



**IESBA Exposure Draft:
Improving the Structure of the Code of Ethics
for Professional Accountants – Phase 1**

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INTRODUCTION

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 1*'. The ICAS Ethics Board has considered the Exposure Draft and I am pleased to forward their comments.

Any enquiries should be addressed to James Barbour, Director, Technical Policy.

Context of Comments

We note that the objectives of the restructuring are to improve the understandability and usability of the Code by restructuring it without changing its meaning, except in limited circumstances where the IESBA considers this necessary, and we have taken these objectives into consideration when preparing our response. We have also sought to distinguish between comments on the application of the structure and drafting conventions, and comments on any changes in meaning.

Caveat

We appreciate that this is a difficult and time consuming process for IESBA. We would, however, highlight that it is difficult to fully assess the extent of the proposed changes when these are published in different phases, although we do understand and accept why this approach was adopted. We therefore reserve the right to make further comments on matters addressed in this phase of the consultation process at a later stage.

Key Points

We welcome that IESBA has conducted extensive research and outreach in connection with this project. We believe this to be an essential feature of such an exercise.

We welcome IESBA's efforts to help users to better understand the Code by seeking to reduce its complexity of language and construction. We believe that the restructuring has tackled to some degree the biggest barrier faced by SMPs in complying with the Code which is fully understanding the requirements of the Code in the first instance.

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 in the proposed Parts B and C of the Code.

Main Features

With specific reference to the main features of the restructuring:

- We support increased prominence of the requirement to apply the conceptual framework and comply with the fundamental principles.
- We support the requirements being distinguished – and paragraphs containing requirements being specifically identified with an 'R'.
- We support application material generally being positioned next to the relevant requirements – and paragraphs identified with an 'A'.
- We support IESBA's efforts to increase clarity of responsibility.

- We support the move towards increased clarity of language – where possible: using simpler and shorter sentences; simplifying complex grammatical structures; increased use of the active voice; avoiding legalistic and archaic terms. However, we believe there is more to be done in this respect.
- We are supportive of reorganising the Code as appropriate, to enhance clarity and usability, positioning the Code to take advantage of forthcoming electronic features.
- We are supportive of the organisation of the material into more self-contained sections and subsections: We are supportive of the approach that each section will have its own introduction which broadly describes the context, including the threats that may exist, and references the fundamental principles.
- We are supportive of revised numbering to facilitate revisions.
- We are ambivalent to reversing the order of extant Parts B8 and C9 to allow the independence provisions to be presented at the end.
- We are supportive of the enhanced definitions section and for it to be presented as a glossary, which also includes descriptions of terms used.
- We are content with the use of the active voice instead of the passive voice.
- We welcome that IESBA has sought to avoid the use of legalistic and archaic terms, nuances, and superfluous adjectives.
- We welcome that IESBA is deferring further consideration of the matter of responsibility until the outcome of the IAASB's consultation on ISQC 1 is known.
- We do not comment on enforceability but it would seem a natural progression that if the Code is clearer, then enforcement, all things being equal, would be easier.

Title

We are not supportive of the proposed new title for the Code. If anything it appears to run contrary to the objectives of this initiative and is more likely to confuse than inform the user. If this is the case to a professional body which operates in a jurisdiction in which English is the main language then we have real concerns as to how this title would translate into other languages.

We are very much supportive of having separate ethical standards for auditors and welcome IESBA's move in this direction. We do, however, believe that such standards would be better located out with the Code.

The current proposal appears to try to mix and match requirements in standards with the content of the Code which we do not believe is possible conceptually.

Guide to the Code

- We are supportive of the addition of a *Guide to the Code*.

Tools

- We welcome that consideration will be given to preparing tools after the Code has been restructured. We believe that the right tools could play a key role in increasing the understandability and usefulness of the Code.
- We note and welcome those suggested by IESBA and also believe that case studies or examples on how to use the restructured Code would be welcomed by a number of jurisdictions.

Reasonable and informed third party

We are generally supportive of the proposed revisions to the Code aimed at clarifying the concepts of:

- (a) "reasonable and informed third party"; and
- (b) "acceptable level".

We do believe that it should be clarified that the "reasonable and informed third party" concept relates to a hypothetical actual person as opposed to also possibly including a legal persona or body.

“The concept of a reasonable and informed third party is a test which involves an evaluation by a hypothetical person. Such a person possesses skills, knowledge and experience to objectively evaluate the appropriateness of the professional accountant’s judgments and conclusions. This evaluation entails weighing all the relevant facts and circumstances that the accountant knows, or could reasonably be expected to know, at the time that the evaluation is made to determine whether the accountant complies with the fundamental principles.”

“An acceptable level is a level at which a reasonable and informed third party would likely conclude that the professional accountant complies with the fundamental principles”.

The Public Interest

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 paragraph 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. “

Safeguards

Where lists of different safeguards are produced at various places in the Code we believe it would be advisable to highlight that these lists are not exhaustive and may not be appropriate in any given situation.

Responses to the Specific Questions

Refinements to the Code

1. Do you agree with the proposals, or do you have any suggestions for further improvement to the material in the ED, particularly with regard to:

- (a) Understandability, including the usefulness of the Guide to the Code?**
- (b) The clarity of the relationship between requirements and application material?**
- (c) The clarity of the principles basis of the Code supported by specific requirements?**
- (d) The clarity of the responsibility of individual accountants and firms for compliance with requirements of the Code in particular circumstances?**
- (e) The clarity of language?**
- (f) The navigability of the Code, including:**
 - (i) Numbering and layout of the sections;**
 - (ii) Suggestions for future electronic enhancements; and**
 - (iii) Suggestions for future tools?**
- (g) The enforceability of the Code?**

Understandability

We believe that the restructuring will help to improve the understandability of Code. We believe that this will help to make the Code more user-friendly. The length of the Code will, however, still act as a disincentive. Therefore, we do welcome the increased focus on the fundamental principles.

Guide to the Code

We are supportive of the ‘Guide to the Code’ which is well structured and easy to read. We do however have the following specific points in relation to the Guide.

(i) Paragraph 4

We question whether in relation to part B 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 would also suggest moving the wording in Part B *"PAs in public practice might also find part B relevant to their particular circumstances"* to the discussion on Part C as such individuals might ignore the content of Part B based on its title and jump immediately to Part C.

(ii) Paragraph 7

This states 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.

(iii) Paragraph 12

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

Requirements and Application Material

- (i) We support the requirements being distinguished – and paragraphs containing requirements being specifically identified with an 'R'. We support application material generally being positioned next to the relevant requirements – and paragraphs identified with an 'A'.
- (ii) We would highlight that it does take time to get used to this new approach but we believe that it is a lot easier to see the "requirements". This approach is better than the current Code where the *"shall's"* get lost in all the text.

Fundamental Principles Supported by Requirements

- (i) We welcome the content of paragraph 100.2 i.e. in relation to the fundamental principles which we believe enhances the Code and clearly establishes the importance of the those principles.

Clarity of Language

We are generally happy with the clarity of the language however we would highlight the following:

- (i) 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.
- (ii) 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.

- (iii) *Section 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.
- (iv) Despite our comments above, we believe the change in wording to the objectivity and professional competence and due care principles do make them clearer (although please refer to our next comment on “objectivity”). 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.
- (v) In relation to the principle of “*objectivity*” we question whether “without conflict of interest..” is too high a hurdle i.e. there may be a conflict of interest against which safeguards can mitigate the threat to an acceptable level. The conflict will still exist but it will be appropriately mitigated.
- (vi) We also note that the word “action” is used rather than “conduct” in professional behaviour. We believe that as a result of the NOCLAR project this will be changed to conduct which we believe to be better.
- (vii) We note that in relation to “professional behaviour” the wording reflects that “the professional accountant knows or should know”, which reflects the wording in current paragraph 150.1 as opposed to that in 100.5. We are happy with this approach but have noted this as a possible difference in meaning below.
- (viii) *Section 111 – Integrity*
We believe that the proposed wording is simpler and better i.e. replace “furnished” with “provided”, and refer to “required information” rather than “information required to be included”
- (ix) *Section R112.2*
We believe that the replacement of “service” with “activity” is better because this is more likely to cover those professional accountants in business as well as practice. We do however question why bias has been dropped from original wording in 120.2.
- (x) *R112.2 A2*
We note that quite a lot of the safeguards suggested tend towards those that could be applied in public practice but not necessarily business. For example, “Discussing the issue with higher levels of management within the firm” could be changed to “discussing the issue with higher levels of management within the firm or organisation”
- (xi) *113.1.A2*
*“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?
- (xii) *113.1 A3*
“Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.”

What if the assignment in question is not ethical?

- (xiii) 120.2
The conceptual framework specifies an approach for the professional accountant to:
 (a) *Identify threats to compliance with the fundamental principles;*
 (b) *Evaluate the threats identified; and*
 (c) *Address the threats by eliminating or reducing them to an acceptable level.”*

As worded this appears to imply that the professional accountant “has” to identify threats, i.e. it makes the assumption that there are always threats to be identified.

- (xiv) R120.9
 Is the overall assessment in the correct place? Should the overall assessment not be placed before the re-evaluation section and that this should be an on-going process?

- (xv) 300 2 A12
 Again is the overall assessment in the correct place? Should the overall assessment not be placed before the re-evaluation section?

- (xvi) R310.7
“Before accepting a new client relationship, engagement, or business relationship, a professional accountant shall take reasonable steps to identify circumstances that might create a conflict of interest, including identifying:
 (a) *The nature of the relevant interests and relationships between the parties involved; and*
 (b) *The service and its implication for relevant parties.”*

We are not convinced that this captures possible conflicts with other clients. We appreciate that it is covered in the application material but it could be clearer in the requirement.

- (xvii) Section 320
 We believe that this is easier to read – with lists of bullet point lists rather than large paragraphs.

- (xviii) 320. 3A2
 In light of the NOCLAR project we question whether there is a need to refer to possible tipping off and anti-money laundering requirements in this paragraph. The safeguards suggested also appear rather light when compared with the threats highlighted.

- (xix) Section 400
 We believe that the introduction to section 400 appears rather messy i.e. there are lots of different headings, sub-headings. It would be useful to the reader for an index to be included at the start of this section to help them navigate it.

- (xx) Section 400 .6
 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 Section 290.25). The definition of a PIE only appears to be in the Glossary – we believe it would be useful to include it here.

- (xxi) *Section R 400.12*
 This does not provide any detail in relation to the engagement period in contrast to the current paragraph 290.30.

- (xxii) *Section R.403.1 to 403.3*
 We believe that the above content appears a bit clumsy i.e. it doesn't flow well - because the “shalls” have been pulled out of the current paragraphs. Also, paragraph R403.3(a) appears rather a long sentence under the new approach.

- (xxiii) The equivalent to current Section 290.3 (which states that when the Code states audit team etc, it also means review team) is in the footnotes. We have concerns that this could be missed and therefore requires to be made more explicit.

- (xxiv) Is there an equivalent to current section 290.117 re an inadvertent violation of financial interest requirements?
- (xxv) *Section 510.11 (a)*
This should reference to paragraphs 510.11 A1 and A2 (not just A1)
- (xxvi) *Section 510.11 (c)*
This should reference to paragraphs 510.11 A3 and A4 (not just A3)
- (xxvii) *Section 510.11 (d)*
This should reference to paragraphs 510.11 A5 and A6 (not just A5)
- (xxviii) 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.

2. Do you believe the restructuring will enhance the adoption of the Code?

We are supportive of the proposed structure of the Code i.e.

- (i) Introduction – sets out the subject matter addressed within the Section, and introduces the requirements and application material in the context of the conceptual framework.
- (ii) Requirements – establish general and specific obligations with respect to the subject matter addressed, including any specific prohibitions.
- (iii) Application material – provides guidance to assist in complying with the requirements.

We believe that the restructuring will help to improve the understandability of Code. Whether this will enhance the adoption of the Code remains to be seen as this is dependent upon a number of different factors. It should certainly make it easier for the Code to be more readily translated into different languages.

3. Do you believe that the restructuring has changed the meaning of the Code with respect to any particular provisions? If so, please explain why and suggest alternative wording.

We would highlight the following possible changes of meaning.

- (i) R100.4
We question whether this paragraph has a slightly different message from that contained in current Section 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.

- (ii) 115.1 A1
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 120.4 A1 re reasonable and informed third party.
- (iii) There is a question as to whether the proposed wording for the principle of professional behaviour is stricter than the extant version. However, we are supportive of this change because the wording better reflects the description of this principle in the extant Section 150 of the Code.

(iv) Section 510

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.

(v) Section R320.3A1 – Client acceptance

Where is the equivalent to current section 210.4 (and second paragraph of section 210.11) which states: “*Where it is not possible to reduce the threats to an acceptable level, the professional accountant in public practice shall decline to enter into the client relationship.*” This may be because this content is covered in Section R120.7 “Addressing threats”. We note that there is the general reference to Section 120 at the top of the page – but perhaps it would be better if there was a specific reference to R120.7 in this section?

4. Do you have any comments on the clarity and appropriateness of the term “audit” continuing to include “review” for the purposes of the independence standards?

Whilst for brevity there is undoubtedly a benefit of continuing with this type of approach we do have certain reservations in that regulators generally focus their attention on audit and the related independence requirements of auditors. There is a danger that the independence requirements associated with a lesser assurance engagement may get unnecessarily burdened with stricter than necessary independence requirements as an unintended consequence. Consideration therefore needs to be given to the costs and benefits of continuing with this policy.

5. Do you have any comments on the clarity and appropriateness of the restructured material in the way that it distinguishes firms and network firms?

We welcome IESBA’s work in this respect. We believe that this will help to improve the clarity of the Code.

6. Is the proposed title for the restructured Code appropriate?

We do not believe that the proposed title is appropriate. If anything it appears to run contrary to the objectives of this initiative and is more likely to confuse than inform the user. If this is the case to a professional body which operates in a jurisdiction in which English is the main language then we have real concerns as to how this title would translate into other languages.

We are very much supportive of having separate ethical standards for auditors and welcome IESBA’s move in this direction. We do, however, believe that such standards would be better located out with the Code.

The current proposal appears to try to mix and match requirements in standards with the content of the Code which we do not believe is possible conceptually. One possible approach would be to separate the Code and the proposed Standards and to repeat the fundamental principles and conceptual framework in each.

Alternatively, the principles and conceptual framework could sit separately above both the Code and the Standards which would both feature separately.