

25 May 2017

Mr K Siong
IESBA Technical Director
International Ethics Standards Board for Accountants (IESBA)
529 Fifth Avenue, 6th Floor
New York, NY 10017, USA
Submitted electronically to kensiong@ethicsboard.org

Dear Ken

Comments on the Exposure Draft, *Improving the Structure of the Code of Ethics for Professional Accountants – Phase 2*

The Independent Regulatory Board for Auditors (IRBA) is the audit regulator and national auditing and ethics standard-setter in South Africa. Its statutory Committee for Auditor Ethics (CFAE) is responsible for prescribing standards of professional competence, ethics and conduct for registered auditors. One of the IRBA's statutory objectives is to protect the public by regulating audits performed by registered auditors, thereby promoting investment and employment in South Africa. In preparing this comment letter, the IRBA consulted internally, with inspectors and investigators; and externally, with registered auditors and professional accountants in business.

The IRBA adopted Parts A and B of the International Ethics Standards Board for Accountants' (IESBA) *Code of Ethics for Professional Accountants* (the Code). This was prescribed in 2010 as the *Code of Professional Conduct for Registered Auditors* (the IRBA Code) in South Africa, with certain additional national requirements. The IRBA Code, with its *Rules Regarding Improper Conduct*, provides the basis for disciplinary action against registered auditors. As the IESBA's exposure draft on the proposed revisions pertaining to the structure of the Code (Structure Project) could result in possible amendments to Parts A and B, the IRBA has particular interest in the process.

We appreciate this opportunity to comment on the exposure draft and our comments are presented under the following sections:

- A. Opening Comments;
- B. Request for Specific Comments and Responses;
- C. Request for General Comments; and
- D. Annexure A: Additional Comments on the Restructured Code.

We have also enclosed a copy of the IRBA comment letter on the IESBA's Safeguards Phase 2 project, which includes comments relevant to the Structure Project.

If you have any questions or would like to discuss any specific comments, please contact:

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- Saadiya Adam on +27 87 940 8870 or at sadam@irba.co.za.

Yours faithfully,

Signed electronically

Imran Vanker

Director: Standards

Saadiya Adam

Professional Manager: Ethics

Encl.

IRBA comment letter to the IESBA dated 25 April 2017, on the Safeguards Phase 2 project



IRBA Comments on
IESBA Exposure Draft

A. Opening Comments

- 1.1. The IRBA supports the IESBA's initiatives to improve understandability, enforceability and usability of the IESBA Code, thereby facilitating adoption, effective implementation and consistent application.
- 1.2. As a regulator of registered auditors, with a statutory objective to protect the public, we are concerned with the enforceability of the Code. Likewise, we support initiatives that create an enabling environment for registered auditors to apply the Code. We believe that the Code is imperative in protecting the public interest, thus support initiatives that promote ease in understanding the Code. The lack of enforceability of the Code may have a negative impact on the level of adoption of the Code in new jurisdictions.
- 1.3. While this exposure draft on the Code has been drafted in the context of professional accountants, our responses are provided in the context of registered auditors who perform audits, reviews and other assurance services.
- 1.4. We believe that the proposed restructured Code is an improvement on the extant Code. However, we believe that additional work outside the scope of this Structure Project may need to be undertaken to achieve the full objectives of this exposure draft. To facilitate understandability and usability of the Code, more specific requirements are needed, especially in relation to those sections which do not contain any requirements.
- 1.5. The IESBA could consider including a public sector perspective in the application material in the scope of the Code. This would be similar to the application material in the various International Auditing and Assurance Standards Board's (IAASB) International Standards on Auditing (ISAs) relating to "Considerations Specific to Public Sector Entities".
- 1.6. The IRBA comment letter on the IESBA Safeguards Phase 2 project (attached) should be considered, especially with respect to comments on the structure of the Code.

B. Request for Specific Comments and Responses

1. Do you believe that the proposals in this ED have resulted in any unintended changes in meaning and if so, please explain why and suggest alternative wording.

- 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)?

1.1. The IRBA has not adopted Part C of the extant Code, thus will not comment on this question.

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

1.2. The IRBA has not adopted Part C of the extant Code, thus will not comment on Section 260.

1.3. Comments on specific paragraphs under Section 360 are as follows:

No	Extant Code	Restructured Code	Comment
1	<p>S225.1</p> <p>A professional accountant in public practice may encounter or be made aware of non-compliance or suspect non-compliance with laws and regulations in the course of providing a professional service to a client.</p>	<p>R360.5</p> <p>The Professional Accountant shall apply this section regardless of the nature of the client, including whether or not it is a public interest entity.</p> <p>360.5 A1</p> <p>A professional accountant might encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. This section guides the accountant in assessing the implications of the matter and the possible courses of action when responding to it.</p>	<p>The repositioning of the statement that the registered auditor “may encounter or be made aware of non-compliance with laws and regulations”, from the prominent opening paragraph to paragraph 5, results in the statement losing its emphasis.</p> <p>In the IESBA Staff Frequently Asked Questions on Responding to NOCLAR, question 12 addresses the registered auditor’s responsibility to identify NOCLAR.</p> <p>The restructured Code should do more to clarify the responsibility.</p>

2.	Not required.	<p>R360.30</p> <p>If the professional accountant identified or suspects that non-compliance has occurred or might occur, the accountant shall discuss the matter with the appropriate level of management. If the accountant has access to those charged with governance, the accountants shall also discuss the matter with them where appropriate.</p>	<p><u>Editorial</u></p> <p>The word “accountants” should be “accountant”.</p>
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• **The revised provisions regarding long association (see Sections 540 and 940 in Chapter 3)?**

1.4. Comments on specific paragraphs under Section 540 are as follows:

No	Extant Code	Restructured Code	Comment
1.	The effective date on page 61 of the Structure Exposure Draft.		<p>This is not directly related to the restructured Code. The position of the effective date at the end of this section is unusual.</p> <p>When the final amendments relating to Long Association were released, we did not envisage that this would be the permanent position of the effective date and would recommend a more traditional placement of the effective date at the end of the Code.</p>

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

1.5. No comment.

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

1.6. Comments on specific paragraphs under Section 900 are as follows:

No	Extant Code	Restructured Code	Comment
1	291.7 Many different circumstances, or combinations of circumstances, may be relevant in assessing threats to independence. It is impossible to define every situation that creates threats to independence and to specify the appropriate action. Therefore, this Code establishes a conceptual framework that requires firms and members of assurance teams to identify, evaluate, and address threats to independence. The conceptual framework approach assists professional accountants in public practice in complying with the ethical requirements in this Code. It accommodates many variations in circumstances that create threats to independence and can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.	900.6 Part 4B describes facts and circumstances, including professional activities, interests and relationships that create or might create threats to independence. Firms are required to apply the conceptual framework to threats to independence as well as to threats to the fundamental principles that are linked to independence. Part 4B describes potential threats, and safeguards and other actions that might be appropriate to address any such threats. It also identifies some situations where the threats cannot be eliminated and there can be no safeguards to reduce the threats to an acceptable level.	The level of responsibility has dropped the reference to engagement team. However, under extant Section 291.7, some of those responsibilities are at the “members of assurance engagement teams” level, or “members of assurance teams” level. This would be considered a change that is outside the scope of the project.
2	291.17 Also, a determination shall be made as to whether threats to independence are created by relationships with individuals at the client in a position to exert significant influence over the subject matter of the engagement.	R900.19 b) The firm shall apply the conceptual framework set out in Section 120 to relationships with individuals at the client in a position to exert significant influence over the subject matter of the engagement.	The level of responsibility has dropped the reference to engagement team. This would be considered a change that is outside the scope of the project.

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?

- 2.1. Yes. The proposed amendments are an improvement to the extant Code. Additionally, the comments on Phase 1 of the IESBA Project on improving the Structure of the Code have been adequately considered in the Basis of Agreement.
- 2.2. The clarity and readability of the recently released final amendments relating to Long Association of Personnel with Audit and Assurance Clients and Responding to Non-compliance with Laws and Regulation have been improved under the restructured Code. The restructured format allows for easier recognition of requirements and application material.

- 2.3. However, the restructure does not address clarifications required by detailed Staff Published Frequently Asked Questions on both these topics. In the future, more effort should be placed on clarifying important concepts in the body of the Code, rather than in the Staff Frequently Asked Questions.
- 2.4. The reorganisation of the Code is welcomed. Hopefully, this will result in less renumbering of the paragraphs in the future, as independence sections are at the end of the Code.
- 2.5. We are unsure whether the retitling of the independence section to *International Independence Standards* (IIS) serves much purpose, as the format of the independence section is still the same.
- 2.6. We appreciate the effort that has been made to make sentences shorter and less complex. However, sections 540 and 940 on Long Association of Personnel with Audit and Assurance Client are still confusing. While we appreciate that this is a rather complex topic, we encourage the Board to spend more time simplifying the layout, e.g. the additional cross referencing between paragraphs is unhelpful.
- 2.7. While there has been increased clarity regarding responsibility, we note that there have been certain unintended changes between firm and network firm. We make detailed reference to these in the IRBA Comment Letter on Safeguards Phase 2.

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.)

- 3.1. Please refer to the attached IRBA comment letter relating to Safeguards Phase 2, which details certain conforming amendments to the restructured Code that may require editing.

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

- 4.1. We agree with the proposed effective date of the restructured Code.
- 4.2. We would further caution against delaying the effective date. A delay in the effective date may lead to the question of the relevance and appropriateness of important recent amendments to the Code, for example, Long Association of Audit and Assurance Personnel.

C. Request for General Comments

5. (a) Small and Medium Practices (SMPs) – The IESBA invites comments regarding the impact of the proposed changes for SMPs.

- 5.1. A big barrier faced by SMPs in complying fully with the Code is in understanding its requirements. Some users, especially those registered auditors whose first language is not English, experience difficulty in understanding the Code because of its complexity of language and construction.

- 5.2. The introduction of the Guide to the Code and the differentiation between requirements and application material help make the Code clearer, easier to understand and will hopefully facilitate implementation of the Code.
 - 5.3. The introduction of requirements alongside a principle-based Code will be welcomed by SMPs as this will allow for scalability in differently sized practices.
 - 5.4. The lack of clarity on some important concepts in the extant Code as well as the restructured Code, e.g. the detail on documentation requirements, could make it especially difficult for SMPs as additional time and resources would be required for them to comply.
- 6. (b) Developing Nations—Recognizing that many developing nations have adopted or are in the process of adopting the Code, the IESBA invites respondents from these nations to comment on the proposals, and in particular, on any foreseeable difficulties in applying them in their environment.**
- 6.1. In environments where the IAASB pronouncements and the Code have been adopted relatively recently, the need for clarity within the Code is of utmost importance. In developing nations, the limited experience of practitioners, standard-setters and regulators in the application of the Code makes the need for a clear structure and enforceability of the Code paramount. As such, we believe that further efforts can be made by the IESBA to achieve clarity and enforceability of the Code, e.g. clarification on the application of materiality in the Code.
- 7. (c) Translations—Recognizing that many respondents may intend to translate the final pronouncement for adoption in their environments, the IESBA welcomes comment on potential translation issues respondents may note in reviewing the proposals.**
- 7.1. No comment.

D. Appendix A: Additional Comments on the Restructured Code

	Extant Code	Restructured Code	Comment
1.	<p>100.20</p> <p>When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:</p> <p>(a) Relevant facts;</p> <p>(b) Ethical issues involved;</p> <p>(c) Fundamental principles related to the matter in question;</p> <p>(d) Established internal procedures; and</p> <p>(e) Alternative courses of action.</p> <p>Having considered the relevant factors, a professional accountant shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the professional accountant may wish to consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.</p>	<p>110.3 A1</p> <p>A professional accountant might face a situation in which complying with one fundamental principle conflicts with complying with one or more other fundamental principles. In such a situation, the accountant might consider consulting, on an anonymous basis if necessary, with:</p> <ul style="list-style-type: none"> • Others within the firm or employing organization. • Those charged with governance. • A professional body. • A regulator. • Legal counsel. <p>However, such consultation does not relieve the accountant from the responsibility to exercise professional judgment to resolve the conflict or, if necessary and unless prohibited by law, disassociate from the matter creating the conflict.</p> <p>110.3 A2</p> <p>The 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.</p>	<p>Paragraphs 110.3 A1–110.3 A2 replace extant paragraphs 100.19–100.24. Conflict resolution process seems to have been excluded.</p>
2.	<p>210.1</p> <p>NOCLAR</p> <p>Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example,</p>	<p>320.2</p> <p>The acceptance of a new client or engagement or changes in circumstances or changes in circumstances in an existing engagement might create self-interest threats.</p> <p>320.4 A1 In some circumstances, acceptance of a new client relationship might create threats to</p>	<p>320.4A1 should have been written as a requirement.</p>

	Extant Code	Restructured Code	Comment
	issues associated with the client (its owners, management or activities) that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, questionable financial reporting practices or other unethical behaviour.	compliance with the principles of integrity or professional behaviour. This might arise, for example, from questionable issues associated with the client (its owners, management or activities). Issues that, if known, might create such threats include client involvement in illegal activities, dishonesty, questionable financial reporting practices or other unethical behaviour.	
3.	290.1 This section addresses the independence requirements for audit engagements and review engagements, which are assurance engagements in which a professional accountant in public practice expresses a conclusion on financial statements. Such engagements comprise audit and review engagements to report on a complete set of financial statements and a single financial statement.	400.6 When performing audit engagements, the Code requires firms to comply with the fundamental principles and be independent. Part 4A sets out specific requirements and application material on how to apply the conceptual framework to maintain independence when performing such engagements. The conceptual framework set out in Section 120 applies to independence as it does to the fundamental principles set out in Section 110.	Should this not be referring to audit and review? This paragraph is before the explanation that the audit includes review.
4.	290.14 To enhance their ability to provide professional services, firms frequently form large structures with other firms and entities. Whether this larger structure creates a network depends on the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct. For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is deemed to be a network.	400.53 A1 There might be other arrangements between firms and entities within a larger structure that constitute a network in addition to those arrangements set out in paragraph R400.53. However, a larger structure might be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network.	It appears that an example has been removed. Was this deliberate?

	Extant Code	Restructured Code	Comment
5.	<p>290.114 The holding by a firm, or a member of the audit team, or a member of that individual's immediate family, of a direct financial interest or a material indirect financial interest in the audit client as a trustee creates a self-interest threat. Similarly, a self-interest threat is created when:</p> <p>(a) A partner in the office in which the engagement partner practices in connection with the audit;</p> <p>(b) Other partners and managerial employees who provide non-assurance services to the audit client, except those whose involvement is minimal; or</p> <p>(c) Their immediate family members, hold a direct financial interest or a material indirect financial interest in the audit client as trustee.</p> <p>Such an interest shall not be held unless:</p> <p>(a) Neither the trustee, nor an immediate family member of the trustee, nor the firm are beneficiaries of the trust;</p> <p>(b) The interest in the audit client held by the trust is not material to the trust;</p> <p>(c) The trust is not able to exercise significant influence over the audit client; and</p> <p>(d) The trustee, an immediate family member of the trustee, or the firm cannot significantly influence any investment decision involving a financial interest in the audit client.</p>	<p>R510.10</p> <p>Paragraph R510.7 shall also apply to a financial interest in an audit client held in a trust for which the firm, network firm or individual acts as trustee, unless:</p> <p>(a) None of the following is a beneficiary of the trust: the trustee, the audit team member or any of that individual's immediate family, the firm or a network firm;</p> <p>(b) The interest in the audit client held by the trust is not material to the trust;</p> <p>(c) The trust is not able to exercise significant influence over the audit client; and</p> <p>(d) None of the following can significantly influence any investment decision involving a financial interest in the audit client: the trustee, the audit team member or any of that individual's immediate family, the firm or a network firm.</p>	<p>This is an important paragraph and is often used in South Africa. However, the re-wording seems to have changed the emphasis. The introductory paragraph relating to when self-interest is created has been lost. For example, any partner in the office holding an interest would create a conflict.</p>