



**IESBA Exposure Draft:  
Improving the Structure of the Code of Ethics for  
Professional Accountants – Phase 2**

With Certain Proposed Conforming Amendments Arising  
from the Safeguards Project

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## INTRODUCTION

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Almost two thirds of our working membership work in business; many leading some of the UK's and the world's great companies. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

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ICAS was created by Royal Charter in 1854. The ICAS Charter requires its Boards to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

ICAS welcomes the opportunity to comment on the IESBA Exposure Draft: *'Improving the Structure of the Code of Ethics for Professional Accountants – Phase 2 – With Certain Proposed Conforming Amendments Arising from the Safeguards Project'*. The ICAS Ethics Board has considered the Exposure Draft and we are pleased to forward their comments.

Any enquiries should be addressed to Ann Buttery, ICAS Head of Ethics.

## KEY POINTS

We appreciate the work done by IESBA in relation to the re-structuring of the Code. However, the re-structuring process is complex and it is difficult to appropriately review the proposed changes. This may have led to matters being inadvertently missed. As such, it is suggested that IESBA devise a process so that if significant issues become apparent in the future they can be addressed quickly.

In relation to this specific Exposure Draft, we have two main issues and these are highlighted in our response to Question 1.

## RESPONSES TO SPECIFIC QUESTIONS

- 1. Do you believe that the proposals in this ED have resulted in any unintended changes in meaning of:**
  - **The provisions for Part C of the Extant Code, as revised in the close-off document for Part C Phase 1 (see Sections 200-270 in Chapter 1)?**
  - **The NOCLAR provisions (see Sections 260 and 360 in Chapter 2)?**
  - **The revised provisions regarding long association (see Sections 540 and 940 in Chapter 3)?**
  - **The provisions addressing restricted use reports in the extant Code (see Section 800 in Chapter 4)?**
  - **The provisions relating to independence for other assurance engagements (Part 4B in Chapter 5)?**

**If so, please explain why and suggest alternative wording.**

PLEASE NOTE THAT WE HAVE FRAMED OUR COMMENTS TO THE ABOVE QUESTION IN THREE SECTIONS:

- a) OVERALL COMMENTS
- b) RESPONSES TO THE SPECIFIC QUESTIONS
- c) OTHER COMMENTS

a) OVERALL COMMENTS

**The Public Interest**

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’ we noted the following:

“In terms of clarity, it would be a good opportunity to clarify what the professional accountant’s responsibilities are in relation to the public interest. Some firms and others interpret the current text as if it is only the profession as a whole which has a specific responsibility to act in the public interest. However, the content of section 300.2 A6 would imply that the responsibility to act in (and not just consider) applies to the individual professional accountant i.e.

*“Leadership of the firm that promotes compliance with the fundamental principles and establishes the expectation that professional accountants will act in the public interest.”*

We note in the ‘*Agreed in Principle Text – Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1 and Proposed Revisions Pertaining to Safeguards in the Code – Phase 1*’ that the sentence above has been amended (now paragraph 300.7 A5) and states the following:

*“Leadership of the firm that promotes compliance with the fundamental principles and establishes the expectation that ~~professional accountants~~ assurance team members will act in the public interest. “*

We do not believe that this addresses our point above, and also the fundamental issue that it is not clear whether it is only the profession as a whole, rather than the individual professional accountant, which has specific responsibility to act in the public interest.

We further note that in ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 2*’ reference to a professional accountant having “responsibility to act in the public interest” is now stated in paragraph 100.1:

*“A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. A professional accountant’s responsibility is not exclusively to satisfy the needs of an individual client or employing organization. Therefore, the Code contains requirements and application material to enable accountants to meet their responsibility to act in the public interest.”*

We note that this is also different wording from both the text of paragraph 100.1 of the Extant Code and Structure ED 1:

Paragraph 100.1 Extant Text:

*“A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, a professional accountant’s responsibility is not exclusively to satisfy the needs of an individual client or employer. In acting in the public interest, a professional accountant shall observe and comply with this Code. If a professional accountant is prohibited from complying with certain parts of this Code by law or regulation, the professional accountant shall comply with all other parts of this Code.”*

Paragraph 100.1 as per Structure ED 1:

*“A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. A professional accountant’s responsibility is not exclusively to satisfy the needs of an individual client or employer. Therefore, the Code contains requirements and application material for accountants regarding matters that are integral to acting in the public interest.”*

We also note that in *“Improving the Structure of the Code of Ethics for Professional Accountants – Phase 2”*, reference to a professional accountant having a responsibility to act in the public interest is also reiterated in the first sentence of paragraph R200.5 A3: “All professional accountants have a responsibility to act in the public interest” and in 260.7 A1 *“A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest.”*

Therefore, as per our original observation, we believe this would be a good opportunity to clarify in the Code what the professional accountant’s responsibilities are in relation to the public interest.

### **Building block approach**

Although we are supportive of the re-structure project, we do, however, remain concerned about the length of the Code and believe this acts as a disincentive to the user. We would prefer a ‘building block’ approach that could be easily scalable. This would consist of a core block for all professional accountants accompanied by additional specific content for those involved in work in relation to PIEs. We believe that such an approach could be introduced by means of a proper electronic tool that enables, among other features, the distinction between provisions applicable to Public Interest Entities (PIEs) and non-PIEs.

## **b) RESPONSES TO THE SPECIFIC QUESTIONS**

### **The provisions for Part C of the Extant Code, as revised in the close-off document for Part C Phase 1 (see Sections 200-270 in Chapter 1)?**

#### **1. Paragraph 200.4**

“In this Part, the term “professional accountant” refers to:

- (a) Professional accountants in business; and
- (b) Professional accountants in public practice when performing professional activities pursuant to the professional accountant’s employment or ownership relationship with their firm. More information on when Part 2 might be applicable to professional accountants in public practice is set out in R120.4, 120.4 A1, R300.5 and 300.5 A1.”

Reference to only “employment or ownership” does not capture contractors.

#### **2. Paragraph R200.5**

Paragraph 300.6 in the extant Code has been replaced by paragraph R200.5 in the restructured Code. Paragraph 300.6 states: *“A professional accountant in business shall not knowingly engage in any business, occupation, or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.”*

Whilst we are supportive of the objectives of the restructure project we are concerned that the direct immediate sentiment of paragraph 300.6 appears to have been lost in the new paragraph R200.5.

#### **3. Paragraph 200.5A3**

We agree with the thinking in paragraph 200.5A 3 in that IESBA, in adding the first sentence (“All professional accountants have a responsibility to act in the public interest”) is trying to emphasise that all professional accountants regardless of what level they are in the organisation (i.e. not just senior professional accountants) have ethical responsibilities. However, in light of our comments above regarding public interest, perhaps instead of “All professional accountants have a responsibility to act in the public interest”, IESBA could say something along the lines that all professional accountants

have individual responsibility to uphold the fundamental ethics principles, regardless of what level they are in the organisation, and must be ethical leaders.

4. Paragraph 200.6A4

*“A professional accountant’s evaluation of the level of a threat might be impacted by the work environment within the employing organization and its operating environment. For example:*

- *Leadership that stresses the importance of ethical behavior and the expectation that employees will act in an ethical manner.*
- *Policies and procedures to empower and encourage employees to communicate ethical issues that concern them to **senior levels** without fear of retribution.”*

Should “senior levels” not be better explained – “senior levels of management”?

5. Paragraph R200.9

*“If a professional accountant communicates with individuals who have management responsibilities, the accountant shall be satisfied that communication with those individuals adequately informs all of those in a governance role with whom the accountant would otherwise communicate.”*

We believe that the above text is ambiguous, and may be viewed differently by different readers.

6. Section 210 – Conflicts of Interest

In Section 210 – conflicts of interest – there is no reference to the “reasonable and informed third party” test which is contained in paragraph 310.3 of the extant Code – we would prefer that the “reasonable and informed third party test” is specifically mentioned in this section as it was previously.

Also, where “Reasonable and informed third party” is referred to in the Code – for example, paragraphs R260.18, R360.21 and R900.51- this should refer back to the “reasonable and informed third party test” in paragraph 120.5A1 for clarity.

7. Paragraph 210.8 A3

*“If such disclosure or consent is not in writing, the professional accountant is encouraged to document:*

- (a) *The nature of the circumstances giving rise to the conflict of interest;*
- (b) *The safeguards applied to address the threats; and*
- (c) *The consent obtained.”*

Is there not a need to mention that recording of the timing of events could be important?

8. Paragraph 210.10 A1

*“A professional accountant might encounter other threats to compliance with the fundamental principles, for example, when:*

- *Preparing or presenting financial information as a result of undue pressure from others within the employing organization; or*
- *Financial, business or personal relationships that immediate or close family members of the professional accountant have with the employing organization.*

*Requirements and application material relevant to such threats is set out in Sections 220, 240 and 270.”*

Does the second bullet make sense? Recommendation, replace proposed wording with: – “Immediate or close family members of the professional accountants have financial, business or personal relationships with the employing organization.”

9. Paragraph 220.11 A1

*“Actions that might be appropriate include:*

- *Consulting the policies and procedures of the employing organization (for example, an ethics or whistle-blowing policy) regarding how to address such matters internally.*
- *Discussing concerns that the information is misleading with the professional accountant’s supervisor and/or the appropriate level(s) of management within the accountant’s organization or those charged with governance and requesting such individuals to take appropriate action to resolve the matter. Such action might include:*
  - o *Having the information corrected.*
  - o *If the information has already been disclosed to the intended users, informing them of the correct information.”*

*In situations where the misleading information might involve non-compliance with laws and regulations, Section 260 sets out requirements and application material on how to respond to such situations.”*

In the last sentence should it not be “**involves** or might involve...” to highlight that it could be actual or suspected non-compliance with laws and regulations.

10. Paragraph R230.4

*“A professional accountant shall not intentionally mislead an employer as to the level of expertise or experience possessed.”*

Should it just be “an employer” - what if the professional accountant is a contractor or NED?

11. Paragraph R230.5

*“If threats to a professional accountant’s ability to act with sufficient expertise cannot be addressed, the accountant shall determine whether to decline to perform the duties in question. If the professional accountant determines that declining is appropriate, the accountant shall communicate the reasons.”*

Should the reference to the threat not be to “professional competence and due care” rather than just “expertise”? For example, having the necessary expertise does not remove the threat of having insufficient time for performing or completing the relevant duties.

12. Paragraph 240.2

*“A professional accountant having a financial interest, or knowing of any financial interests held by others, might create threats. Self-interest to compliance with the principles of objectivity or confidentiality might, for example, be created where there is a motive or an opportunity to manipulate price-sensitive information.”*

Does this not also create a threat to professional behaviour – possibly illegal use of confidential information i.e. potentially leading to insider trading?

13. Paragraph 270.4 A3

*“Factors that are relevant in evaluating the level of threats created by pressure include:*

- *The intent of the individual who is exerting the pressure and the nature and extent of the pressure.*
- *The application of laws, regulations, and professional standards to the circumstances.*
- *The culture and leadership of the employing organization including the extent to which they reflect or emphasize the importance of ethical behavior and the expectation that employees will act ethically. For example, a corporate culture that tolerates unethical behavior might increase the likelihood that the pressure would result in a threat to compliance with the fundamental principles.*

- *Policies and procedures, if any, that the employing organization has established, such as ethics or human resources policies that address pressure.”*

In the first bullet should this not be expanded to “individuals and or entities...” This is backed by the content of paragraph 270.4 A6:

*“An action that might eliminate a threat created by pressure is the professional accountant’s request for a restructure of, or segregation of certain responsibilities and duties so that the accountant is no longer involved with the individual or entity exerting the pressure. This might be appropriate only when doing so would address the threat created by the pressure. For example, if the accountant is pressured in relation to a conflict of interest, the threat to compliance with the fundamental principle created by the pressure might be addressed when the accountant avoids being associated with the matter creating the conflict.”*

14. Paragraph 270.4 A4

*“Consultation with:*

- *A colleague, superior, human resources personnel, or another professional accountant;*
- *Relevant professional or regulatory bodies or industry associations; or*
- *Legal counsel might assist the professional accountant understand the factors that are relevant in evaluating the level of the threat.*

*The principle of confidentiality applies in communications with external parties.”*

Instead of “factors” should it not be “facts and circumstances” in line with the terminology used in Section 120.

15. Paragraph R270.5

*“If the professional accountant identifies and determines that the threat created by pressure is not at an acceptable level, the accountant shall address that threat by:*

- Eliminating the circumstances, interests or relationships, that are creating the threats; including resigning from the employing organization;*
- Applying safeguards, where available or capable of being applied; or*
- Declining or ending the specific professional activity.”*

In relation to point (a) we view resignation as the “nuclear” option and this does not necessarily serve the public interest. We would rather the wording was: (a) Eliminating the circumstances, interests or relationships, that are creating the threats. This may in extreme situations including resigning from the employing organization.” This would also then be more in line with the wording in the requirements and application material at R220.13 and R260.18.

16. Paragraph 270.5 A1

*“The professional accountant is also encouraged to document:*

- *The facts.*
- *The communications.*
- *The courses of action considered.*
- *The parties with whom these matters were discussed.*
- *How the matter was addressed.”*

Is there a need to spell out that timing should be documented, or is this covered by “the facts”?

**The NOCLAR provisions (see Sections 260 and 360 in Chapter 2)?**

17. Paragraph R260.6

*“In some jurisdictions, there are legal or regulatory provisions governing how professional accountants are required to address non-compliance or suspected non-compliance. These legal or regulatory provisions might differ from or go beyond the provisions in this section. When encountering*

*such non-compliance or suspected non-compliance, the accountant shall obtain an understanding of those legal or regulatory provisions and comply with them, including:*

- (a) Any requirement to report the matter to an appropriate authority; and*
- (b) Any prohibition on alerting the relevant party prior to making any disclosure*

*260.6 A1 A prohibition on alerting the party prior to making any disclosure might arise, for example, pursuant to anti-money laundering legislation.”*

We would prefer for these paragraphs to be more upfront.

18. Paragraph 260.20 A2

“The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or might be caused by the matter to investors, creditors, employees or the general public. For example, the senior professional accountant might determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The employing organization is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The employing organization is regulated and the matter is of such significance as to threaten its license to operate.
- The employing organization is listed on a securities exchange and the matter might result in adverse consequences to the fair and orderly market in the employing organization’s securities or pose a systemic risk to the financial markets.
- It is likely that the employing organization would sell products that are harmful to public health or safety.
- The employing organization is promoting a scheme to its clients to assist them in evading taxes.”

The last bullet - “The employing organization is promoting a scheme to its clients to assist them in evading taxes” - appears more suited to a professional practice firm. We believe a better example for professional accountants in business would be: *“Pressure to structure a transaction to evade tax”*.

19. In various places within these sections references are made to the “employment organisation”. We noted in our response to the NOCLAR Exposure Draft (dated 3 September 2015): “We are not convinced that the proposed changes cover situations where the professional accountant may be acting in a sub-contracted role, that is, where the employing organisation makes use of sub-contracted labour. Additionally, in terms of section 360, are non-executive directors (NEDs) within the scope of this guidance? NEDs, in the UK, are not normally classified as “employees”. Is the intention to define “employing organisation” within the revised Code? Paragraph 36 of the NOCLAR Explanatory Memorandum states: “The revised proposals are intended to cover only situations where the PA has a direct (contractual) relationship with a client (such as through an audit or other assurance engagement or the provision of non-assurance services), or for PAIBs, where there is an employment relationship.” We are not convinced that NEDs are captured, nor are professional accountants engaged on a sub-contract basis.”

We therefore welcome the addition of paragraph 260.8 A1 which states:

*“The employing organization’s management, with the oversight of those charged with governance, is responsible for ensuring that the employing organization’s business activities are conducted in accordance with laws and regulations. Management and those charged with governance are also responsible for identifying and addressing any non-compliance by:*

- (a) The employing organization;*
- (b) An individual charged with governance of the entity;*
- (c) A member of management; or*
- (d) Other individuals working for or under the direction of the employing organization.”*

This paragraph seems to cover contractors in point (d). Our reading of this paragraph being that this establishes a responsibility on the employing organisation’s management, and those charged with governance, for ensuring that both the organisation’s employees, and contractors, conduct their activities in accordance with laws and regulations.

However, when it comes to specific paragraphs – for example paragraph 260.12 A1 - it is not clear whether a sub-contractor or NED, for whom the organisation is not an employer, would be within the scope:

260.12 A1 – “A senior professional accountant is expected to apply knowledge and expertise, and exercise professional judgment. However, the accountant is not expected to have a level of understanding of laws and regulations greater than that which is required for the accountant’s role within the employing organization. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.”

We therefore believe it would be clearer if the term “employing organisation” could be clearly defined.

We also note that there might be other paragraphs where this comment is also relevant.

### **The revised provisions regarding long association (see Sections 540 and 940 in Chapter 3)?**

#### 20. Section 540 - Long Association of Personnel (including partner rotation) with an audit client

The “Other considerations” paragraphs at R540.20 are tagged on at the end of Section 540 after the paragraphs on “cooling off”, and yet they discuss matters which should be considered when considering the “time-on” period.

We believe these paragraphs should be added under “Audits of public interest entities” (paragraphs R540.6 to R540.9) so that it is clear these matters should be thought about as part of the “time-on” considerations.

#### 21. Paragraph 540.1

As we noted in our response to the *IESBA Exposure Draft: Proposed Revisions Pertaining to Safeguards in the Code – Phase 2 and Related Conforming Amendments* dated 25 April 2017:

*“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.”*

Is it just independence as opposed to the fundamental principles and independence? Likewise, at paragraph 940.1, 800.1, 905.1, 906.1 and 907.1.

#### 22. Paragraph 540.6 A1

*“In calculating the time-on period, the count of years cannot be restarted unless the individual ceases to act in any one of the roles in paragraph R540.6(a) to (c) for a consecutive period equal to at least the cooling-off period determined in accordance with paragraphs R540.10 to R540.12 as applicable to the role in which the individual served in the year immediately before ceasing such involvement. For example, an individual who served as engagement partner for four years followed by three years off can only act thereafter as a key audit partner on the same audit engagement for three further years (making a total of seven cumulative years). Thereafter, that individual is required to cool off in accordance with paragraph R540.13.”*

We appreciate that the subject matter of this paragraph is complex, however we believe the wording of this paragraph could be simplified to aid understanding, and also ultimately with translation.

#### 23. Paragraph 907.4 A2

*“An example of an action that might be a safeguard to address threats created by actual or threatened litigation is having a professional review the work performed.*

*If the litigation involves an assurance team member, an action that might eliminate those threats is removing that individual from the assurance team.”*

We would prefer that the reference to “a professional review” be made more specific to clarify that it is a professional with the appropriate or relevant expertise who should review the work performed. For example, if it is an actuarial matter it is a professional with actuarial expertise who should be performing the review.

24. Paragraph R910.8

*“When an entity has a controlling interest in the assurance client and the client is material to the entity, neither the firm, nor an assurance team member nor any of that individual’s immediate family shall hold a direct or material indirect financial interest in that entity.”*

We believe this paragraph could be made clearer by making the following amendments:

*“When an entity has a controlling interest in the assurance client and that assurance ~~the~~ client is material to the entity, neither the firm, nor an assurance team member nor any of that individual’s immediate family shall hold a direct or material indirect financial interest in that entity.”*

**The provisions addressing restricted use reports in the extant Code (see Section 800 in Chapter 4)?**

25. Section 800 - Reports that include a restriction on use

We believe that the wording in extant paragraphs 290.500 to 290.514 more clearly describes what firms ought to do if a report includes a restriction on use and distribution.

The new Section 800 often refers to “Part 4A (excluding this section),” however when reading section 800 we believe use of this term does not always make sense, and could lead to confusion, in the paragraphs within which it is used. We suggest IESBA review this section again to ensure the requirements and application material is clear.

For example, we note paragraph R800.3:

“A firm might issue a report on an audit of special purpose financial statements which includes a restriction on use and distribution. The independence requirements that apply in respect of such as an engagement shall only be eligible for the modifications to Part 4A (excluding this section) that are permitted by this section if:....”

Whereas paragraph 290.500 of the extant Code states the following which we believe is much clearer than the underlined sentence above: “The independence requirements in Section 290 apply to all audit engagements. However, in certain circumstances involving audit engagements where the report includes a restriction on use and distribution, and provided the conditions described in 290.501 to 290.502 are met, the independence requirements in this section may be modified as provided in paragraphs 290.505 to 290.514.”

Similarly, paragraph R.800.7 states: “When the firm performs an eligible audit engagement, references to audit client in Part 4A (excluding this section) do not need to include its related entities.” We argue simply by saying: “When the firm performs an eligible audit engagement, references to audit client in ~~Part 4A (excluding this section)~~ do not need to include its related entities” makes the sentence clearer.

We also note that extant paragraph 290.506 states the following: “When the conditions set out in paragraphs 290.500 to 290.502 are met, references to audit client do not include its related entities.” This appears to be a slightly different meaning to that in new paragraph R.800.7 above.

## **The provisions relating to independence for other assurance engagements (Part 4B in Chapter 5)?**

### 26. Section 910 – Financial interests

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountant – Phase 1*’ we noted:

“We are not convinced that it is an improvement to have the “financial interests – other circumstances” all lumped in together. It might be better to have separate individual sections.”

We reiterate this comment noting that, whilst Section 921 “Family and business relationships” has clear sections distinguishing between the application material for “immediate” and “close” family, paragraph 910.11 “Financial Interests – Other circumstances” discusses “close family” within “Other circumstances”, along with the requirement and application material for financial interests held “by other individuals”. We believe it would be more helpful if there were separate sub-sections for “close family” and “other individuals”. The distinction between “close” and “immediate” family may then be more obvious to users.

Further, in our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountant – Phase 1*’ we noted: Is there an equivalent to current paragraph 290.117 re an inadvertent violation of financial interest requirements?

### 27. Section 920 - Business relationships

In paragraph R920.5, “immediate family members” are not specifically mentioned in this paragraph but are discussed in extant paragraph 291.118. We believe guidance regarding “immediate family members” should be specifically mentioned in this paragraph.

### 28. Section 924 - Employment with an assurance client

We question whether new paragraph 924.5 A3 should be denoted as a “requirement” paragraph. We note the paragraph opens with saying: “The requirement to apply the conceptual framework...”

Extant paragraph 291.128 states: “If a former partner of the firm has previously joined an entity in such a position and the entity subsequently becomes an assurance client of the firm, the significance of any threats to independence shall be evaluated and safeguards applied when necessary, to eliminate the threat or reduce it to an acceptable level.”

## **c) OTHER COMMENTS**

We would also like to note the following comments in relation to the *Agreed-In-Principle Text “Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1 and Proposed Revisions Pertaining to Safeguards in the Code – Phase 1”* for consideration.

### **Guide to the Code**

We continue to be supportive of the ‘Guide to the Code’. We do however have the following specific points in relation to the Guide.

#### 29. *Paragraph 4*

We noted in our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’, whether in relation to Part 2 whether this definition would be confusing for non-English speakers? Does it therefore include a professional accountant who is engaged or contracted by a third party but not in an executive or non-executive capacity?

We also re-iterate our suggestion that moving the wording in Part 2 “*PAs in public practice might also find part 2 relevant to their particular circumstances*” to the discussion on Part 3 as such individuals might ignore the content of Part 2 based on its title and jump immediately to Part 3.

30. *Paragraph 9*

We noted in our response to *‘Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1’* that Paragraph 7 of the Guide stated that “shall” means a requirement. In the extent version of the Code, Paragraph 100.4 says compliance is required unless an exception is permitted. There is no equivalent text here. There is possibly a need to refer to the content of paragraph R100.3 in this context i.e. compliance is required unless local laws or regulations preclude compliance with certain parts of the Code.”

31. We note that in paragraph 11 of Guide to the Code in the *‘Agreed in Principle Text – Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1 and Proposed Revisions Pertaining to Safeguards in the Code – Phase 1’* explanation is now given as to the difference between ‘might’ and ‘may’ (this was not given in original restructuring ED). Is this a nuance which will get lost in translation?

Paragraph 10 in the Guide in *‘Agreed in Principle Text – Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1 and Proposed Revisions Pertaining to Safeguards in the Code – Phase 1’* text now says “In some situations the Code provides a specific exception to a requirement. In such a situation, the provision is designated with an “R” but uses “may” or conditional wording.”

We would argue our point above, that the use of “might” or “may” could be lost in translation, making it unclear that compliance with the Code is required unless local laws or regulations preclude compliance with certain parts of the Code.

32. In our response to *‘Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1’* we noted the following in respect of the Guide:

*“Paragraph 12*

We question whether it might be more appropriate to use a stronger word than “encouraged” in relation to the need for documentation. “

In the *‘Agreed in Principle Text – Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1 and Proposed Revisions Pertaining to Safeguards in the Code – Phase 1’*, we note that there is now no guidance at all regarding documentation.

We believe that the Guide should contain guidance on documentation, and would suggest re-introducing the wording contained in the *‘Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1’* Exposure Draft (“A professional accountant is encouraged to document the substance of the issue, the details of any discussions, the decisions made and the rationale for those decisions.”), or the wording used in paragraphs elsewhere in the Code where documentation is discussed.

33. **Professional accountant**

Although we understand why the term “professional accountant” is sometimes followed by use of the term “accountant”, we would prefer for a consistent approach to be adopted throughout and believe that the former term is more accurate and therefore preferable.

34. **Paragraph R100.4**

*“A professional accountant who identifies a breach of the Code shall evaluate the significance of the breach and its impact on the accountant’s ability to comply with the fundamental principles. The accountant shall also:*

- (a) Take whatever actions might be available, as soon as possible, to satisfactorily address the consequences of the breach; and*
- (b) Determine whether to report the breach to, for example, those who might have been affected by it, a professional body or a regulator.”*

We believe that consideration should be given to adding in additional content in relation to whether there a need to include anything for the professional accountant to take action to mitigate the risk of another similar breach.

35. **Paragraph R100.4**

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’ we noted:

“We question whether this paragraph has a slightly different message from that contained in current Paragraph 100.10 which states: *“A professional accountant may inadvertently violate a provision of this Code. Depending on the nature and significance of the matter, such an inadvertent violation may be deemed not to compromise compliance with the fundamental principles provided, once the violation is discovered, the violation is corrected promptly and any necessary safeguards are applied.”*”

The current wording relates to a specific professional accountant who may inadvertently have violated a provision of the Code. The new wording potentially encompasses other professional accountants who may discover a breach of the Code. The new provision also appears to be more detailed.”

36. **Paragraph 110.1**

We note that changes have been made to the definitions of the fundamental principles. We believe that this would be better done as a separate exercise. We accept that the approach adopted probably uses simpler language, and results in clearer wording, but do not believe that the wording of the principles should be changed, unless full consideration has been given as to whether the principles are fundamentally still fit for purpose.

37. **Paragraph R112.2**

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’ we noted that “bias” has been dropped from original wording in 120.2.

38. **Paragraph 113.1.A2**

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’ we noted:

*“Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the **professional environment**.”*

Is it just the professional environment or should it be wider and refer also to the relevant business environment?

39. **Paragraph R114.1**

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’ we noted:

“Despite our comments above, we believe the change in wording to the objectivity and professional competence and due care principles do make them clearer. We note that a lot of the confidentiality principle has been deleted although it is included separately at paragraph R114.1 later. We question whether this approach is the most appropriate. “

40. **Paragraph 115.1 A1**

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’ we noted:

We note that this paragraph drops the wording “weighing all the specific facts and circumstances available to the professional accountant at that time,” which is contained in current paragraph 150.1. Is this not important wording because it would not be fair to judge someone on the basis of information which only came to light after the event? We believe that this paragraph should reflect the wording of new paragraph 120.5 A1 re “reasonable and informed third party.”

41. **Paragraph 400 .6**

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’ we noted:

It would be good to have an explanation of what is considered to be a PIE in this introductory section. This paragraph does not currently give the detailed definition of a PIE (as per current paragraph 290.25). The definition of a PIE only appears to be in the Glossary – we believe it would be useful to include it here.

42. **Paragraph R510.11**

In our response to ‘*Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*’ we noted:

We are not convinced that sections 510.9 (a) and (b) have the same meaning as the content of current paragraph 290.112. Current paragraph 290.112 states; “*independence is deemed not to be compromised if these interests are immaterial AND the audit client cannot exercise significant influence over the entity*”. Proposed section 510.9 (a) states: “*The financial interests are immaterial, OR, the audit client cannot exercise significant influence.*” We are also not convinced that the content of paragraph 510 9 (b) reflects that of the existing section either.

This remains in paragraph R510.11.

**2. Do you believe that the proposals are consistent with the key elements of the restructuring as described in Section III of this Explanatory Memorandum?**

Generally, we believe that the proposals are consistent with the key elements of the restructuring as described in Section III of the Explanatory Memorandum. We would however draw your attention to the points raised above.

***Conforming Amendments Arising from the Safeguards Project***

**3. Respondents are asked for any comments on the conforming amendments arising from the Safeguards project. Comments on those conforming amendments are requested by April 25, 2017 as part of a response to Safeguards ED-2.**

Please refer to our separate response to that consultation.

***Effective Date***

**4. Do you agree with the proposed effective dates for the restructured Code? If not, please explain why not.**

For simplicity, we support one effective date of 15 June 2019.

## Request for general comments

### *Translations*

We have highlighted some concerns regarding translation above as follows:

1. We note that in paragraph 11 of Guide to the Code in the *'Agreed in Principle Text – Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1 and Proposed Revisions Pertaining to Safeguards in the Code – Phase 1'* explanation is now given as to the difference between 'might' and 'may' (this was not given in original restructuring ED). Is this a nuance which will get lost in translation?

Paragraph 10 in the Guide in *'Agreed in Principle Text – Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1 and Proposed Revisions Pertaining to Safeguards in the Code – Phase 1'* text now says "In some situations the Code provides a specific exception to a requirement. In such a situation, the provision is designated with an "R" but uses "may" or conditional wording."

We would argue our point above, that the use of "might" or "may" could be lost in translation, making it unclear that compliance with the Code is required unless local laws or regulations preclude compliance with certain parts of the Code.

2. Paragraph 200.6A4

*"A professional accountant's evaluation of the level of a threat might be impacted by the work environment within the employing organization and its operating environment. For example:*

- *Leadership that stresses the importance of ethical behavior and the expectation that employees will act in an ethical manner.*
- *Policies and procedures to empower and encourage employees to communicate ethical issues that concern them to **senior levels** without fear of retribution."*

Should "senior levels" not be better explained – "senior levels of management"?