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Dear Board Members

### **Exposure Draft of Proposed Revisions to the Fee-related Provisions of the Code**

We are pleased to have the opportunity to respond IESBA's Exposure Draft *Proposed Revisions to the Fee-related Provisions of the Code*. We set out below our overall comments on the proposals followed by detailed responses to the questions raised. We trust that you will find our comments helpful. Please feel free to contact me if you would like to discuss further.

#### **Overall Comments**

In general, we support the IESBA's efforts to enhance the fee-related provisions of the code so that they remain robust and appropriate in enabling professional accountants to meet their responsibility to comply with the fundamental principles and to be independent. We also note that in many jurisdictions there are ongoing initiatives which may also result in changes to auditor independence requirements with respect to fee related matters of audit clients.

We do consider further clarification is needed in some areas, particularly in relation to the role, responsibilities and implications of the independent professional accountant proposed as a safeguard in relation to fee dependency.

We are disappointed that greater prominence isn't given in consideration of the role of Professional Accountants in Business in relation to auditor independence, and associated audit quality, in the proposed revisions to the Code. We believe that there should be stronger requirements for Professional Accountants in Business with regard to agreeing an appropriate fee for the audit as we believe that the conforming amendments in 270.3 A3 are not sufficient. We recommend that a specific requirement be added to R270.3 requiring Professional Accountants in Business to ensure that audit fees are sufficient to enable the auditor to comply with professional standards and independence requirements.

**WORLDWIDE NETWORK OF INDEPENDENT ACCOUNTING FIRMS  
MEMBER OF THE FORUM OF FIRMS**

Baker Tilly International Limited, Company Registration No. 4343879, Incorporated in England and Wales, Registered Office as above. Arrandco Investments Limited is the registered owner of the UK trade mark for Baker Tilly.

## Response to request for specific comments

### Evaluating Threats Created by Fees Paid by the Audit Client

*1. Do you agree that a self-interest threat to independence is created and an intimidation threat to independence might be created when fees are negotiated with and paid by an audit client (or an assurance client)?*

**Response:** We agree with the statement that threats *might* be created when applied to the negotiations and agreement of fees for an audit engagement. However, we believe that using the terminology “a threat to independence is created” in the code implies that there is always an actual, rather than perceived, self-interest threat to independence. Furthermore, we believe that there is a potential for a significant intimidation threat in relation to the negotiation and agreement of audit fees where a client may put pressure on the auditor to accept an insufficient fee for the work required, and indeed to the payment of audit fees. Clients may threaten to withhold payment of audit fees until the audit report is issued. There is a further intimidation threat in relation to non-payment of audit fees where disclaimer or modified audit reports are issued (i.e. the client may contend that the service was not provided to their satisfaction and threaten to withhold payment on this basis). We believe that the wording “might be created” is more appropriate for both self-interest and intimidation threats.

*2. Do you support the requirement in paragraph R410.4 for a firm to determine whether the threats to independence created by the fees proposed to an audit client are at an acceptable level:*

*a) Before the firm accepts an audit or any other engagement for the client; and*

*b) Before a network firm accepts to provide a service to the client?*

**Response:** We support the requirement to consider the impact of fees on any actual or perceived threats to independence. In R410.4 A2 we would prefer if the guidance states that “Factors that **may be** relevant in evaluating...” as not all factors listed are necessarily relevant in all cases.

As noted above, we disagree with the statement in R410.4 A1.

*3. Do you have views or suggestions as to what the IESBA should consider as further factors (or conditions, policies and procedures) relevant to evaluating the level of threats created when fees for an audit or any other engagement are paid by the audit client? In particular, do you support recognizing as an example of relevant conditions, policies and procedures the existence of an*

*independent committee which advises the firm on governance matters that might impact the firm's independence?*

**Response:** We do not support the example provided around establishing an independent committee which advises the firm on governance matters in the way outlined in the exposure draft. Although this may be appropriate for larger firms it would be impractical and perhaps even inappropriate to expect small and medium sized practices to establish such committees given their lack of resources and the difficulty they may have in demonstrating the independence of such committees. We acknowledge that this proposal would only be an example. However, international standard setters need to be mindful of the unintended consequence that many suggestions in application material within the standards are interpreted as requirements by regulators.

#### **Impact of Services Other than Audit Provided to an Audit Client**

*4. Do you support the requirement in paragraph R410.6 that a firm not allow the level of the audit fee to be influenced by the provision by the firm or a network firm of services other than audit to the audit client?*

**Response:** Yes, we support this requirement. It is clearly inappropriate for the audit fee to be influenced by other services provided to the audit client. The audit fee should reflect the matters identified in 410.22 A1 and 410.6 A2 and the auditor should be able to demonstrate that the fee is sufficient to comply with professional standards and other requirements.

However, it is also important to note that when clients put the audit out to tender it is usually to test the market to see if they can get a better deal on the audit fee. We believe that there should be strong requirements on Professional Accountants in Business with regard to agreeing an appropriate fee for the audit. In this regard we believe that the conforming amendments in 270.3 A3 are not sufficient and would recommend a specific requirement be added to R270.3 requiring Professional Accountants in Business to ensure that audit fees are sufficient to enable the auditor to comply with professional standards and requirements.

#### **Proportion of Fees for Services Other than Audit to Audit Fee**

*5. Do you support that the guidance on determination of the proportion of fees for services other than audit in paragraph 410.10 A1 include consideration of fees for services other than audit:*

*a) Charged by both the firm and network firms to the audit client; and*

*b) Delivered to related entities of the audit client?*

**Response:** We are supportive of the guidance on determination of the proportion of fees for services other than audit set out in 410.10A1 and the relevant factors in 410.10 A2.

However, we are concerned that there may be an over-emphasis of the importance and impact of fees at the network level. For most networks there is no profit-sharing arrangement between independent members of the network, and the extent of centralisation of network activities varies considerably. So, for example, in a situation where two firms within a network have separate operating structures and compensation arrangements and are providing services to the same non-PIE client, it is entirely possible that non-audit services are likely to be of higher value than the audit fee. However, in this example, the firms do not share profits and therefore it is not clear why there would be a self-interest or intimidation threat to the firm performing the audit. Is it the intention of these provision to suggest that such a threat exists when, in reality, it may not?

In addition, there is no definition of what “large proportion of fees” is in 410.10 A1. Whilst we understand that it may be difficult to set a global definition, given the existence of local jurisdictional thresholds, it may be difficult to achieve consistent application across firms and networks.

#### **Fee Dependency for non-PIE Audit Clients**

*6. Do you support the proposal in paragraph R410.14 to include a threshold for firms to address threats created by fee dependency on a non-PIE audit client? Do you support the proposed threshold in paragraph R410.14?*

**Response:** We are supportive of including a requirement for firms to assess fee dependency in non-PIE audits. We do, however, note the arbitrary “non-scientific” manner in which the 30% threshold has been determined. We consider that it is unlikely that there will be many instances where a non-PIE audit exceeds 30% of fee income for a firm, even for smaller practices, and as such a hard and fast rule may not be necessary. It may, therefore, be more appropriate that this threshold be included in application guidance rather than as a requirement given the lack of a formal basis for its determination.

*7. Do you support the proposed actions in paragraph R410.14 to reduce the threats created by fee dependency to an acceptable level once total fees exceed the threshold?*

**Response:** We do not support the remaining proposals in R410.14 given the lack of clarity in the provisions as currently written. With regard to the proposals for an independent professional

accountant to be appointed after five years, the following areas need to be addressed to ensure appropriate and consistent application of the requirements:

- What are the consequences if the independent professional accountant does not agree with the conclusions reached by the engagement team and the proposed audit opinion? Who is responsible for taking action in this situation, and what recourse is there for any actions to be taken?
- What is the format of the output of the independent professional accountant? Will there, for example, be a formal report of some description?
- Where there is a disagreement with the independent professional accountant, what is the impact on the audit opinions for the previous four years?
- What is the liability position of the independent professional accountant in the case of any future litigation?
- What are the requirements relating to qualifications, experience, independence etc. for this role against which the professional accountant should be assessed?
- What is the role of the independent professional accountant in non-PIE audits? For PIE audits, equating the role to that of an EQCR creates a clearer role. There is, however, no indication of the nature, timing and extent of the review to be undertaken by the independent professional accountant in non-PIE engagement. As a result, there may be lack of consistency in application of this safeguard.
- Why is there an option (b) of reviewing the fifth year's audit work after it has been completed and the audit opinion has been issued? It is unclear what the purpose or benefit of such a review is, given that the opinion has already been issued. As noted above, what would be the recourse if the independent professional accountant disagreed with the auditor's conclusions?
- In the case of networks, would a representative of another independent network member firm be considered to be an "independent" professional accountant?

### **Fee Dependency for PIE Audit Clients**

*8. Do you support the proposed action in paragraph R410.17 to reduce the threats created by fee dependency to an acceptable level in the case of a PIE audit client?*

**Response:** Please see our comments in response to Question 7 above where we raise concerns over the role of the Independent Professional Accountant. The same concerns apply in regard to PIE audits with the following additional comments:

- the Code should be clear that the Independent Professional Accountant should have relevant expertise in the field of PIE audits

- it is not clear how the role of the Independent Professional Accountant sits alongside the requirement to have an Engagement Quality Control Review for Listed/PIE engagements, and what the relative roles and responsibilities are.

*9. Do you agree with the proposal in paragraph R410.19 to require a firm to cease to be the auditor if fee dependency continues after consecutive 5 years in the case of a PIE audit client? Do you have any specific concerns about its operability?*

**Response:** Yes, we agree with the proposal in R410.9, subject to R410.20, that firm rotation would be the most appropriate course of action in this situation to overcome the self-interest threat in this situation.

*10. Do you support the exception provided in paragraph R410.20?*

**Response:** Although it may be difficult in practice to justify the 'compelling reason' to a regulatory body, we support the idea that there may be exceptional circumstances which is consistent with a principles-based set of standards. With regards to part (b) of this provision, our concerns and questions around the Independent Professional Accountant in Q6 and Q8 are again relevant.

### **Transparency of Fee-related Information for PIE Audit Clients**

*11. Do you support the proposed requirement in paragraph R410.25 regarding public disclosure of fee related information for a PIE audit client? In particular, having regard to the objective of the requirement and taking into account the related application material, do you have views about the operability of the proposal?*

**Response:** Whilst we consider that it is important for fees to be disclosed in the financial statements/annual report for PIEs, as required in many jurisdictions, we do not consider the disclosure of fees to be the responsibility of the auditor relevant to compliance with the Code. It is difficult to require such information to be published outside of the provisions of either accounting standards, auditing standards or jurisdictional laws and regulations and, as such, we do not believe it is appropriate to have requirements relating to audit fee disclosures in the Code.

More specifically, we do not believe that it is appropriate to include fee disclosures in the audit report which is a vehicle for the auditor to provide their opinion on the financial statements and the disclosure contained therein. The audit report is not a vehicle for the auditor to make disclosures of audit fees or other matters that are not already included in the financial statements.

12. Do you have views or suggestions as to what the IESBA should consider as:

- a) Possible other ways to achieve transparency of fee-related information for PIEs audit clients; and
- b) Information to be disclosed to TCWG and to the public to assist them in their judgments and assessments about the firm's independence?

**Response:** With regard to fee disclosures, as noted above, we consider that IESBA should consult with the IASB / IAASB as to the appropriate solution to disclosure where not currently required by law and regulation.

### **Anti-Trust and Anti-Competition Issues**

13. Do you have views regarding whether the proposals could be adopted by national standard setters or IFAC member bodies (whether or not they have a regulatory remit) within the framework of national anti-trust or anti-competition laws? The IESBA would welcome comments in particular from national standard setters, professional accountancy organizations, regulators and competition authorities.

**Response:** We have no comments.

### **Proposed Consequential and Conforming Amendments**

14. Do you support the proposed consequential and conforming amendments to Section 905 and other sections of the Code as set out in this Exposure Draft? In relation to overdue fees from an assurance client, would you generally expect a firm to obtain payment of all overdue fees before issuing its report for an assurance engagement?

**Response:** We support the proposed consequential and conforming amendments to Section 905 and we support the proposed changes to Section 410, as there needs to be consistency in both sections.

In relation to overdue fees, we would normally expect overdue fees from previous audits, along with other assurance and non-assurance fees, to have been paid before issuing the assurance report. Indeed, it may even be appropriate to require fees to be paid in advance of issuing an audit report to address any intimidation threat arising from the auditor – client relationship.

As noted above, we believe the conforming amendments in 270.3 A3 are not sufficient and we recommend a specific requirement be added to R270.3 requiring Professional Accountants in

Business to ensure that audit fees are sufficient to enable the auditor to comply with professional standards and requirements.

*15. Do you believe that there are any other areas within the Code that may warrant a conforming change as a result of the proposed revisions?*

**Response:** None identified

Yours faithfully,

A handwritten signature in black ink that reads "Paul Winrow". The signature is written in a cursive, slightly slanted style.

**Dr Paul Winrow**

**Director of Professional Standards**