# Proposed revisions to the Code pertaining to the offering and accepting of inducements

An exposure draft issued for public consultation by the International Ethics Standards Board for Accountants (IESBA)

Response from ACCA
December 2017

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Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We seek to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our 200,000 members and 486,000 students in 180 countries, helping them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of 101 offices and centres and 7,291 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting, and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

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## GENERAL COMMENTS

We welcome the opportunity to comment on the proposals to establish a comprehensive framework that covers all forms of inducements. It is important that the Code promotes ethical behaviour by Professional Accountants in Business (PAIBs) and Professional Accountants in Public Practice (PAPPs) through greater consistency, understandability and usability. We are therefore supportive of the IESBA's aim to strengthen the provisions concerning the offering and accepting of inducements, and to make related conforming amendments to the independence provisions relating to gifts and hospitality.

We welcome the inclusion of the offering of inducements within the provisions, and a broader definition of inducements which moves away from a focus on 'gifts and hospitality'. We also welcome the distinction between inducements prohibited by law and regulations and those that are not, and the inclusion of the professional accountant's responsibilities regarding third parties. We are further encouraged by the acknowledgement, in the explanatory memorandum to the exposure draft, that 'cultures vary across jurisdictions and influence what constitutes an acceptable inducement',[1] although we believe that the significance of this should be addressed more clearly within the proposed changes to the Code.

We note that the proposals seek to address the prevalence of bribery and corruption. However, while admirable, this aim is perhaps naive, as the Code is not the place to address someone's dishonesty. Amended guidance to support the conceptual framework will only assist those who are willing to comply with the Code.

We support strengthened provisions in the Code for inducements, provided that they add clarity and so enhance public trust in the profession, which in turn upholds the public interest. In this response, we have highlighted some aspects of the proposed changes in the exposure draft which appear to suggest a loss of focus and could lead to confusion. For example, in paragraph 250.10 A1 (and 340.10 A1) an 'inducement' which does not intend to improperly influence, and is trivial and inconsequential, does not meet the definition of an inducement. In responding to this consultation, we have focused on the proposed definition as set out in paragraph 250.4 A1, ie 'an object, situation, or action that is **used as a means to influence another individual's behavior**, but not necessarily with the intent to improperly influence that individual's behavior' [emphasis added].

Where appropriate, we have highlighted omissions and suggested further improvements to the Code pertaining to the offering and acceptance of inducements. An opportunity also exists to prohibit all inducements offered or accepted in the context of an audit or assurance engagement.

Overall, the area of inducements is complicated and there is always a risk that the fundamental principles may be undermined by more prescriptive requirements within the Code, as people

[1] Proposed revisions to the Code pertaining to the offering and accepting of inducements, page 10



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lose sight of those underlying principles and how to recognise and address threats. We believe that a lack of clarity is inevitable as long as the IESBA tries to achieve too much.

## AREAS FOR SPECIFIC COMMENT:

In this section, we set out our responses to the request for specific comments set out on page 13 of the consultation document.

*Proposed Section 250*

**Question 1: Do respondents support the proposals in Section 250? In particular, do respondents support the proposed guidance to determine whether there is an intent to improperly influence behaviour, and how it is articulated in the proposals?**

We broadly support the proposals in Section 250. However, we have some significant concerns, as there are aspects of the proposals that appear to demonstrate a loss of focus and could lead to confusion. In our opinion, any changes to the Code arising out of this project will only be regarded as strengthening the Code if they are seen to add clarity.

***Offering inducements***
We support the inclusion in Section 250 of offering inducements, as well as being offered them. Indeed, we suggest the focus of the proposed changes should be the offering of inducements, which may impact the recipient's objectivity, rather than that of the professional accountant. When offering an inducement, the intention to influence (or apparent intention) would suggest a lack of integrity on the part of the professional accountant, in that the offer may present a threat to the ethical principles of the counterparty. If professional behaviour is not breached by offering an inducement that is contrary to law or regulation, then the only ethical principle of the professional accountant that may be breached in offering an inducement (in actuality or in appearance) is that of integrity.

***Inducements prohibited / not prohibited by laws and regulations***
We welcome the distinction between inducements prohibited by laws and regulations and those that are not. However, the importance of obtaining an adequate understanding of the relevant laws and regulations in the jurisdiction in which the inducement is being offered should not be concealed within paragraph R250.5 (and R340.5). That understanding of relevant laws and regulations would likely need to be communicated to others (including those within the organisation) who might be subject to those laws and regulations, and so the requirement for an adequate understanding should be highlighted.

***Immediate or close family members***
We are encouraged by the exposure draft's inclusion of the professional accountant's responsibilities regarding the actions of third parties. The exposure draft refers to 'immediate and close family members', and yet the reason for restricting the population of third parties in



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this way is unclear. Essentially, it is the impact, or potential impact, on the professional accountant that must be considered, and not the nature of the relationship between the parties. Therefore, we do not believe that any of the three relationships identified in paragraph 250.13 A1 (and 340.13 A1) are relevant to assessing the threat to the fundamental principles, or even the assessment of the intent to influence. The only relevant factor is whether the professional accountant has been made aware of the benefit to the third party that may amount to an inducement to the professional accountant.

***Definition of inducement***
Although we understand and support the concept of inducements being expanded beyond goods and hospitality, we believe that a loss of clarity is caused by trying to encapsulate too much within the definition of 'inducement'. In paragraph 250.4 A1 the definition requires that an inducement is something that is 'used as a means to influence another individual's behaviour'. However, the term is used more widely throughout the exposure draft. For example, it covers gifts etc that are not used to influence, but may be *perceived* as having that purpose. Furthermore, paragraphs 250.10 A1 to 250.11 A4 cover inducements with no intent to *improperly* influence behaviour, including 'inducements' that are 'trivial and inconsequential'. Confusion arises because surely an 'inducement' that is trivial and inconsequential is not intended to improperly influence, and so would not meet the definition of 'inducement' in the first place. In this regard, the self-interest threat example provided in paragraph 250.11 A1 is unclear.

***Intent to improperly influence behaviour***
We welcome the proposed guidance in paragraph 250.9 A1 (and 340.9 A1) which sets out relevant factors to consider in determining whether there is actual or perceived intent to improperly influence behaviour. However, we believe this is not clearly articulated. For example, the timing (as well as the frequency) of an inducement might also indicate an intent to improperly influence behaviour. Having taken account of the various factors, it is not necessarily clear how to reach a conclusion. An opportunity exists to highlight those factors that are more likely to indicate an intent to improperly influence behaviour, and those that are more likely to indicate otherwise.

We note that the question of whether or not the recipient is actually influenced – regardless of the donor's intent – is not addressed within the exposure draft.

***Refraining from offering or accepting an inducement***
The explanatory material (paragraph 28) states that there is no need to explicitly state in the Code that refraining from offering or accepting an inducement is available to the professional accountant in order to eliminate the threat to the fundamental principles. We take a different view, as we believe there are occasions when (although not prohibited by law) the offer or acceptance of an inducement should not take place. Nevertheless, it would be unreasonable to believe that it is always possible to do the right thing in the heat of the moment.

In addition, the wish to avoid offence (perhaps alluded to by the reference to cultural differences in the explanatory memorandum to the exposure draft) will mean that inducements will sometimes not be perceived as such by a professional accountant, or will be accepted due to a belief that more harm will be done by causing offence to the counterparty and rejecting the offer



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than by accepting it and managing the threat to the fundamental principles. In essence, the need to protect the fundamental principle of objectivity (by refusing an offer) may conflict with the need to protect the professional accountant's reputation (ie the principle of professional behaviour). If the outcome is that the offer is accepted (which may, in fact, be correct if there is no intent to improperly influence), the public perception must nevertheless be managed.

***Public perception***
With regard to the public perception, we believe this is more important than the perception of a reasonable and informed third party. The public will not be informed of all the relevant facts. Nevertheless, the reputation of the profession must be protected. In contrast, a reasonable and informed third party would be aware of the perception of the recipient of an inducement. Therefore, if the recipient does not perceive an intent to improperly influence him or her, neither does the reasonable and informed third party. Consequently, that third party perspective becomes irrelevant.

***Connected parties***
Finally, with regard to the safeguards available in respect of inducements offered by, or to, connected parties, the safeguards available to the professional accountant are severely limited. The connected party may be advised not to offer or accept an inducement, but the professional accountant cannot prevent it. The biggest problem (which is not addressed by the exposure draft) is where a connected party accepts some form of benefit. Whether there is intent or not, the connected party cannot be compelled to return that benefit or donate it to any charity. Furthermore, if the professional accountant is unaware that a gift, for example, has been accepted by a connected party, then it is unlikely that the gift will have been recorded anywhere, and the professional accountant will remain unaware.

*Proposed Section 340*

**Question 2: Do respondents agree that the proposed provisions relating to inducements for PAPPs should be aligned with the enhanced provisions for PAIBs in proposed Section 250? If so, do respondents agree that the proposals in Section 340 achieve this objective?**

We agree that the proposed provisions relating to inducements for PAPPs should be aligned with the enhanced provisions for PAIBs, as there is no reason for the ethical principles in respect of inducements to differ between PAPPs and PAIBs.

We believe Section 340 achieves this objective as the proposed provisions are clearly aligned to those in respect of PAIBs in Section 250. However, we believe the test for whether there is intent to improperly influence behaviour should be stricter in the case of an auditor and a provider of other assurance services. Inducements offered or accepted by auditors and providers of other assurance services should be prohibited (unless the value is trivial and inconsequential), even where there is no actual or perceived intent to improperly influence behaviour.



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Although auditors and providers of other assurance services are referred to in Sections 420 and 906 respectively (but only for gifts and hospitality), we believe Section 340 should distinguish between the offering or acceptance of an inducement in the context of an audit or assurance engagement, and the offering or acceptance of an inducement by a professional accountant in the context of general practice. For example, if an auditor receives an invitation to attend the wedding of an audit client, the fact that the wedding invitation arises from a 'special occasion' is irrelevant when determining whether there is actual or perceived intent to improperly influence the behaviour of the auditor. The invitation should not be accepted by the auditor. (This is, of course, a matter to be considered within the International Independence Standards.)

*Proposed conforming amendments to inducement provisions*

**Question 3: Do respondents support the restructuring changes and proposed conforming arrangements in proposed Sections 420 and 906?**

We broadly support the restructuring changes and proposed conforming amendments to proposed Sections 420 and 906. These sections prohibit auditors (and reviewers) and providers of other assurance services from accepting gifts and hospitality, unless the value is trivial and inconsequential. However, it would be advisable to extend sections 420 and 906 to cover other forms of inducements such as entertainment and political or charitable donations (as listed in paragraph 340.4 A1).

Furthermore, as stated in our response to question 2 above, we believe the Code should prohibit **all** inducements offered or accepted by an auditor or provider of other assurance services, even where there is no actual or perceived intent to improperly influence behaviour (unless the value of the inducement is trivial and inconsequential).

We would also welcome the inclusion of guidance to assist auditors (and reviewers) in determining whether inducements are trivial and inconsequential. This might include factors such as the nature, frequency, timing and value of inducements.

**Question 4: Do respondents believe the IESBA should consider a project in the future to achieve further alignment of Sections 402 (*sic*) and 906 with proposed Section 340? If so, please explain why.**

We do not believe it is necessary to achieve further alignment of Sections 420 and 906 with the proposed Section 340. It appears that the cross-referencing to Section 340 within Sections 420 and 906 is sufficient and, subject to the comments we have made in response to question 3 above, we would not support any changes which would lengthen the Code still further.

The IESBA restructure project has determined that the second and third parts of the Code (currently B and C in the extant Code) should be swapped around, in order to place all the PAPP requirements together. While consistency and clarity are fundamental requirements of the Code, we believe there is no need nor justification for duplicating in Sections 420 and 906



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provisions that will already exist in part 3 of the Code. Furthermore, the impression should not be given that everything an auditor, for example, needs to know in relation to inducements is contained within Section 420. An auditor would still need to be competent to understand and implement the conceptual framework.

**Request for general comments**

*Small and medium-sized entities (SMEs) and Small and Medium Practices (SMPs):*
PAPPs in SMPs have always been regarded as important stakeholders in the project to restructure the Code. It is within such organisations (with more limited resources, including fewer personnel) where improvements in behaviours can best be achieved through enhanced understandability and streamlining. We believe that the current proposals, as drafted, achieve meaningful improvements. However, we also believe that opportunities remain to provide greater clarity.

*Regulators and audit oversight bodies:*
We are concerned that, from a regulatory and disciplinary perspective, any requirement to evidence a close family relationship would most likely be disproportionately onerous, and make enforcement difficult.

*Developing nations:*
Member bodies in different parts of the world operate within a range of cultural environments, and clarity and sensitivity are important with regard to offering and accepting inducements. The provisions need to provide practical and effective guidance in respect of inducements and safeguards in order to aid consistency of understanding and interpretation across all the IFAC member organisations.

*Translations:*
In our opinion the proposals should be clear, consistent and logical. Although, as drafted, the proposed paragraphs would be unlikely to present translation issues, we believe the IESBA should remain alert to this in proposing further changes to the existing wording.



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