

**Review of Part C of the Code, Phase 2—
Issues and Task Force Proposals****I. Introduction**

1. This paper summarizes the issues and Task Force proposals related to a revision of the inducement provisions in the extant Code. This paper includes the following sections:
 - Approach to Revising Inducement Provisions and Project Scope
 - Matters for CAG Consideration
 - Proposed Conforming Amendments

II. Approach to Revising Inducement Provisions and Project Scope

2. Proposed Section 250 (Agenda Item C-2) represents a substantive redraft of extant Section 350. Based on the input received from the IESBA and the CAG at their respective meetings in September 2016, the Task Force presented a [first read](#) draft of proposed revisions at the December 2016 IESBA meeting. The Task Force's proposals in Agenda Item C-2 include revisions made to address the input received from the September 2016 CAG meeting and the December 2016 IESBA meeting.
3. In considering the first read draft, the IESBA agreed that:
 - (a) A structure that first addresses illegal inducements, such as bribery and corruption, would be suitable (before addressing unethical inducements that, while not defined as illegal, might still result in a breach of the fundamental principles).
 - (b) While most of the provisions in the section will invariably concern the professional accountant (PA) being offered inducements, the offering and receiving of inducements should be dealt with at the same time to avoid repetition.

Bribery and Corruption

4. Feedback received from the IESBA and the CAG suggested that bribery and corruption should be covered by the revised section, as they are topical issues that stakeholders would expect the proposals in Section 250 to address, particularly for situations where legislation does not exist or is inadequate.
5. The Task Force believes illegal inducements that are adequately covered by laws and regulations are considered in the proposals but are not the focus of the section. In addition, no mention of specific legislation has been made. Given the plethora and complexity of legislation relating to bribery and corruption, the Task Force believes that it would not be advisable to develop provisions on how to follow each legal or regulatory requirement individually. Instead, in the proposed revisions, PAs are required to understand and abide by relevant legal and regulatory provisions governing bribery and corruption and comply with them.
6. The remaining principles-based proposals have been written to consider all types of inducements that might not be covered by legislation. This would not only be gifts and hospitality that might be

considered unethical, but also include inducements that can be illegal in some jurisdictions but legal in others, for example facilitation payments, political lobbying and commission payments.

7. In determining whether proposed Section 250 should address bribery and corruption, the IESBA also considered whether a definition of bribery and corruption was necessary to conclude whether an inducement constitutes a bribe or corruption. It concluded that:
 - (a) It would be difficult to devise precise definitions that can be applied globally given the variety of jurisdictional definitions. Hence, a definition in the Code would not necessarily add value and might even conflict with local legal definitions.
 - (b) Bribery and corruption are widely used and generally understood terms. Hence, a generic definition within the Code could set an adverse precedent and may raise questions about whether other widely used terms should also be defined.
 - (c) Inclusion of a definition could incorrectly suggest that the scope of Section 250 is aimed at addressing illegal bribery and corruption.
8. There was also a suggestion to consider including a reference to a definition(s) external to the IESBA Code. The Task Force did not consider this feasible because it is not aware of a single globally accepted definition.

III. **Matters for CAG Consideration**

The Use of “Inducements” as a Neutral Term and the Title of Section 250

9. The IESBA and the CAG had questioned the suitability of the current heading of Section 250, “Inducements.” Notably, concerns relating to the word “inducement” included the following:
 - While it has a clear definition in English, it might be difficult to translate.
 - It has a negative connotation.
 - It is unlikely to be a search term used when looking for relevant guidance in the Code.
 - It does not have a definition and is not easily definable.
10. The IESBA considered the merits of alternatives. Notably the term “gifts and hospitality” was considered as this phrase is:
 - More neutral than “Inducements;”
 - Appears to be a standard way that similar codes introduce the subject;
 - Would be a more likely search term; and
 - Is the current title of proposed restructured Section 340 applicable to professional accountants in public practice (PAPPs).
11. However, during the IESBA discussion it was felt that this option could narrow the scope of the revised section, hence the IESBA expressed a preference for “Gifts, Hospitality and other Inducements.”
12. After considering feedback received at the September 2016 IESBA and CAG meetings and the December 2016 IESBA meeting, the Task Force has amended the application material to explain that

an “inducement” can take many different forms, for example objects, situations or actions that are used to influence behavior but not necessarily influence with an inappropriate intent. Inducements can be used to improperly influence the PA’s ability to comply with the fundamental principles, but can also encourage positive beneficial behaviors, for example an employer offering incentive programs to its employees.

13. Hence, inducements such as gifts, hospitality, financial interest and compensation incentives should still be considered inducements. However, the proposed Section 250 focuses on inducements that influence behavior in a manner that might result in a breach of the fundamental principles.

Examples of Inducements

14. The IESBA agreed with the Task Force’s proposals to include a variety of examples in the proposed Section 250 to (a) assist in establishing what might constitute an inducement, and (b) provide guidance on different situations which, depending on the circumstances, might lead to unethical behavior or even illegal acts. In addition, the Task Force felt that as the term “inducement” is being presented as a collective term for all kinds of means to influence behavior, it would be useful to clarify to a reader that certain types of inducements, especially gifts and hospitality, can be perfectly acceptable for a PA to offer or accept.

Intent Behind an Inducement

15. The IESBA agreed with the Task Force that the PA should consider the actual or perceived intent behind the inducement and whether the intention is to gain an advantage that would not have been otherwise obtained. If the PA has reason to believe that the actual or perceived intent is adverse, the PA should be required to refuse the inducement. An underlying “intent test,” although described in other words, is set out in the extant paragraph 350.2¹ and as such, this test is already embedded in the Code.
16. The IESBA considered a test that might allow a more objective assessment of the intent of another individual. However, the IESBA concluded that another individual’s intent can only be understood to a certain extent and hence a degree of subjectivity is inherent. The need for a consideration of this subjectivity is set out in proposed provisions by limiting matters to what “the accountant has reason to believe” is the intent.
17. The IESBA felt that it would be beneficial to include application material in the proposals on how to objectively consider whether there is an intent to unduly influence the PA.
18. In considering the nature of such application material, it was also noted that any factors that a PA should consider when evaluating the intent behind an inducement would be similar to the factors to

¹ Extant paragraph 350.2 notes that “Offers of inducements may create threats to compliance with the fundamental principles. When a professional accountant in business or an immediate or close family member is offered an inducement, the situation shall be evaluated. Self-interest threats to objectivity or confidentiality are created when an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behavior, or obtain confidential information. Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the professional accountant in business or an immediate or close family member.”

consider when evaluating the level of any threats created by an inducement. The Task Force considered duplicating the factors in two different circumstances, i.e., in evaluating:

- (a) The intent behind an inducement; and
- (b) The level of any threat the inducement might create.

19. However, in order to avoid any possible confusion that duplication might cause, the proposals clarify that factors used to determine the intent behind an inducement can also be used for evaluating the level of any threat.

Reasonable and Informed Third Party (RITP)

20. The proposals presented at the December 2016 IESBA meeting included an alternative to the RITP test to evaluate whether the offering or accepting of an inducement is appropriate to account for the fact that perceptions might be held by those who do not meet the description of a RITP. During the IESBA discussion, it was felt that another threshold might be more appropriate with respect to perceptions about inducements where the disclosure of an inducement is publically available. However, the IESBA felt that the RITP test should be retained for evaluating whether an inducement is appropriate, as an alternative test would need to be established first.
21. The Task Force has reconsidered the matter, noting that the matter of “anyone” forming a conclusion over whether an inducement is appropriate could essentially forbid any inducements, as the possibility exists that someone within the general public might regard even the smallest inducement as being inappropriate. Having such an important test being based on individual perceptions complicates enforceability. The RITP test, however, is made from the perspective of an individual who evaluates all the relevant facts and circumstances that the PA knows, or could reasonably be expected to know, at the time the conclusions are made.
22. The Task Force thus aligned with the IESBA’s views and concluded that the RITP test is relevant to Section 250. Also, a different test than the RITP test has not been established in the Code.

Trivial and Inconsequential

23. The Task Force debated whether it is acceptable to offer or accept an inducement that is “trivial and inconsequential” in value if it is made with an adverse intent. It noted that research literature indicated that even a gift bearing little value can still affect an individual’s behavior and might result in a threat to compliance with the fundamental principles.
24. The Task Force thus concluded that an inducement, regardless of its value, should not be offered or accepted if the PA has reason to believe that it is made with actual or perceived adverse intent. However, once the PA has evaluated the actual or perceived intent behind the inducement and believes that it is not adverse, a “trivial and inconsequential” inducement cannot pose a threat to compliance with the fundamental principles.

Immediate or Close Family Members

25. The IESBA considered whether it could include a requirement relating to an immediate or close family member (hereafter referred to as “family member”) offering or accepting an inducement that is made

with adverse intent. It concluded that this would not be appropriate as the Code is not applicable to, or enforceable on, non-PAs. However, consistent with the extant Code, if a PA is aware of a family member offering or accepting an inducement, the PA should be required to evaluate any threats to the PA's compliance with the fundamental principles that might arise.

26. After the December 2016 IESBA meeting, the Task Force concluded that more guidance regarding these situations would be appropriate. As a starting-point, the PA has to be alert to the possibility that threats to the PA's compliance with the fundamental principles might arise if a family member is offering or receiving an inducement. When facing such situations, the PA has to apply the same requirements and application material as when the PA is offering or receiving the inducement directly.
27. In a situation where the PA is offering or being offered the inducement, the relationship between the PA and counterparty only needs to be considered to evaluate any threats. However, where a family member is involved, the PA would also need to consider the relationships between the family member and:
 - (a) The PA; and
 - (b) The counterparty offering or being offered the inducementas both of these can also impact the nature of the threat.
28. There might also be circumstances where the only way to address the threat is for the PA to not be involved in any business-related decisions involving the counterparty.

Matters for Consideration

1. Representatives are asked for views on the Task Force's proposals with respect to:
 - (a) The use of "inducements" as a neutral term and the title of proposed Section 250.
 - (b) The provisions related to the intent test.
 - (c) The use of the RITP test to evaluate the intent behind an inducement.
 - (d) The provisions related to immediate and close family members.

IV. Proposed Conforming Amendments

29. The IESBA is of the view that conforming amendments are needed to certain sections of the proposed restructured Code, notably Sections 340,² 420³ and 906⁴ in light of the proposed revisions to Section 250.
30. In considering necessary conforming changes to proposed Section 340 applicable to PAPPs, the Task Force intends to clarify that the counterparty offering or receiving the inducement would be a

² Extant Part B, Section 260, *Gifts and Hospitality*

³ Extant paragraph 290.225, *Gifts and Hospitality*

⁴ Extant paragraph 291.155, *Gifts and Hospitality*

client. In addition, the examples will be tailored to be more appropriate to the relationship between a client and a PAPP.

31. The proposed conforming amendments in Section 340 would apply for the provisions of services that are not audits, reviews or other assurance engagements (e.g., in situations when a PAPP offers an inducement to, or receives an inducement from, a tax client).
32. The IESBA will consider conforming amendments to Sections 420 and 906, which relate to independence for audit and assurance engagements, with specific guidance for PAPPs when providing audit and review services (Section 420) as well as when providing other assurance services (Section 906).

Matter for Consideration

2. Representatives are asked for views on the approach to the proposed conforming amendments arising from the proposed revisions to extant Section 350.