant's compliance with the fundamental principles created by the offering of an inducement:

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- (a) By an immediate or close family member of the accountant to a counterparty with whom the accountant has a professional relationship; or
- (b) To an immediate or close family member of the accountant by a counterparty with whom the accountant has a professional relationship.

R250.134 Where the professional accountant becomes aware of an inducement being offered to or made by an immediate or close family member and concludes there is intent to improperly influence the behavior of the accountant or the counterparty, or considers a reasonable and informed third party would be likely to conclude such intent exists, the accountant shall advise the immediate or close family member not to offer or accept the inducement.

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250.134 A1 The factors set out in paragraph 250.10 A1 are relevant in determining whether there is actual or perceived intent to improperly influence the behavior of the professional accountant or the counterparty. Another factor that is relevant is the nature or closeness of the relationship, between:

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- (a) The professional accountant and the immediate or close family member;
- (b) The immediate or close family member and the counterparty; and
- (c) The accountant and the counterparty.

For example, the offer of employment, outside of the normal recruitment process, to the spouse of the professional accountant by a counterparty with whom the accountant is negotiating a significant contract might indicate such intent.

Application of the Conceptual Framework

250.145 A1 ~~Threats to compliance with the fundamental principles may be created~~ The application material in paragraphs 250.12 A1 to 250.12 A5 is relevant for the purposes of identifying, evaluating and addressing threats where:

- (a) The immediate or close family member offers or accepts the inducement contrary to the advice of the professional accountant in accordance with paragraph R250.14; or
- (b) The accountant does not have reason to believe an actual or perceived intent to improperly influence the behavior of the accountant or the counterparty exists.

250.145 A2 The application material in paragraphs 250.11 A1 to 250.11 A5 is relevant for the purposes of identifying, evaluating and addressing such threats. Factors that are relevant in evaluating the level of threats in these circumstances also include the nature or closeness of the relationships set out in paragraph 250.134 A1.

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Other Considerations

250.156 A1 If a professional accountant is offered an inducement by the employing organization relating to financial interests, compensation and incentives linked to performance, the requirements and application material set out in Section 240 apply.

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250.156 A2 If a professional accountant encounters or is made aware of inducements that might result in non-compliance or suspected non-compliance with laws and regulations by other individuals working for or under the direction of the employing organization, the requirements and application material set out in Section 260 apply.

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250.156 A3 If a professional accountant faces pressure to offer or accept inducements that might create threats to compliance with the fundamental principles, the requirements and application material set out in Section 270 apply.

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PART 4A – INDEPENDENCE FOR AUDITS AND REVIEWS

Section 420

Gifts and Hospitality

Introduction

420.1 Firms are required to comply with the fundamental principles, be independent and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats to independence.

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420.2 Accepting gifts and hospitality from an audit client might create a self-interest, familiarity or intimidation threat. This section sets out a specific requirement relevant to applying the conceptual framework in such circumstances.

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Requirement and Application Material

R420.3 A firm, network firm or an audit team member shall not accept gifts and hospitality from an audit client, unless the value is trivial and inconsequential.

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420.3 A1 The requirements set out in Section 340 relating to inducements would not allow a firm, network firm or audit team member to accept gifts and hospitality where the intent is to improperly influence behavior even if the value is trivial and inconsequential.

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Other Considerations

420.4 A1 Where a firm, network firm or audit team member is offering or accepting an inducement to or from an audit client, the requirements and application material set out in Section 340 apply and non-compliance with these requirements might affect create threats to independence.

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Inducements – Proposed Text (Clean)
IESBA Meeting (March 2018)