

**Revision of Part C¹ Phase 2—Issues and Task Force Proposals Relevant to
Section 250, Inducements****Background**

1. At the September 2016 IESBA meeting, the IESBA considered a “[strawman](#)” with the Task Force’s proposals for revising Section 350² of the extant Code using the formatting and drafting conventions for the proposed restructured Code set out in **Agenda Item 3-I**. IESBA members generally approved of the revised structure in the strawman, and provided editorial and drafting suggestions for the development of proposed text for a first-read of Section 250. Based on the feedback received, the Task Force is proposing the additional amendments outlined below.

Issues and Task Force Proposals*Structure and Scope*

2. Some concerns were raised that related to the positioning of guidance on bribery and corruption. It was indicated that consideration of bribery and corruption had been made too early in the strawman, and could imply that the section was aimed at addressing illegal bribery and corruption. It was suggested that the Task Force clarify the scope of the section.
3. In consideration of this view, the Task Force has amended the strawman to clarify that the focus area of the section is the offering or accepting of inducements that are not defined as illegal but might still result in a breach of the fundamental principles (see paragraphs 250.3 in **Agenda Item 5-F**). The Task Force’s view is that illegal inducements that are covered by laws and regulations are not within scope, but the section still includes a requirement to remind professional accountants to obtain an understanding of legal and regulatory provisions governing bribery and corruption and comply with them (see paragraph R250.6).
4. Some IESBA meeting participants reiterated that in their view, the Code should include a definition of bribery and corruption. The Task Force reconsidered the need for a definition and after deliberation concluded that its initial decision not to include one is still valid because:
 - Given the variety of jurisdictional definitions of illegal bribery and corruption, it would be difficult to devise precise definitions that apply globally. Hence, a definition in the Code would not necessarily add value and might even conflict with local legal definitions. Where it is not clear whether an inducement is illegal, direction in Section 250 would come into force if the inducement creates a threat to compliance with the fundamental principles.
 - Developing a generic definition for bribery and corruption, a term that is widely used and generally understood within the Code could set an adverse precedent, and may raise questions about whether other widely used terms should be defined. Also, having such a definition could incorrectly imply that the scope of Section 250 is aimed at addressing illegal bribery and corruption; something that the IESBA has clarified as not being the case.

¹ Restructured Part 2—*Professional Accountants in Business*

² Extant Paragraph 350, *Inducements*

5. The Task Force also considered whether the Code could refer to an external definition of bribery and corruption. However, such a reference could only be made to a widely accepted definition which the Task Force has not been able to confirm exists. Also, the Task Force notes that referring to external sources in the Code deviates from both the extant and restructured drafting guidelines for the Code.

Intent Behind an Inducement

6. At the September 2016 IESBA meeting the following substantive views were received from IESBA members:

- A professional accountant should not only consider how an inducement might be perceived but should be required to refuse an inducement if it can be perceived to be made with an adverse intent.

Task Force Response: The Task Force agrees with this view and has made appropriate amendments to the strawman (see paragraph 250.11).

- The motivation behind an action when addressing ethical issues is not considered elsewhere in the Code and should not be considered here. The revised guidance could be drafted in a more objective way, such as considering whether an inducement is aimed at obtaining an unwarranted benefit.

Task Force Response: The intent test is a key tenant to addressing inducements as the first step in deciding how to deal with an inducement would be to consider whether it is made in an attempt to unduly influence the recipient, i.e., with an adverse intent. In addition, evaluating the intent behind an inducement would assist with addressing cultural differences; as the same inducement in different cultures might be made with different actual or perceived intentions, and hence influence how a professional accountant addresses the inducement (see paragraph R250.9).

7. While considering the member's view, the Task Force concluded that the intent test would benefit from supporting guidance on how to objectively consider whether there is an intent to unduly influence the professional accountant. In considering the nature of such supporting guidance, the Task Force noted that application material in the strawman already included factors to consider when evaluating the level of any threats by accepting an inducement (see paragraph 250.13 A1). The Task Force believes that the same factors are relevant for assessing the actual, or perceived intent behind being offered an inducement and therefore suggests that the same factors should be used in this regard (see paragraph 250.9 A1).
8. In making the necessary revisions to the strawman, the Task Force noted that restructuring guidelines encourage the use of reference paragraphs wherever possible to avoid duplication of requirements and application material. The Task Force believes that in this instance, since this guidance is key to the process of assessing actual or perceived intent and evaluating whether there is a possible threat associated with an inducement, it should be duplicated.
9. The Task Force initially believed that the reasonably informed third party (RITP) test could be used to evaluate perceptions about receiving, or the offering of an inducement. However, while deliberating the need for the intent test, the Task Force noted that for professional accountants in certain positions, such as CEOs, details of the inducement could be publicly disclosed. As a result, a perception could be formed by any member of the public, reasonably informed or otherwise. While a RITP might not

perceive any adverse intent behind the inducement, a member of the public might form a different perception.

10. In order to clarify that the RITP test is not adequate when evaluating the perception linked to the receiving or offering of an inducement, the phrase “by others” has been included into paragraphs R250.9 and R250.11.

Matters for IESBA Consideration

1. IESBA members are asked whether they agree with the Task Force’s view that the RITP test is not adequate when assessing the perceived intention of unduly influence the recipient that might accompany the receiving and offering of an inducement.
2. If IESBA members agree that the RITP test is not adequate in these circumstances, do members agree that the inclusion of the phrase “by others” clarifies that a perception could be made by any member of the public, not just a RITP.

Title of Revised Section 250

11. At the September 2016 IESBA meeting, the Task Force proposed an amended title of “Gifts, Hospitality and other Inducements.” To complement this title, the Task Force also added application material clarifying that the term “inducement” is intended to be neutral and that not all inducements are intended to induce behavior that might result in a breach of the fundamental principles.
12. The IESBA deliberated the proposed title and the merits of alternatives and generally agreed to a new title, “Gifts, Hospitality and other Inducements.” Based on this conclusion, supported by all except one IESBA member, no further Task Force consideration has been given to this issue. However, the Task Force has further refined the application material in paragraphs 250.4 A1 and 250.5 A1 to provide additional clarification about what could constitute an inducement.

Counterparties

13. At the September 2016 IESBA meeting, an IESBA member suggested that clarification was needed in the strawman as to the counterparties with whom an inducement might be offered to or received from. The member noted that when a professional accountant in public practice (PAPP) offers or receives an inducement the counterparty would be a client. However, for a professional accountant in business (PAIB) the counterparty is not apparent.
14. The Task Force considered that the aim of Section 250 is to provide guidance to a professional accountant in the offering or accepting of an inducement in his or her professional capacity. In attempting to clarify possible counterparties it is impossible to exclude a particular category and hence specifying conceivable counterparties could narrow the scope of the section.

Value of an Inducement

15. Some IESBA members questioned whether it is acceptable to offer or accept an inducement that is “trivial and inconsequential” in value that is made with an adverse intent. They noted that even a gift bearing little value might still affect the recipient’s behavior and might result in a threat to compliance with the fundamental principles.

16. The Task Force reviewed research literature that supported the view that gifts bearing a small monetary value can influence the recipient's behavior and agreed that an inducement, regardless of its value, should not be offered or accepted if it is made with actual or perceived adverse intent.
17. The Task Force then considered that once the professional accountant believes that there is no actual or perceived adverse intent behind the inducement, that inducement cannot pose a threat to compliance with the fundamental principles, if its value is "trivial and inconsequential."

Evaluating and Addressing Threats

18. During the Safeguards session, IESBA members agreed-in-principle that the RITP test should be used in identifying, evaluating and addressing threats (see paragraph R120.5 in **Agenda Item 4-B**). The Task Force notes that applying the conceptual framework already requires the use of the RITP test and is of the view that it is not necessary to repeat the requirement in Section 250.
19. Editorial and drafting suggestions on the proposed factors to consider when evaluating the level threats and possible actions to address threats were also received. Based on this suggestion one of the proposed factors to consider³ has been deleted (see paragraph 250.13 A1).
20. The Task Force also specifically considered whether a professional accountant recusing from any business related decisions is an action that addresses a threat. When an inducement is accepted by a professional accountant, it might create an actual or perceived threat to the individual's objectivity. The Task Force notes that while recusing is no longer considered a safeguard under the new description in paragraph 120.10 A1 in **Agenda Item 4-B**, it is a valid action that could eliminate any threat objectivity created by inducements. Accordingly, the guidance has been repositioned to a new paragraph 250.14 A2, separate from the examples of actions that might be safeguards in paragraph 250.14 A1.

Cultural Differences

21. The strawman presented at the September 2016 IESBA meeting did not include any specific guidance to address cultural issues.
22. At the September 2016 IESBA meeting, a member suggested that cultural issues could be considered within organizational policies. Since cultural issues are specific to jurisdictions and not globally homogenous, individual organizations can consider the jurisdictions in which they are operating before considering which cultural differences professional accountants in the employing organization need to address, and how best to address them. It was also suggested that adding that by doing so cultural issues could be linked to the tone at the top principle, with senior professional accountants being encouraged to influence relevant policies and procedures.
23. In deliberating how to address cultural issues, the Task Force noted that:
 - The strawman already encouraged professional accountants to complement guidance in Section 250 with more specific policies and procedures from within their employing organizations.

³ The significance or materiality of the inducements to the individual(s) offering and being offered the inducements.

- At the September 2016 IESBA meeting, members did not indicate the need to specifically address cultural issues, with only a few CAG Representatives, at the September 2016 CAG meeting, requesting that cultural differences be considered in drafting the revised standard.
24. The Task Force formed the view that the principle-based approach within the conceptual framework could be applied to cultural differences. This has been achieved in the strawman in the intent test and the evaluation of threats to compliance with the fundamental principles, as stated in paragraph 12 of this agenda paper. The Task Force thus concluded that specific guidance addressing cultural issues is not needed and might not even be appropriate.

Guidance Relating to Immediate or Close Family Members

25. Consistent with the extant Code, the Task Force's proposals include guidance on how a professional accountant might advise an immediate or close family member of relevant threats and how those threats might be addressed when the immediate or close family member is placed in a position that might result in them being offered inducements (see paragraph 250.9 A2).

Matter for IESBA Consideration

3. IESBA members are asked for views on the proposed text for Section 250 based on the matters considered above.

Conforming Amendments to Section 340, Gifts and Hospitality

26. The Task Force has considered the implications of its proposals on Section 340 set out in **Agenda Item 3-B**. The Task Force is of the view that the basis of its proposals set out in **Agenda Item 5-F** is also applicable to PAPPs. For example, the Task Force is of the view that, when offering or being offered an inducement, a PAPP should first consider the intent behind the inducement. Even when the professional accountant has no reason to believe that there is an actual or perceived intent to unduly influence the accountant, the professional accountant would still have to consider possible threats to compliance with the fundamental principles. The process of assessing the intent and then identifying, evaluating and addressing threats should therefore be the same for PAPPs as for PAIBs.
27. However, Section 340 might be enhanced by tailoring examples of threats to better consider the specific dynamics of a relationship between a PAPP and a client. In its deliberations, the Task Force is of the view that, in comparison to PAIBs, relatively few inducements would fall under the banner of "other inducements," such as discounts in purchases of retail goods. The majority of inducements that a PAPP would offer or receive would be classified as gifts or hospitality. This would be reflected when consideration is given to modifying examples of threats for a revised Section 340.
28. In addition, under Section 340 a PAPP can accept a gift or hospitality regardless of the intent if a RITP considers the value of the gift or hospitality to be trivial and inconsequential. This would need to be amended to conform to the proposed Section 250.

Matters for IESBA Consideration

4. IESBA members are asked for views on:
- (a) Whether the proposed requirements and application material within **Agenda Item 5-F** can replace extant Section 340?

- (b) What guidance within **Agenda Item 5-F** needs to be tailored to suit PAPPs, other than the examples?
- (c) How the examples within **Agenda Item 5-F** can be tailored to be more applicable to PAPPs in their relationships with clients.