

DRAFT V3.4 for discussion

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**COMPARISON BY TOPIC OF THE INDEPENDENCE
REQUIREMENTS IN THE IESBA CODE RELATING TO THE
AUDIT OF PIEs TO THOSE OF CERTAIN JURISDICTION**

This draft document has been prepared for IESBA discussion purposes as part of its convergence efforts. The draft comparison and the details have not been prepared by the respective regulator or professional body nor validated by them.

Introduction – Understanding this document

The Independence requirements set out in Section 290 of the IESBA Code have been compared to the jurisdictional requirements of the following:

- USA (SEC/PCAOB)
- Australia
- Germany
- UK (APB)
- Brazil
- France
- Japan
- Hong Kong

The comparison was based on the 'long document' presented to the Board (which contains a synopsis of the Code's provisions and not, in most cases, the full text of the Code) and focuses only on those relationships and circumstances that are either 'prohibited' or 'permitted only if certain conditions exist or specified safeguards are applied'.

This document summarises by topic the results of the comparison. It details:

- the IESBA requirement
- the jurisdictional requirement if substantively more restrictive than the Code, and
- in a few places, it also identifies where the jurisdictional requirement is substantively less restrictive than the Code (*these are identified in italics*).

Where there is no detail for a jurisdiction in the topic this is because the relevant jurisdictional requirement is deemed to be similar or equivalent to that in the IESBA code.

No attempt has been made in this document to evaluate whether a difference noted is regarded by the Board as **significant and/or common**.

The comparison also was intended to identify matters (or topics) covered by jurisdictions that are not covered in the Code. There are a few such matters included herein. See pages 7, 20, 63.

It is noted that in a number of cases the jurisdictional requirements do not contain an equivalent of a "term" used in the IESBA code (such as "acceptable level" or an "office"). For example, the US SEC rules do not provide a counterpart definition to the IESBA's "network" definition, but includes similar concepts in its definitions of "accountant" and "accounting firm," referring to "affiliated" accounting firms and "associated entities." In practice these are essentially equivalent. This paper identifies, from topic 50, where the overall effect of the requirements results in a substantive difference in application.

This summary is supported by a more detailed analysis by jurisdiction.

Background information – overview of the jurisdictional regulatory regime/approach

USA

The independence rules of the Securities and Exchange Commission (SEC) must be complied with for audits required by federal securities laws, including audits of the financial statements of issuers. The audit of an issuer must also be performed in accordance with the rules of the Public Company Accounting Oversight Board (PCAOB). To the extent an SEC rule is more restrictive or less restrictive than a PCAOB rule, the auditor must follow the more restrictive rule. The Sarbanes-Oxley Act of 2002 established the PCAOB to oversee the audits of public companies and broker-dealers. The SEC has oversight authority over the PCAOB, including the approval of the PCAOB's rules. Since the time of its formation, the PCAOB adopted interim independence rules and has adopted its own independence rules on an ongoing basis. It did not adopt the SEC independence rules, since those rules were already applicable to auditors of SEC issuers. The SEC/PCAOB rules are essentially rules-based, underpinned by a general Standard of independence to be applied where there is no specific rule.

UK and Republic of Ireland

The Auditing Practices Board (APB) establishes and issues Ethical Standards (ES) which UK and Irish accountancy bodies are required to ensure that registered auditors apply to all statutory audits carried out in accordance with UK and Irish Auditing Standards. The approach is similar to that of the IESBA code – principles based, including threats and safeguards, plus specific prohibitions in some areas, particularly for listed entity audits. The Standards differentiate between clear requirements (set out in black-lined text) and supporting guidance. The Standards also assign responsibility for activity required and are quite prescriptive as regards process requirements within the firm. The most recent update in December 2010 applied from 30 April 2011 to audits of financial statements commencing on or after 31 December 2010.

The ICAEW (UK member body) has adopted, as regards auditor independence requirements, these Ethical Standards. When conducting audit engagements in accordance with ISAs (UK and Ireland), professional accountants are required to comply with the requirements of the APB's Ethical Standards for Auditors. The APB has stated, in ISA (UK and Ireland) 200, that it is not aware of any significant instances where the relevant parts of the IESBA Code of Ethics are more restrictive than the APB's Ethical Standards. In some areas there is minor detail where the APB standards are less restrictive than the IESBA Code and so, in theory, the requirements would default to the ICAEW Code of Ethics (based on the IESBA Code including all the PIE provisions) - in practice compliance with the APB Standards is required.

Australia

Australia has a co-regulatory regime, including prohibitions around financial arrangements, employment relationships and partner rotation in the Corporations Act 2001, together with a conceptual threats and safeguards approach to independence in APES 110. The independence requirements of the Corporations Act do not include rules on non-audit service rules but the law includes a general independence test ("reasonable person" provision) covering all aspects of auditor independence.

The Corporations Act provisions on auditor independence apply to all companies and "registered schemes" (managed investment funds) that are required to have a statutory audit. The Corporations Act independence rules apply equally to PIEs and non-PIEs except for rotation provisions which only apply to listed companies.

APES 110 is the IESBA Code equivalent professional standard and applies to all entities for which an audit engagement is conducted. Audits conducted under the Corporations Act are required by law to comply with "relevant ethical standards" so APES 110 has the force of law in respect of audits conducted under the Corporations Act.

The APESB are due to commence a project in 2011 to consider defining PIEs in Australia.

Germany

German Commercial Code (CC) - Company Law – is a principles-based approach with some specific provisions which apply to all statutory audits, and additional provisions which apply to statutory audits of PIEs. The CC applies to all companies for which a statutory audit is required (those over a certain size); companies that are listed, or have filed an request for admission for listing, on a regulated market in the meaning of the EU capital markets directives (also defined as PIEs); other companies, such as certain financial institutions and insurance companies and very large unlimited partnerships. The CC contains an overall framework assessment which applies when the Code does not contain specific requirements.

This is supplemented by the Public Accountant Act (PAA) which governs the (audit) profession and a Professional Charter (PC) governing the (audit) profession in accordance with PAA. These apply primarily to the auditor or audit firm rather to entities.

Brazil

Auditing Standards are set by the Federal Accounting Council (CFC) and the Institute of Independent Auditors of Brazil. CFC Resolution 1311 – NBC PA 290 – “Independence – Audit and Review Engagements” and Resolution 1312 – NBC PA 291 – “Independence – Other Assurance Engagements” are translations to Portuguese of Section 290 and 291 of the current IESBA code, with only a few local differences. The Central Bank National Monetary Council (CMN) Resolution 3198 (CMN), which applies to the audit of financial institutions and financial settlement entities, establishes some stricter guidelines, especially with respect to financial interests of the audit firm and team members with management responsibilities.

Hong Kong

The Code of Ethics is established by the Hong Kong Institute of Certified Public Accountants. The Code is based on the IESBA Code with a few jurisdictional modifications to reflect local or legal requirements in HK.

Japan

The Japanese ethics rules comprise the Constitution of the Japanese Institute of Certified Public Accountants (JICPA), the JICPA Code of Ethics and Guidance on Independence and the statutory provisions contained in the Certified Public Accountant Act (CPA Act), the Companies Act, and the Financial Instruments and Exchange Act (FIEA).

Out of the Japanese ethics rules, the CPA Act precedes the other rules. The CPA Act requires the JICPA to stipulate a Constitution and also requires a member of the JICPA to observe the Constitution in self-regulation. The Constitution stipulates general provisions on ethics and a member's obligation to observe provisions and regulations including the JICPA Code of Ethics. The JICPA Code of Ethics and Guidance on Independence provide detailed regulations and guidance. In addition, the CPA Act also states general provisions on ethics and independence and contains specific provisions in certain areas, which results in duplicate rules. In such cases, the tighter rules (of the CPA Act) shall be observed. In limited specific circumstances, the Companies Act and the FIEA impose rules in addition to the CPA Act. In any case, the JICPA Code of Ethics and Guidance on Independence do not, in any way, override the legal provisions.

The JICPA Code of Ethics and Guidance on Independence, except for certain regulations modified to fit Japanese circumstances, are in substance equivalent to the IESBA Code of Ethics, and follows the IESBA Code as it relates to Public Interest Entities (PIEs). The CPA Act defines a “large company, and similar entities” and has specific provisions related to an audit for a “large company, and similar entities” which is always a PIE. The FIEA is applicable only to listed companies. The Companies Act has specific provisions applicable only to large-size companies in which capital amounts to JPY 500 million or more, or total liabilities amount to JPY 20 billion or more.

Certain Japanese legal provisions or regulations are more restrictive than the IESBA Code of Ethics; and the Japanese Acts, due to the legal structure, adopt a rule based approach, not a conceptual framework approach.

France

The French regulation consists of a combination of law (Code de Commerce) and a Code of Ethics. Although the Code of Ethics contains a significant number of prohibitions, it also recognises some elements of a principle based approach including a threats and safeguards assessment, which is explicitly dealt with in many circumstances. One of the main characteristic of the French regulation is that it applies to all entities subject to statutory audit. Therefore legislation and the Code do not differentiate between PIEs and non-PIEs. There is no definition of PIEs. The only distinction made is in relation to partner rotation; the requirement for partner rotation is only for listed entities and certain “not for profit” organisations. The French legislation was first issued by the law n° 1966-537 of 24 July 1966 modified and now consolidated in the code of commerce. The current Code of Ethics was issued by regulation of Décret n° 2005-1412 du 16 November 2005. This Code has been reviewed recently by Décret n° 2010-131 of 10 February 2010 which, to some extent, has tried to recognise and give more room to a more principle based approach.

Detailed comparison by topic

Introduction [1]

IESBA

Introduction

Members of audit teams, firms and network firms are required to be independent of audit clients.

The use of the word “shall” in this Code imposes a requirement on the professional accountant or firm to comply with the specific provision in which “shall” has been used. Compliance is required unless an exception is permitted by this Code.

The Code prohibits the professional accountant from entering into certain interests and relationships. In certain circumstances, the Code sets out conditions that must be met, or specified safeguards that must be applied, if independence is to be deemed not to be compromised. For other interests and relationships, the Code provides a conceptual framework that the accountant is required to apply to (i) identify threats to independence; (ii) evaluate the significance of the threats, and (iii) apply safeguards, when necessary¹, to eliminate the threats or reduce them to an acceptable level. [290.7]

A professional accountant is required to use professional judgment in applying the conceptual framework [100.7] and, when evaluating the significance of a threat, to take account of qualitative as well as quantitative factors. [100.9]

When the professional accountant determines that appropriate safeguards are not available or cannot be applied to eliminate the threats or reduce them to an acceptable level, the professional accountant shall eliminate the circumstance or relationship creating the threats or decline or terminate the audit engagement. [290.7]

The Code does not describe all of the circumstances and relationships that create or may create a threat to independence. In those situations, the firm and members of the audit team shall evaluate the circumstance or relationship using the conceptual framework [290.100]. Whenever new information about a threat to independence comes to the attention of the firm during the engagement, the firm shall evaluate the significance of the threat in accordance with the conceptual framework approach. [290.10]

The Code does not, in most cases, prescribe the specific responsibility of individuals within the firm for actions related to independence because responsibility may differ depending on the size, structure and organization of a firm. [290.12]

USA

The SEC independence requirements are rules based and set forth specific prohibitions and specified conditions that must be met before an interest or relationship would be considered permissible. SEC rules do not incorporate a conceptual framework, but do outline overarching principles, to be considered from the perspective of a “...reasonable investor with knowledge of all relevant facts and circumstances...,” where SEC rules do not explicitly address a circumstance that may raise an independence concern. In considering this standard, the Commission looks in the first instance to whether a relationship or the provision of a service:

- (a) creates a mutual or conflicting interest between the accountant and the audit client;*
- (b) places the accountant in the position of auditing his or her own work;*
- (c) results in the accountant acting as management or an employee of the audit client; or*
- (d) places the accountant in a position of being an advocate for the audit client.*

¹ Safeguards are necessary when the professional accountant determines that the threats are not at a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised. [100.2]

AUSTRALIA

Multiple insignificant threats are to be aggregated and evaluated, and safeguards applied if required to eliminate or reduce them to an acceptable level.

GERMANY

The independence requirements also apply to all “legal representatives” of the audit firm (although in practice this may have little or no impact).

UK

The Standards are more specific on the policies and procedures that must be set up by the firm, and the timing of application. Explicitly requires threats to be assessed on a cumulative basis. “For this purpose, 'cumulative' means all current relationships and any past completed relationships that may be expected to have a continuing relevance to the auditor's independence and consideration of the threats”.

The Standards requires the audit firm to establish policies and procedures setting out when the additional requirements for listed entities will apply to other audit engagements, including PIEs.

The Standards prescribe the individual “responsible” for actions, usually the audit engagement partner, EQCR partner or the ‘Ethics partner’ (who has to be designated for each audit firm bar very small ones). Specific instructions and requirements are included throughout.

The ES also contains the following general requirement “When identifying and assessing threats to the auditor's objectivity and independence, the audit engagement partner takes into account current relationships with the audited entity (including non-audit service engagements and known relationships with connected parties of the audited entity) and with other parties in certain circumstances, those that existed prior to the current audit engagement and any known to be in prospect following the current audit engagement”.

JAPAN

Note - Various differences may arise between the Japanese legal provisions and IESBA Code because the Japanese legal provisions are not based on a conceptual framework approach (as adopted in the IESBA Code), but rather on a rule based approach.

FRANCE

In the French Code “entity” refers to the audited entity and not to the group the entity belongs to. Therefore the notion of audit client is restricted to the audited entity and when a specific provision applies to the group it is explicitly mentioned. Furthermore, the French code in application to a “group” explicitly deals with only with entity controlling or controlled by the audited entity. There are no specific requirements for other entities, such as those over which the audit client has significant influence.

Network and Network Firms [2]

IESBA
Networks and Network Firms
A network firm shall be independent of the audit clients of the other firms within the network. [290.13]

GERMANY
<i>The independence requirements do not all apply to network firms. Broadly speaking, except for prohibited non-audit services, a network firm is not required to comply with the other independence provisions if it will not be able to influence the outcome of the audit.</i>

Related Entities [3]

IESBA

Related Entities

In the case of an audit client that is a listed entity, references to an audit client include related entities of the client (unless otherwise stated). For all other audit clients, references to an audit client include related entities over which the client has direct or indirect control. When the audit team knows or has reason to believe that a relationship or circumstance involving another related entity of the client is relevant to the evaluation of the firm's independence from the client, the audit team shall include that related entity when identifying and evaluating threats to independence and applying appropriate safeguards. [290.27]

USA

The SEC's definition of related entities (affiliates) with respect to audit clients that are listed entities is more restrictive (inclusive) in that the IESBA Code applies a materiality threshold to entities that control the audit client and entities under common control with the audit client. The SEC does not consider materiality in such circumstances. SEC rules also go further in providing affiliate requirements relating to investment companies, variable interest entities and employee benefit plans.

AUSTRALIA

The Corps Act explicitly states that the manager of an audit client that is a managed fund is a related entity for the purpose of the provisions in the law. [Note- the same position can be reached applying the related entity definition in the IESBA Code, depending on the facts and circumstances].

Some specific provisions include references only (i.e. apply) to entities under direct or indirect control of the audit client (called a "related body corporate").

GERMANY

The independence requirements would apply to related entities only under the general framework which states that a certified public accountant cannot act as statutory auditor, if there are reasons for his independence being compromised, in particular relationships of a business, financial or personal nature. *This can be viewed as less prescriptive.*

BRAZIL

For financial institutions there is a broader definition of "affiliates" (see Related Entity definition)

JAPAN

Whether an entity is a related entity is initially based on the degree of ownership. Then an evaluation is made as

to whether the entity has direct or indirect control. This can result in a more inclusive application depending on the circumstances.

FRANCE

Note - Except for partner rotation (which applies only for listed entities and certain “not for profit” organisations) the French regulation does not make any distinction between listed and non listed entities.

Furthermore, when the French Code provides provisions regarding relationships or assignments which can be delivered by the statutory auditor or its network to related entities of the audited company it explicitly includes only entities controlling or controlled by the audited entity. There is no specific requirement for joint controlled entities, sister entities or entities over which the entity exert significant influence.

Those Charged with Governance [4]

IESBA

Those Charged with Governance

Regular communication is encouraged between the firm and those charged with governance of the audit client regarding relationships and other matters that might, in the firm's opinion, reasonably bear on independence. [290.28]

USA

PCAOB rule 3526, *Communication with Audit Committees Concerning Independence* requires communication with and documentation of discussions with audit committees of issuer audit clients regarding matters thought to bear on independence. This is required prior to accepting the engagement and at least annually. Likewise PCAOB Rules 3524, *Audit Committee Pre-approval of Certain Tax Services*, Rule 3525, *Audit Committee Pre-approval of Non-audit Services Related to Internal control Over Financial Reporting*, require communications with audit committees relating to obtaining pre-approval for certain tax and internal control related services.

Additionally, the SEC rules require audit committee pre-approval of audit and non-audit services subject to certain exceptions for non-attest services.

AUSTRALIA

The APES110 Code has a requirement to discuss with those charged with governance any inadvertent violation that is not trivial or inconsequential.

The Corps Act has a requirement for the auditor to provide a declaration of independence to the directors (included in the director's report and therefore public). The declaration must include details of contraventions of the Corps Act or APES 110. For further details refer to "Inadvertent Violations" in topic 46 of this document.

GERMANY

For Listed companies, those charged with governance are required to obtain from the incoming auditor

"Prior to submitting a proposal for election,a statement from the proposed auditor stating whether, and where applicable, which business, financial, personal and other relationships exist between the auditor and its executive bodies and head auditors on the one hand, and the enterprise and the members of its executive bodies on the other hand, that could call its independence into question. This statement shall include the extent to which other services were performed for the enterprise in the past year, especially in the field of consultancy, or which are contracted for the following year".

The auditor is required to inform immediately "any grounds for disqualification or impartiality occurring during the audit, unless such grounds are eliminated immediately".

UK

The audit engagement partner shall ensure that those charged with governance of the audited entity are appropriately informed, on a timely basis, of all significant facts and matters that bear upon the auditor's objectivity and independence, including a more specific list of items required to be discussed in case of listed audits. This includes:

- (a) a written disclosure of relationships (including the provision of non-audit services) that bear on the auditor's objectivity and independence, the threats to auditor independence that these create, any safeguards that have been put in place and why they address such threats, together with any other information necessary to enable the auditor's objectivity and independence to be assessed,
- (b) details of non-audit services provided and the fees charged in relation thereto,
- (c) written confirmation that the auditor is independent.

Note - Some of this would be addressed by the ISA 260 for listed entities.

Documentation [5]

IESBA

Documentation

The professional accountant shall document conclusions regarding compliance with independence requirements, and the substance of any relevant discussions that support those conclusions and:

- When safeguards are required, the nature of the threat and the safeguards in place or applied that reduce the threat to an acceptable level.
- When a threat required significant analysis to determine whether safeguards were necessary and the professional accountant concluded that they were not because the threat was already at an acceptable level, the nature of the threat and the rationale for the conclusion. [290.29]

Engagement Period [6]

IESBA
Engagement Period Independence is required both during the engagement period and the period covered by the financial statements ² . [290.30]

See topic 61 of this document for comparatives

² The Code also includes provisions dealing with situations in which an entity becomes an audit client during or after the period covered by the financial statements on which the firm will express an opinion [290.31] and a non-assurance service was provided to the audit client during or after the period covered by the financial statements but before the audit team begins to perform audit services. [290.32]

Financial interests – *Audit team and firm* [7]

IESBA

Prohibited

A member of the audit team, a member of that individual's immediate family, and a firm shall not have:

- a direct or material indirect financial interest in an audit client. [290.104]
- a direct or material indirect financial interest in an entity that has a controlling interest in the audit client, where the client is material to the entity. [290.106]
- a financial interest in an entity, in which an audit client also has an interest, if such interest is material to any party, and the audit client can exercise significant influence over the other entity. [290.112]

USA

The broader definition of a related entity would create the following differences for listed entities:

- (a) the SEC affiliate rule extends the prohibitions to a controlling parent and to entities under common control (irrespective of materiality)
- (b) the rules extend to entities that are part of an "investment company complex".

In addition, the SEC rules contain the following:

"Independence would be impaired if any partner, principal, shareholder, or professional employee of the accounting firm, any of his or her immediate family members, any close family member of a covered person in the firm, has filed a Schedule 13D or 13G with the Commission indicating beneficial ownership of more than five percent of an audit client's equity securities or controls an audit client, or a close family member of a partner, principal, or shareholder of the accounting firm controls an audit client.

AUSTRALIA

The Corps Act prohibits a material interest (direct or indirect) in an entity with a controlling interest in the audit client. When the client is not material to the investor this is more restrictive. *When the client is material, APES is less restrictive since it does not prohibit an immaterial direct financial interest.*

GERMANY

No definition of direct and indirect financial interests. Broadly the same scope of financial interests, but more flexible with respect to financial interests other than shares (except shares, insignificant financial interests are generally permitted). Also no specific reference to family of members of the audit team other than the statutory auditor (the lead partner).

The restriction on financial interests apply to the parent and an entity which holds a 20% stake in the audit client (irrespective of materiality).

UK

Indirect financial interests are also prohibited if material to the intermediary through which an investment is held.

Prohibits a pension scheme of an audit firm having a financial interest in an audited entity or its affiliates if the firm has any influence over the trustees' investment decisions (other than indirect strategic and policy decisions).

BRAZIL

For financial institutions, the prohibition extends to any indirect shareholding (regardless of materiality) held by a member of the engagement team with managerial responsibilities for the audit (but not to his/her family members).

For financial institutions, the prohibition extends to any indirect shareholding (regardless of materiality) in an entity with a controlling interest in the audit client (regardless of the materiality of the client to the entity) held by a member of the engagement team with managerial responsibilities (but not to his/her family members).

HONG KONG

Prohibits the holding by a firm's retirement benefit plan of a direct financial interest in an audit client.
Prohibits the holding by a firm's or a network firm's retirement benefit plan of a material indirect financial interest in an audit client.

JAPAN

Japanese laws do not permit direct or indirect financial interests, which under the Code are primarily stocks or shares in a company, regardless of materiality.

FRANCE

All indirect financial interests are prohibited unless held via certain mutual funds (*in which case there is no prohibition*).

The French Code does not explicitly address the interest covered by 290.112.

Financial interests – *Other partners and employees* [8]

IESBA

Partners in the office in which the engagement partner practices in connection with the audit engagement, and partners and managerial employees who provide non-audit services to the audit client, except those whose involvement is minimal, and their immediate family members, shall not have a direct or a material indirect financial interest in that audit client. [290.108 and 290.110]

UK

Restrictions on financial interests apply to all partners in the firm.

Restrictions on financial interests apply to professional personnel from other disciplines if they are involved in the audit, where as the IESBA applies to all those providing services to the audit client (subject to a de minimis rule).

JAPAN

Japanese laws do not permit direct or indirect financial interests, which under the Code are primarily stocks or shares in a company, regardless of materiality.

FRANCE

All indirect financial interests are prohibited unless held via certain mutual funds.

Interests of partners who are not “members of the management team,any partner of the audit firm who has a significant influence on the opinion expressed by the French statutory auditor on the entity whose financial statements are being audited, or any professional from the audit firm who performs significant work on the entity, whose financial statements are being audited” are addressed on a threats and safeguards basis.

Financial interests – *Trustee holdings* [9]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

Members of the audit team, partners in the engagement office, partners and managerial employees who provide non-audit services to the audit client (as above), and their immediate family members, and the firm are permitted to have a direct or material indirect financial interest in the audit client as a trustee only if:

- Neither the trustee, nor an immediate family member of the trustee, nor the firm are beneficiaries of the trust or can significantly influence any investment decision involving a financial interest in the audit client,
- The interest in the audit client held by the trust is not material to the trust, and
- The trust is not able to exercise significant influence over the audit client. [290.114]

USA

While the SEC rules also allow service as trustee or executor if the individual does not have authority to make investment decisions (presumably this would include the ability to "significantly influence" such decisions) for the trust or estate, the IESBA Code imposes further requirements, such that the interest in the audit client held by the trust cannot be material to the trust, and the trust cannot exercise significant influence over the audit client. Further, the IESBA Code provides that the trustee must not be a beneficiary of the trust. The SEC rules do not address this aspect directly.

GERMANY

Not specifically addressed and might therefore be less restrictive in application - would be covered by overall framework assessment of financial and/or business relationships.

JAPAN

Japanese laws only permit a trust where the trust property of many settlors, who are not joint settlors, is jointly managed; and investment trusts. All other trusts are prohibited.

FRANCE

In France only banks, investment companies, insurance companies and lawyers can be trustees. As such, interests in the audit client by such individuals and the firm held via trusts are not permitted.

Other financial interests (capital contributions) [no IESBA equivalent]

USA

Independence is impaired when:

- An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

Loans, Guarantees and deposits [10]

IESBA

Prohibited

A member of the audit team, a member of that individual's immediate family, or the firm shall not:

- Have a loan, or a guarantee of a loan, from an audit client that is a bank or a similar institution that has not been made under normal lending procedures, terms and conditions. [290.118]
- Have a loan from an audit client that is not a bank or similar institution that is material to (a) the firm or the member of the audit team and the immediate family member, or (b) the client. [290.121]
- Make or guarantee a loan to an audit client that is material to (a) the firm or the member of the audit team and the immediate family member, or (b) the client. [290.122]
- Have a deposit or brokerage account with an audit client that is a bank, broker, or similar institution if the deposit or account is not held under normal commercial terms. [290.123]

USA

The SEC rules are more restrictive in that:

- they apply to all covered persons³, not just members of the audit team. (i.e. to partners in the office and non-audit services providers)
- they limit the types of loans that are permitted to those made under normal lending procedures, terms and requirements (e.g. to car loans, collateralised loans). Other loans, including unsecured loans, are not permitted.
- loans from non-financial institutions, including officers, directors, or record or beneficial owners of more than ten percent of the audit client's equity securities, are prohibited (regardless of materiality), and apply to all covered persons.
- accounts with a bank or similar institution cannot have balances that exceed amounts insured by FDIC except that the *firm* may have uninsured amounts provided likelihood of bank experiencing financial difficulties is remote.
- brokerage or similar accounts with a broker dealer are permitted only if certain criteria are met.
- futures and commodity accounts with futures commission merchant audit client are prohibited.
- they prohibit insurance policies with an audit client for a covered person, unless subject to specified "grandfathering" provisions.

SEC rules are (arguably) more restrictive than IESBA Code since IESBA does not specifically address credit cards from lender that is an audit client. [Unless the Code reference to loan is deemed to cover credit card balances]. At a minimum, the SEC rule puts an upper limit on the size of the permissible loan (\$10,000), even if held on normal commercial terms.

³ (i) The "audit engagement team"; (ii) The "chain of command"; (iii) Any other partner or managerial employee of the accounting firm who has provided ten or more hours of non-audit services to the audit client (iv) Any other partner from an "office" of the accounting firm in which the lead audit engagement partner primarily practices in connection with the audit.

AUSTRALIA

Additionally, the Corps Act restricts all partners in the firm from having a loan from any audit client (not just a financial institution) that has not been made under normal lending procedures, terms and conditions. There is no materiality test.

The Corps Act does not allow a member of the audit team or the firm to make or guarantee a loan to an audit client. Only exception is a loan by an immediate family member (of an audit team member or of a non-audit service provider) in the ordinary course of business. There is no materiality test.

GERMANY

Not specifically addressed and might therefore be less restrictive in application - would be covered by overall framework assessment of financial and/or business relationships. Nb Brokerage accounts N/A.

UK

Re .118, prohibited where such loans are in arrears by a significant amount.

BRAZIL

Re .118, For financial institutions, the prohibition extends to any credit relationship (regardless of materiality) held by a member of the engagement team with managerial responsibilities, but not his/her family members.

Re, .122 For financial institutions, the prohibition extends to any loan to the audit client (regardless of materiality) by a member of the engagement team with management responsibilities, but not his/her family members.

Re. 123, For banks and other regulated financial institutions, the prohibition extends to any deposit account relationship including investment funds managed by the entity (regardless of materiality) held by a member of the engagement team with management responsibilities, but not his/her family members.

JAPAN

Japanese laws permit mortgages. However, these could not be advanced on basis more advantageous than regular commercial rates.

Other loans are effectively prohibited (if over JPY 1 million); even if these are made under usual commercial terms.

FRANCE

The Statutory auditor (lead partner), the firm and members of the management team of the firm are prohibited

from having any deposit with, loan from or insurance policy with the audit client (or certain related entities).

Only financial institutions can provide loans and deposits so such relationships (e.g. 290.121/122) would not be permissible in practice.

Close business relationships [11]

IESBA

Prohibited

A firm or a member of the audit team shall not have a close business relationship with an audit client or its management if, in the case of the firm, any financial interest is material or the business relationship is significant to the firm or the client or its management and, in the case of the audit team member, any financial interest is material or the business relationship is significant to the member of the audit team. [290.124]

Permitted only if certain conditions exist or specified safeguards are applied

A business relationship involving the holding of an interest by the firm, or a member of the audit team, or a member of that individual's immediate family, in a closely-held entity when the audit client or a director or officer of the client, or any group thereof, also holds an interest in that entity. [290.125]

USA

SEC prohibits any direct business relationship with an audit client regardless of materiality or significance. The SEC rules are also more restrictive in that they apply to all covered persons. They also extend the prohibition to such relationships with substantial stockholders of the client.

AUSTRALIA

In addition, the Corps Act prohibits

- a partner or a member of the audit team being in partnership ("a partner of") with an officer or audit critical employee of the audit client, without regard to materiality of any financial interest or significance of the business relationship.
- a partner or a member of the audit team from employing or being employed by an officer or audit critical employee or any employee of theirs.
- the firm or a partner from remunerating as a consultant (to the firm or that person), any officer or audit critical employee of an audit client

UK

Goods and services transactions are required to be immaterial and arms length.

In relation to other business relationships such as JVs, the requirements are different (clearly inconsequential and no reference to financial interests)

The firm cannot provide audit services to an entity or person who can exert influence the affairs of the firm or any audit engagement.

"Clearly inconsequential" appears a lower threshold than "not significant".

Re .125 where such a joint interest does not amount to a JV (as covered above) the IESBA Code is more

restrictive. The ethics partner might be consulted.

FRANCE

All business relationships (other than normal supplier type relationships entered into on an arm's length basis) are prohibited, regardless of materiality.

§ 290. 124 also applies to immediate family members. Such individuals are only covered by the French Code for the holding of a financial interest – thus less restrictive in that regard.

290.125 is not addressed by the French Code.

Family relationships [12]

IESBA

Prohibited

A member of the audit team shall not have an immediate family member who is a director or officer of the audit client, or an employee in a position to exert significant influence over the preparation of the audit client's accounting records or financial statements, or was in such a position during any period covered by the engagement or the financial statements. [290.128]

USA

SEC rule applies to all covered persons and all close family members (i.e., not only immediate family, but parents, siblings, and non-dependent children).

Also, the two requirements apply to different roles (i.e., "director or officer of the audit client, or an employee in a position to exert significant influence over the preparation of accounting records or financial statements" vs. SEC "accounting role or FROR at an audit client"). The IESBA Code could be read to be more restrictive in this area, since it can conceivably include officer positions (e.g., VP of Marketing) that aren't necessarily accounting roles or FRORs.

AUSTRALIA

In addition, the Corps Act prohibits the immediate family member from having been an officer (see definition) of the audit client in the immediately preceding period of 12 months.

GERMANY

More restrictive in that, as it relates to the statutory auditor

- the restriction applies to all employees at the audit client
- it also applies to all affiliates in the case of a non-listed PIE
- it also extends to an entity with SI over the audit client, irrespective of materiality (all PIEs)

However, there is no explicit provision relating to positions held by immediate family members of the rest of the audit team.

UK

In the case of (a) a director or officer position, the provisions are extended to other close family members of those in a position to influence the conduct and outcome of the audit, and (b) in the case of an immediate family member in a position to exercise influence on the accounting records or financial statements to all those who can influence the conduct and outcome of the audit or a partner in the audit firm.

FRANCE

The French Code extends the prohibitions to partners in the office to which the signing audit partner belongs.
--

Employment – *Partners and staff joining an audit client* [13]

IESBA

Prohibited

The following shall not join an audit client as a director or officer, or as an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements.

- A former member of the audit team or partner if significant connections remain with the firm. Accordingly, such an individual shall not be entitled to any benefits or payments from the firm, unless made in accordance with fixed pre-determined arrangements, and any amount owed to the individual shall not be material to the firm. The individual shall not continue to participate or appear to participate in the firm's business or professional activities. [290.135]
- A key audit partner, unless subsequent to the partner ceasing to be a key audit partner, the client had issued audited financial statements covering a period of not less than twelve months and the partner was not a member of the audit team with respect to the audit of those financial statements. [290.139]
- The firm's Senior or Managing Partner, unless twelve months have passed since the individual was the Senior or Managing Partner. [290.140]

USA

SEC prohibitions relating to employment with an audit client impose requirements on a broader category of individuals (i.e., all former partners, principals, shareholders, and professional employees of the firm) in "accounting or financial reporting oversight roles" at the audit client. (The criteria under which employment with an audit client is permitted are similar to those in bullet 1 above).

The IESBA Code could be read to be more restrictive from the perspective that certain officer positions (e.g., VP of Marketing) may not be accounting roles or FRORs.

The SEC rule extends a prohibition beyond key audit partners to include most members of the audit engagement team (with certain limited exceptions). *The SEC rule is narrower in the sense that it only applies to those in a financial reporting oversight role at an issuer.* (The period is broadly equivalent to bullet 2).

The SEC rules do not have a specific requirement relating to firm's Senior or Managing Partner, unless a member of the audit engagement team.

The relevant rules also apply to an investment company registered under section 8 of the Investment Company Act of 1940.

AUSTRALIA

In addition, the Corps Act extends this requirement to all former professional employees, rather than just a former member of the audit team or partner.

Furthermore, any fixed pre-determined arrangements cannot be dependent on profits, or revenues. There is no materiality clause in relation to the amount due from the firm.

Additionally, the Corps Act requires a period of 2 years to have lapsed since the date of the last audit report on which the partner was a member of the audit team, before they can become an "officer" of the audit client.

This applies to all partners on the audit team, not just a key audit partner.

The Corps Act also prohibits a former partner becoming an officer of an audit client if another individual (who was a partner of the firm at the time the entity was an audit client of the firm) is already an officer, and less than 5 years has passed since the former partner left the firm.

GERMANY

There is no equivalent provision to the first and third items covered by the Code.

An individual who has been statutory auditor of a company in the meaning of § 319a CC (i.e. PIE) or has participated as responsible audit partner (=key audit partner) in the audit of such company, shall not take an important leadership position at that company until a period of two years has elapsed after termination of the audit work.

UK

APB allows a threats and safeguards approach as regards staff who were a former member of the engagement team joining the audit client (within the past 2 years).

Require a two year “cooling off” period before the audit engagement partner, engagement quality control reviewer, key partner involved in the audit or a partner in the chain of command can join the audit client.

BRAZIL

For financial institutions, a 12-month cooling off period is required, regardless of whether significant connections remain, before any member of the engagement team with managerial responsibilities joins in a position related to services that would create an impediment or incompatibility with respect to the services of the independent auditor, or which may influence the management of the institution. This includes key audit partners.

JAPAN

The laws stipulate that when a certified public accountant (engagement partner) has provided audit engagement service related to the financial documents of a company or any other person, the certified public accountant (engagement partner) may not become an officer for nor take an equivalent position with said company or person nor a consolidated company, etc.; unless specifically approved by the Prime Minister due to unavoidable circumstances or in other cases specified by a Cabinet Office Ordinance.

FRANCE
<p>A prohibition applies, for 5 years, but <i>only to the audit partner who signs the audit report.</i></p> <p><i>Accordingly, there is no equivalent provision relating to the firm's Senior or Managing Partner.</i></p>

Employment – *Business combinations* [14]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

A former key audit partner or the individual who was the firm's former Senior or Managing Partner is in a position described above as a result of a business combination if

- (a) The position was not taken in contemplation of the business combination;
- (b) Any benefits or payments due to the former partner from the firm have been settled in full, unless made in accordance with fixed pre-determined arrangements and any amount owed to the partner is not material to the firm;
- (c) The former partner does not continue to participate or appear to participate in the firm's business or professional activities; and
- (d) The position held by the former partner with the audit client is discussed with those charged with governance. [290.141]

USA

The SEC rules also make an exception for employment due to an emergency, and for de minimis involvement (ten or fewer hours of audit/review/attest services) for those other than lead/concurring partners.

GERMANY

There is no such exception.

UK

No equivalent provision.

JAPAN

Permitted in cases of merger or other limited cases and only if approved by the Prime Minister in a specific case, based on whether or not an exception can be made due to unavoidable circumstances.

FRANCE

The absence of such a provision means that the signing partner becoming in such a position at the client, due to such circumstances, would be a violation of the Code if this occurred within the 5 year period.

Temporary staff assignments [15]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

The firm may lend staff to an audit client for a short period of time if

- (a) The staff will not be providing prohibited non-assurance services and will not assume management responsibilities;
- (b) The audit client will be responsible for directing and supervising the activities of the staff; and
- (c) The significance of any threat is evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. [290.142]

USA

SEC rules prohibit a firm lending staff to an audit client--even for a short period of time--(as considered a prohibited management function).

GERMANY

Generally prohibited due to specific laws governing special companies that are engaged in personal lease engagements.

UK

In the case of non-listed PIEs the same restriction can extend to a broader range of related entities.

JAPAN

Not permitted.

FRANCE

Secondments of staff to the client are effectively prohibited.

Recent service with an audit client [16]

IESBA

Prohibited

An individual who has served, during the period covered by the audit report, as a director or officer of the audit client, or was an employee in a position to exert significant influence over the preparation of the client's accounting records or financial statements shall not be a member of the audit team. [290.144]

USA

SEC rules extend the restriction (on being on the audit team) to any former employee of the audit client covering any period during which he or she was employed by or associated with that audit client.

AUSTRALIA

In addition, the Corps Act prohibits any partner as well as any member of the audit team from being an officer or audit critical employee of the audit client in the immediately preceding 12 month period, as well as the audit and engagement period.

UK

Similar requirements but extends to a two year period prior to employment with the firm and applies to those "able to influence the conduct and outcome of the audit for that entity or its affiliates".

JAPAN

An individual who has served as a director or officer of the audit client in the preceding 12 month period shall not be a member of the audit team.

FRANCE

Persons who have been directors or employees of a legal entity cannot be appointed as statutory auditor of that entity unless five years have elapsed since they were employed by that entity.

There is no similar restriction for other members of the audit team.

Serving as a director or officer [17]

IESBA

Prohibited

No partner or employee of the firm shall serve as a director or officer of an audit client. [290.146]

GERMANY

More restrictive in that

- the restriction extends to any employment position at the audit client
- it also applies to all affiliates in the case of a non-listed PIE
- it also extends to an entity with SI over the audit client, irrespective of materiality (all PIEs), but
- *it does not extend to all employees of the audit firm if they do not influence the audit*

UK

In the case of a non-listed PIE also extends to “such a position in an entity which holds directly or indirectly more than 20% of the voting rights in the audited entity, or in an entity in which the audited entity holds directly or indirectly more than 20% of the voting rights”.

An audit firm shall not admit to the partnership, or employ a person to undertake audit work, if that person is also employed by the audited entity or its affiliates (‘dual employment’).

AUSTRALIA

In addition, the Corps Act explicitly prohibits

- a partner or a member of the audit team from employing or being employed by an officer or audit critical employee or any employee of theirs (dual employment).

JAPAN

No partner of the firm shall be a director, officer or any kind of employee of an audit client.

Serving as Company Secretary [18]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

A partner or employee of the firm shall not serve as Company Secretary for an audit client unless:

- (a) The practice is specifically permitted under local law, professional rules, or practice,
- (b) Management makes all relevant decisions,
- (c) The duties and activities of the individual are limited to those of a routine and administrative nature, and
- (d) The significance of any threats are evaluated and safeguards are applied when necessary. [290.148]

Other provisions

Performing routine administrative services to support a company secretarial function or providing advice in relation to company secretarial administration matters does not generally create threats to independence if client management makes all relevant decisions. [290.149]

USA

The SEC rules do not directly address a partner or employee serving as company secretary. However, the SEC management function prohibition would likely prohibit acting as company secretary.

The SEC management function and employee function prohibition would likely also prohibit such “routine” activities.

AUSTRALIA

No partner or employee of the firm shall serve as company secretary of an audit client (no exceptions).

UK

Serving as Company Secretary is prohibited (as an Officer)

HONG KONG

Serving only permitted if the duties and activities of the individual are limited to those of a routine and administrative nature.

JAPAN

Serving as Company Secretary is prohibited (as an Officer)

FRANCE
Effectively prohibited.

Partner rotation – Key audit partners [19]

IESBA

Prohibited

An individual shall not be a key audit partner for more than seven years. After such time, the individual shall not be a member of the engagement team or a key audit partner for the client for two years. During that period, the individual shall not participate in the audit of the entity, provide quality control for the engagement, consult with the engagement team or the client regarding technical or industry-specific issues, transactions or events or otherwise directly influence the outcome of the engagement. [290.151]

USA

SEC partner rotation rules are more restrictive given a 5 year rotation period (with 5 years off) applicable to all lead engagement partners and quality review partners on the audit of an SEC issuer audit client. The SEC partner rotation rules are at least as restrictive (and possibly more so) with regard to other "audit partners" with respect to the issuer, which include a 7 year rotation period (with 2 years off) for non-LEPs and non-QRPs on the issuer audit as well as for QRPs and LEPs on significant subsidiaries of the issuer and for relationship partners on the issuer audit.

The SEC definition of "audit partner" is more expansive than the IESBA definition of "key audit partner" in that it not only includes "other audit partners who make key decisions or judgments on significant audit matters" but also those partners who have a high level of contact with management and the audit committee of the issuer (e.g., relationship partners).

AUSTRALIA

The Corps Act has a stricter 5 year rotation requirement for listed companies. An individual cannot be a lead or review auditor ("a significant role") of a listed company for more than 5 years. After such time the individual shall not be a lead or review auditor for the client for 2 years.

In addition there is a prudential regulator in Australia (APRA) that generally applies APES 110 and Corps Act rules except that it applies the Corps Act rotation provisions to all audits of Authorised Deposit-taking Institutions (ADI) whether listed or not. APRA may grant an exemption from this requirement if the individual provides specialist services that are otherwise not readily available or there are no other registered company auditors available to provide satisfactory services for the ADI.

GERMANY

Rotation requirement is equivalent but extends to significant subsidiaries, but only in Germany (in order not to govern rotation beyond German borders)

During the "period off" the audit, there is no prohibition on consultation with the audit team

UK

Standard requires 5 years maximum for engagement partner with 5 years off. Standard requires 7 years maximum for EQCR and other key partners with 5 years off.

BRAZIL

The maximum period of service is five years instead of seven years (under the CFC) (with 2 years off). For audits of financial institutions, the five-year limit applies to all audit team members with managerial responsibilities, including KAPs.

NB Audit firm rotation was implemented by 3 regulators - the Central Bank (affecting financial institutions), the Insurance Superintendency (SUSEP - affecting insurance companies) and the Securities Commission (CVM - affecting only listed companies). Each regulator has a rule requiring rotation after 5 consecutive years. The Central Bank and SUSEP have suspended their rotations indefinitely. The CVM rotation will come back after the 2011 audits, although it is understood that this is under consideration.

JAPAN

Where a lead engagement partner in a large audit corporation has provided audit services related to the financial statements pertaining to five accounting periods, the lead engagement partner shall not provide audit-related services on the financial statements for the following five years.

FRANCE

The statutory auditor shall not provide audit services for more than six consecutive periods, with six years off.
No such requirement for others who would fall to be KAPs under the IESBA Code.

Partner rotation – Key audit partners (cont'd) [20]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

Key audit partners whose continuity is especially important to audit quality may, in rare cases due to unforeseen circumstances outside the firm's control, be permitted an additional year on the audit team as long as the threat to independence can be eliminated or reduced to an acceptable level by applying safeguards⁴. [290.152]

When a firm has only a few people with the necessary knowledge and experience to serve as a key audit partner, rotation may not be an available safeguard. If an independent regulator in the relevant jurisdiction has provided an exemption from partner rotation in such circumstances, an individual may remain a key audit partner for more than seven years, in accordance with such regulation, provided that the independent regulator has specified alternative safeguards which are applied, such as a regular independent external review. [290.155]

USA

There is no exception similar to the first scenario above.

Note - The SEC provides an exception from partner rotation for audit firms with fewer than five issuer audit clients and fewer than ten partners.

AUSTRALIA

No exceptions are provided for in the case of the lead or review auditor.

GERMANY

No exceptions are provided for.

UK

Similar notion to para 290.152 but the exception a) is limited to the audit engagement partner b) lasts for 2 years, and c) requires audit committee approval and disclosure in the annual report.

Re 290.155, no direct APB equivalent though the exception above could arguably be applied to the AEP.

⁴ The Code includes transitional provisions dealing with the situation where an audit client becomes a public interest entity. [290.154]

JAPAN
Only if a specific case meets the criteria of an unavoidable circumstance as specified by a Cabinet Office Ordinance and the Prime Minister approves the specific case, an engagement partner may be permitted an additional year on the audit team. In such cases, Japanese laws require a JICPA external review for the engagement.

FRANCE
There is no exception to the 6 year rule (see topic 19).

Partner rotation – *Others* [21]

IESBA
Not covered by the Code.

BRAZIL
See topic 19.

Non-Assurance services

Assuming a management responsibility [22]

IESBA

Prohibited

A firm shall not assume a management responsibility for an audit client. [290.165]

- Activities that are routine and administrative, or involve matters that are insignificant, generally are deemed not to be a management responsibility. [290.164]
- To avoid the risks of assuming a management responsibility, the firm shall be satisfied that a member of management is responsible for making the significant judgments and decisions that are the proper responsibility of management, evaluating the results of the non-assurance service and accepting responsibility for the actions to be taken arising from the results of the service. [290.166]

USA

SEC independence rules in this area are more restrictive, prohibiting an auditor from performing a “management function” (i.e., acting temporarily or permanently, as a director, officer, or employee of an audit client or performing a decision making, supervisory, or ongoing monitoring function for an audit client).

SEC rules provide no exception to its management function prohibition relating to matters that are insignificant or activities that are routine and administrative.

FRANCE

Acts of administration are prohibited.

The provision of non audit services (services that are not covered by the statutory assignment or related services) are prohibited for the statutory auditor (the firm). There is no equivalent provision to the IESBA code.

Explanatory note re non audit services: essentially the statutory auditor (the firm) is prohibited from providing services, other than audit related services, to the audit client including any foreign branches, or to an entity controlling, or controlled by, the audit client. Network firms are similarly prohibited from providing such services to the audit client; network firms are prohibited, subject to the application of the “not subject to audit” principle, from providing 3 specified services to an entity controlling, or controlled by, the audit client; in addition there are 10 services which are presumed to affect the statutory auditor’s independence if provided to such entities by a network firm – these are subject to a threats and safeguards analysis and may be provided by a network firm only if the statutory auditor can substantiate that the service does not affect his professional judgment, audit opinion or the conduct of the audit. The provisions do not address other related entities, such as those over which the audit client has significant influence (“other downstream related entities”).

Preparing accounting records and financial statements [23]

IESBA

Prohibited

[Except as permitted below] Providing accounting and bookkeeping services, including payroll services, preparing the client's financial statements, and preparing financial information that forms the basis of the financial statements. [290.172]

USA

SEC rules are more restrictive as they do not allow for any exceptions (see below). See topic 24.

AUSTRALIA

There is no exception allowing the provision of accounting and bookkeeping services in an emergency situation. See topic 24.

JAPAN

The existing rule is similar to IESBA Code, but Japanese law has no exception. See topic 24.

FRANCE

Potentially in relation to services (other than preparation of accounting or financial information affecting the consolidated financial statements) by a network firm to an entity controlling, or controlled by, the audit client, the Law could be less restrictive, although always subject to a threats and safeguards analysis. Could also be less restrictive in relation to services to other downstream related entities.

Preparing accounting records and financial statements – *Permitted exceptions* [24]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

Accounting and bookkeeping services, including payroll services and the preparation of financial statements or other financial information, of a routine or mechanical nature for divisions or related entities of an audit client if the personnel providing the services are not members of the audit team and:

- (a) The divisions or related entities for which the service is provided are collectively immaterial to the financial statements on which the firm will express an opinion; or
- (b) The services relate to matters that are collectively immaterial to the financial statements of the division or related entity. [290.173]

Accounting and bookkeeping services, which would otherwise not be permitted, may be provided to audit clients in an emergency or other unusual situation when it is impractical for the audit client to make other arrangements, provided that the following conditions are met:

- (a) Those who provide the services are not members of the audit team;
- (b) The services are provided for only a short period of time and are not expected to recur; and
- (c) The situation is discussed with those charged with governance. [290.174]

USA

SEC rules do not provide for such exceptions (unless the services are “not subject to audit procedures” which would not apply to such downstream related entities).

AUSTRALIA

There is no exception allowing the provision of accounting and bookkeeping services in an emergency situation.

GERMANY

No exceptions provided therefore potentially more restrictive in circumstances where the activities would be other than clearly insignificant (i.e prohibited) [this extends to affiliates in a group audit situation].

In practice, certain payroll services are considered permitted if routine and mechanical.

JAPAN

Japanese law has no such exception.

FRANCE

<p>There is no such exception to the above prohibitions (including in emergencies).</p>

<p>Note - However, the application of the threats and safeguards analysis in the case of services, other than relating to the preparation of accounting and financial information affecting the consolidated financial statements, by network firms (see above) may allow certain services by a network firm similar to 290.173.</p>
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Valuation services [25]

IESBA

Prohibited

Valuation services where the valuation would have a material effect, separately or in the aggregate, on the financial statements. [290.180]

USA

SEC rules include a prohibition with respect to the provision of any appraisal service, valuation service, or any service involving a fairness opinion or contribution-in-kind report for an audit client. The SEC rules do not give consideration to materiality.

Note - SEC independence requirements provide that the audit firm may perform these and 4 other "conditionally prohibited" services for an affiliate of an SEC audit client if it is reasonable to conclude that the results of the particular service will "not be subject to audit procedures" during an audit of the company's financial statements and, therefore, the firm would not be auditing its own work. This could apply to a parent, other investor, or sister entity. This concept is also embedded in the IESBA Code.

FRANCE

Valuation services, actuarial or not, including preparation of accounting or financial information, to be included in the financial statements or financial information are prohibited (regardless of materiality).

Tax return preparation [26]

IESBA

Other provisions

Tax return preparation services do not generally create a threat to independence if management takes responsibility for the returns including any significant judgments made. [290.183]

USA

The rules address tax services to individuals employed by the audit client. PCAOB rules are more restrictive in this regard, generally prohibiting tax services to certain individuals at the client (subject to some exceptions). The rules state that “ a firm is not independent of its audit client if the firm, or any affiliate of the firm, during the professional engagement period provides any tax service to a *person in a financial reporting oversight role* at the audit client, or an immediate family member of such person, unless – [certain conditions are met]

JAPAN

Note - The requirements are similar to the IESBA provisions but tax services have to be provided by a separate firm within the Network.

FRANCE

Any service, including advice, relating to legal, financial or tax matters or relating to methods of financing is prohibited.

Note - Tax services to entities controlling or controlled by the client, provided by network firms, are addressed on a threats and safeguards basis.

Tax calculations [27]

IESBA

Prohibited

Preparing tax calculations of current and deferred tax liabilities (or assets) for the purpose of preparing accounting entries that are material to the client's financial statements. [290.185]

USA

SEC Rule 2-01 does not specifically address tax calculations for the purpose of preparing accounting entries. However, Rule 2-01 does address preparing accounting entries in its provision on bookkeeping, which prohibits maintaining or preparing accounting records, preparing financial statements filed with the SEC, or preparing or originating source data underlying the financial statements (unless not subject to audit). The SEC rules do not include a materiality threshold.

JAPAN

Note - The requirements are similar to the IESBA provisions but tax services have to be provided by a separate firm within the Network.

FRANCE

See topic 23/24.

Tax calculations – *Permitted exceptions* [28]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

Preparing tax calculations, which would otherwise not be permitted, may be undertaken in an emergency or other unusual situation, when it is impractical for the audit client to make other arrangements, provided the following conditions are met:

- (a) Those who provide the services are not members of the audit team;
- (b) The services are provided for only a short period of time and are not expected to recur; and
- (c) The situation is discussed with those charged with governance. [290.185 and 186]

USA

The SEC rules do not include an emergency situation provision.

GERMANY

No exception provided therefore more restrictive in circumstances where the activity would be other than clearly insignificant (i.e prohibited)

JAPAN

Note - The requirements are similar to the IESBA provisions but tax services have to be provided by a separate firm within the Network.

FRANCE

See topic 23/24

Tax planning advice [29]

IESBA

Prohibited

Providing tax advice where the effectiveness of the advice depends on a particular accounting treatment or presentation in the financial statements if:

- (a) The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and
- (b) The outcome or consequences of the tax advice will have a material effect on the financial statements on which the firm will express an opinion. [290.190]

USA

Though not addressed by the SEC rules, the PCAOB Rule 3522 provides that a firm is not independent if the firm provides any non-audit service to the audit client related to marketing, planning, or opining in favour of the tax treatment of a transaction that is a confidential transaction; or that was initially recommended by the firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws. *The PCAOB rule does not address the "effectiveness of tax advice" provision as drafted in the Code and therefore in that respect the Code imposes a requirement incremental to the PCAOB rule.*

JAPAN

Note - The requirements are similar to the IESBA provisions but tax services have to be provided by a separate firm within the Network.

FRANCE

Any service, including advice, relating to tax matters is prohibited for the firm (and for network firms in relation to the audit client).

Note - Tax services to entities controlling or controlled by the client, provided by network firms are addressed on a threats and safeguards basis.

Valuation for tax purposes [30]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

Where a valuation is performed for tax purposes only and the result of the valuation will affect the financial statements only through accounting entries related to tax, this would not generally create threats to independence if such effect is immaterial or if the valuation is subject to external review by a tax authority or similar regulatory authority. [290.191]

GERMANY

More restrictive as the general rule for valuation service will apply and therefore does not provide the safeguard of external review by tax authority, where material.

UK

No equivalent re tax authority review.

JAPAN

Note - The requirements are similar to the IESBA provisions but tax services have to be provided by a separate firm within the Network.

FRANCE

Prohibited due to the provisions on accounting and tax.

Assistance in the resolution of tax disputes [31]

IESBA

Prohibited

Acting as an advocate for an audit client before a public tribunal or court in the resolution of a tax matter if the amounts involved are material to the financial statements. [290.193]

USA

The SEC rules are more restrictive in that representation of an audit client before a tax court, district court, or federal court of claims is prohibited, irrespective of materiality.

SEC rules categorically prohibit the provision of an expert opinion or other expert service for an audit client, or an audit client's legal representative for the purpose of advocating an audit client's interest in litigation or in a regulatory or administrative proceeding or investigation, irrespective of materiality.

GERMANY

Professional Charter explicitly allows representation in tax matters.

UK

Also prohibited where the outcome of the tax issue is dependent on a future or contemporary audit judgment.

JAPAN

Note - The requirements are similar to the IESBA provisions but tax services have to be provided by a separate firm within the Network.

FRANCE

Any service, including advice, relating to tax matters is prohibited for the firm (and for network firms in relation to the audit client). The following are also prohibited:

13o Defending the interests of management or acting on their behalf within the context of negotiations or in a search for partners in capital transactions or a search for financing;

14o Representing the entities referred to in paragraph one above, and the management of such entities, before any jurisdiction, or participating, as an expert, in a dispute in which they are involved.

Note - Tax services to entities controlling or controlled by the client, provided by network firms are addressed on a threats and safeguards basis.

Internal audit services [32]

IESBA

Prohibited

Providing internal audit services that relate to:

- (a) A significant part of the internal controls over financial reporting;
- (b) Financial accounting systems that generate information that is, separately or in the aggregate, significant to the client's accounting records or financial statements; or
- (c) Amounts or disclosures that are, separately or in the aggregate, material to the financial statements. [290.200]

USA

SEC rules prohibit any internal audit service that has been outsourced by the audit client that relates to the audit client's internal accounting controls, financial systems, or financial statements, for an audit client are more restrictive, irrespective of "significance" or materiality.

GERMANY

IA services prohibited only if the auditor is participating in a position with responsibility in the conduct of internal audit work. Effectively, if client management takes responsibility, and the conditions such as those in the Code are met, then the auditor could perform IA activities that the Code would prohibit.

JAPAN

Outsourcing of internal audit is prohibited regardless of degree of significance. No exception applies.

FRANCE

Effectively prohibited for the firm (and for network firms in relation to the audit client) as "the statutory auditor shall be prohibited from performing the following, for the benefit, the intention of or at the request of the entity whose financial statements he is auditing:

1o Any service that may place him in a position of having to assess, during his statutory audit engagement, documents, valuations or positions that he may have contributed to;

12o Taking charge, even partially, of an outsourced service"

Note- Such services to entities controlling or controlled by the client, provided by network firms, are addressed on a threats and safeguards basis, even though there is no direct reference to internal audit in the relevant article (24).

Internal audit services – *Permitted IA services* [33]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied

Internal audit services that are not prohibited, if the firm is satisfied that:

- (a) The client designates an appropriate and competent resource, preferably within senior management, to be responsible at all times for internal audit activities and to acknowledge responsibility for designing, implementing, and maintaining internal control;
- (b) The client's management or those charged with governance reviews, assesses and approves the scope, risk and frequency of the internal audit services;
- (c) The client's management evaluates the adequacy of the internal audit services and the findings resulting from their performance;
- (d) The client's management evaluates and determines which recommendations resulting from internal audit services to implement and manages the implementation process; and
- (e) The client's management reports to those charged with governance the significant findings and recommendations resulting from the internal audit services. [290.198]

USA

The scope of permissible internal audit services is narrower than that allowed by the IESBA Code (e.g., internal audit services that are not in substance the outsourcing of the internal audit function), while the Code would allow any services that are not prohibited, subject to client management oversight etc, as provided in this provision.

Note- Both the SEC rules and IESBA Code provide that management must take responsibility for scope and assertions.

JAPAN

No exception applies.

FRANCE

No such exception applies due to the prohibition above.

Designing or implementing IT systems [34]

IESBA

Prohibited

Designing or implementing IT systems that (a) form a significant part of the internal control over financial reporting or (b) generate information that is significant to the client's accounting records or financial statements. [290.206]

USA

The SEC rule is similar but also contains specific a prohibition on “Directly or indirectly operating, or supervising the operation of, the audit client's information system or managing the audit client's local area network”.

UK

The APB rule is similar but includes the additional condition regarding reliance;

5.73 The audit firm shall not undertake an engagement to design, provide or implement information technology systems for an audited entity where:

(a) the systems concerned would be important to any significant part of the accounting system or to the production of the financial statements and the auditor would place significant reliance upon them as part of the audit of the financial statements; or

(b) for the purposes of the information technology services, the audit firm would undertake part of the role of management.

FRANCE

Prohibited for the firm (and for network firms in relation to the audit client).

Note - Such services to entities controlling or controlled by the client, provided by network firms, are addressed on a threats and safeguards basis,

Litigation support services [35]

IESBA

Prohibited

Estimating damages or other amounts that would have a material effect on the financial statements.
[290.208 and 290.180]

USA

The SEC rules categorically prohibit the provision of an expert opinion or other expert service for an audit client, or an audit client's legal representative for the purpose of advocating an audit client's interest in litigation or in a regulatory or administrative proceeding or investigation. There is no materiality condition. Also prohibited under rules relating to valuation services.

FRANCE

Prohibited for the firm (and for network firms in relation to the audit client) – See Valuations, topic 25.

Note- Such services to entities controlling or controlled by the client, provided by network firms, are addressed on a threats and safeguards basis.

Legal services [36]

IESBA

Prohibited

Acting in an advocacy role for the client in resolving a dispute or litigation when the amounts involved are material to the financial statements. [290.211]

A partner or employee of the firm accepting an appointment as General Counsel for an audit client. [290.213]

USA

The SEC rules categorically prohibit the provision of an expert opinion or other expert service for an audit client, or an audit client's legal representative for the purpose of advocating an audit client's interest in litigation or in a regulatory or administrative proceeding or investigation. There is no materiality condition.

The SEC rule prohibits providing any service to an audit client that, under circumstances in which the service is provided, could be provided only by someone licensed, admitted, or otherwise qualified to practice law in the jurisdiction in which the service is provided.

GERMANY

Professional Charter explicitly allows representation in legal matters.

FRANCE

Prohibited for the firm (and for network firms in relation to the audit client).

Note- Such services to entities controlling or controlled by the client, provided by network firms, are addressed on a threats and safeguards basis.

Recruitment services – *Acting as a negotiator* [37]

IESBA

Prohibited

Acting as a negotiator on the client's behalf, making the hiring decision for the client, or assuming any other management responsibilities. [290.214]

FRANCE

All recruitment services are prohibited for the firm (and for network firms in relation to the audit client).

Note- Such services to entities controlling or controlled by the client, provided by network firms, are addressed on a threats and safeguards basis.

Recruitment services – *Other services* [38]

IESBA

Prohibited

With respect to a director or officer of the entity or senior management in a position to exert significant influence over the preparation of the client's accounting records or the financial statements:

- (a) Searching for or seeking out candidates for such positions; and
- (b) Undertaking reference checks of prospective candidates for such positions. [290.215]

GERMANY

No equivalent restriction

UK

The audit firm shall not undertake an engagement to provide advice on the quantum of the remuneration package or the measurement criteria on which the quantum is calculated, for a director or key management position of an audited entity.

Corporate finance services – Advice depending on a particular accounting treatment or presentation [39]

IESBA

Prohibited

Providing corporate finance advice where the effectiveness of the advice depends on a particular accounting treatment or presentation in the financial statements if:

- (a) The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and
- (b) The outcome or consequences of the corporate finance advice will have a material effect on the financial statements on which the firm will express an opinion. [290.218]

USA

There is no equivalent prohibition to this.

GERMANY

An individual cannot act as statutory auditor, if, within the fiscal year to be audited or until the date of the issuance of the audit report, he [or other individuals detailed] has undertaken [corporate] financial services unless the activity is clearly insignificant. This is less specific but could be more restrictive.

FRANCE

Although not specifically mentioned, effectively prohibited for the firm (and for network firms in relation to the audit client) as “the statutory auditor shall be prohibited from performing the following, for the benefit, the intention of or at the request of the entity whose financial statements he is auditing:

“11o Any service, in particular advice, relating to legal, financial, or tax matters or relating to methods of financing;”

Materiality is not a consideration.

Note - Such services to entities controlling or controlled by the client, provided by network firms, are addressed on a threats and safeguards basis, even though there is no direct reference to internal audit in the relevant article (24).

Corporate finance services – *Promoting, dealing and underwriting* [40]

IESBA

Prohibited

Providing corporate finance services involving promoting, dealing in, or underwriting the client's shares.
[290.219]

USA

An auditor's independence would be impaired by entering into preliminary or other negotiations on behalf of an audit client, by promoting the client to potential buyers, or "with respect to subsequent audits of a client if the accountant renders advice as to whether, or at what price a transaction should be entered into." Release 33-7919

Other services addressed [No IESBA equivalent]

USA

Any actuarially-oriented advisory service involving the determination of amounts recorded in the financial statements and related accounts for the audit client other than assisting a client in understanding the methods, models, assumptions, and inputs used in computing an amount, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements.

UK

“Where an audited entity in distress is a listed company or a significant affiliate of a listed audited entity, the restructuring services provided by the audit firm shall be limited to providing:

- (a) preliminary general advice to an entity in distress;
- (b) assistance with the implementation of elements of an overall restructuring plan, such as the sale of a non-significant component business, provided those elements are not material to the overall restructuring plan;
- (c) challenging, but in no circumstances developing, the projections and assumptions within a financial model that has been produced by the audited entity;
- (d) reporting on a restructuring plan, or aspects of it, in connection with the proposed issue of an investment circular; and
- (e) where specifically permitted by a regulatory body with oversight of the audited entity.”

Services that are not otherwise permitted (as above) are implicitly prohibited.

Fees

Contingent fees [41]

IESBA

Prohibited

Charging a contingent fee, directly or indirectly, in respect of

- An audit engagement. [290.225]
- A non-assurance service provided to the audit client if:
 - (a) The fee is charged by the firm expressing the opinion on the financial statements and the fee is material or expected to be material to that firm;
 - (b) The fee is charged by a network firm that participates in a significant part of the audit and the fee is material or expected to be material to that firm; or
 - (c) The outcome of the non-assurance service, and therefore the amount of the fee, is dependent on a future or contemporary judgment related to the audit of a material amount in the financial statements. [290.226]

USA

A contingent fee or commission from an audit client is prohibited regardless of materiality (including in relation to non-assurance services).

GERMANY

An public accountant may not accept fees the amount of which will depend on the result of his activity as public accountant for:

- Audits and other assurance engagements
- Special expert services
- Trustee services
- Tax services (ss 55a PAA)

This is specifically more restrictive in relation to the 3 services mentioned, *but less restrictive for other permitted non audit services.*

UK

A contingent fee for a non-assurance service that is prohibited if material to that part of the firm by reference to which the audit engagement partner's profit share is calculated.

ES does not contain “or is expected to...”

There is an explicit prohibition on contingent fees for certain tax services. “The audit firm shall not undertake an engagement to provide tax services wholly or partly on a contingent fee basis where the outcome of those tax services (and, therefore, the amount of the fee) is dependent on the proposed application of tax law which is uncertain or has not been established”. There is no materiality criterion. cf .226

In the case of listed companies the audit engagement partner shall disclose to the audit committee, in writing, any contingent fee arrangements for non-audit services provided by the auditor or its network firms.

FRANCE

A statutory auditor may not accept any form of proportional or contingent remuneration (i.e. for any permitted service).

Reliance on fees from an audit client [42]

IESBA

Permitted only if certain conditions exist or specified safeguards are applied, when necessary

If for two consecutive years, the total fees from the client and its related entities [where relevant] represent more than 15% of the total fees received by the firm expressing the opinion on the financial statements of the client, the firm may continue the audit engagement provided if:

- (a) Discloses to those charged with governance of the audit client the fact that the total of such fees represents more than 15% of the total fees received by the firm, and
- (b) Applies one of two specified safeguards (in relation to the second year's financial statements) – a pre- or post-issuance review that is equivalent to an engagement quality control review performed by an accountant who is not a member of the firm or by a professional regulatory body.

When the total fees significantly exceed 15%, the firm shall determine whether the significance of the threat is such that a post-issuance review would not reduce the threat to an acceptable level and, therefore, a pre-issuance review is required.

Thereafter, when the fees continue to exceed 15% each year, the disclosure to and discussion with those charged with governance shall occur and one of the two specified safeguards shall continue to be applied. If the fees significantly exceed 15%, the firm shall determine whether the significance of the threat is such that a post-issuance review would not reduce the threat to an acceptable level and, therefore, a pre-issuance review is required. [290.222]

USA

Note - The SEC does not have a specific rule but a "SEC Staff Reply Letter" dated, January 3, 1997 used a "15% of total revenues" as a rule of thumb in considering whether independence may be impaired when a significant portion of the firm's revenues are derived from one client or group of related clients. Broadly equivalent.

GERMANY

Firm cannot act "if for the last 5 consecutive years, the total fees from the audit client and from entities in which the audit client holds more than 20% of the shares represent more than 15% of the total fees received, and this is also the case to be expected in the current year". *Less stringent as it allows an extension of the threshold for 5 consecutive years*, more restrictive as no safeguard is available after expecting the threshold to exceed 15% in year 6.

UK

Absolute prohibition on acting as audit firm if "total fees for both audit and non-audit services receivable from a

listed audited entity and its subsidiaries audited by the audit firm (1) will regularly exceed 10% of the annual fee income of the audit firm (2) or, where profits are not shared on a firm-wide basis, of the part of the firm by reference to which the audit engagement partner's profit share is calculated"

NB Disclosure to the Ethics Partner and to those charged with governance of the audited entity required if regularly over 5%.

BRAZIL

For financial institutions, if fees from the audited entity individually or in conjunction with its affiliated entities, equals or exceeds 25% of the total billings of the audit firm for that year the firm cannot act as auditor, regardless of safeguards.

Other matters

Evaluating and compensating a key audit partner [43]

IESBA

Prohibited

Evaluating or compensating a key audit partner based on that partner's success in selling non-assurance services to the partner's audit client. [290.229]

USA

The SEC rules prohibit any audit partner, not just key audit partners, from earning or receiving compensation based on the partner procuring engagements with that audit client to provide any products or services other than audit, review, or attest services.

An exemption exists for firms with fewer than ten partners and fewer than five audit clients that are issuers.

GERMANY

No equivalent provision

UK

Prohibition extends to the engagement team (unless individual's role is insignificant) and is more explicit in terms of also applying to objective setting, evaluating performance, impact on promotion.

FRANCE

Note only - No equivalent provision in the French code due to the prohibitions on non-audit services.

Gifts and hospitality [44]

IESBA
<i>Prohibited</i> A firm or a member of the audit team shall not accept gifts or hospitality from an audit client, unless the value is trivial and inconsequential. [290.230]

UK
Applies also to those in a position to influence the conduct and outcome of the audit (broadly equivalent to the audit team) <u>and</u> immediate family members of such persons.

Application of the Code in unusual circumstances [45]

IESBA
When a professional accountant encounters unusual circumstances in which the application of a specific requirement of the Code would result in a disproportionate outcome or an outcome that may not be in the public interest, it is recommended that the professional accountant consult with a member body or the relevant regulator. [100.11]

USA
Not specifically addressed in the SEC rules (but consultation between audit firms and the SEC on issues such as those that might be considered above is common including emergency situations and the impact of client mergers and acquisitions).

UK
No equivalent (but similarly this is what often happens in practice)

FRANCE
No equivalent provision. In the event of serious doubt or difficulty regarding interpretation, the statutory auditor shall refer the matter to the <i>Haut Conseil du commissariat aux comptes</i> (French statutory auditors' oversight board), after having informed the president of his regional institute of statutory auditors of the situation.

Inadvertent violations [46]

IESBA

If an inadvertent violation occurs, it generally will be deemed not to compromise independence provided the firm has appropriate quality control policies and procedures in place, equivalent to those required by International Standards on Quality Control, to maintain independence and, once discovered, the violation is corrected promptly and any necessary safeguards are applied to eliminate any threat or reduce it to an acceptable level. The firm shall determine whether to discuss the matter with those charged with governance. [290.39]

The following provisions also address inadvertent violations:

An inadvertent violation of the Code relating to a financial interest in an audit client is deemed not to compromise independence (i) if the firm has established policies and procedures that require prompt notification of any breaches, (ii) actions are taken to address the violation (including disposal of the interest), and (iii) other safeguards are applied, when necessary, to reduce any remaining threat to an acceptable level. The firm shall determine whether to discuss the matter with those charged with governance. [290.117]

An inadvertent violation of the Code as it relates to family and personal relationships is deemed not to compromise independence (i) if the firm has established policies and procedures that require prompt notification of any breaches, (ii) where the violation relates to an immediate family member of a member of the audit team, the individual is removed from the audit team, and (iii) other safeguards are applied, when necessary, to reduce any remaining threat to an acceptable level. The firm shall determine whether to discuss the matter with those charged with governance. [290.133]

The inadvertent provision of a prohibited non-assurance service to a related entity, division or in respect of a discrete financial statement item of the client will be deemed not to compromise independence if any threats have been reduced to an acceptable level by arrangements for that related entity, division or discrete financial statement item to be audited by another firm or when another firm re-performs the non-assurance service to the extent necessary to enable it to take responsibility for that service. [290.159]

USA

Under its “Quality Control” provision, the SEC has a limited exception pursuant to which inadvertent violations of the financial interest rules by covered persons will not make the accounting firm not independent if the firm maintains certain quality controls and did not know of the circumstances giving rise to the impairment and, upon discovery, the impairment is quickly resolved. Accordingly, this is narrower than the Code’s provisions.

AUSTRALIA

In addition, APES110 requires that a firm shall document and discuss with Those Charged with Governance any such inadvertent violation, unless the violation is trivial and inconsequential.

The auditor independence requirements of the Corporations Act cover three broad areas: a general independence test, a table of specific financial and employment prohibitions and other provisions related to audit partner rotation and retiring partners.

With respect to the general independence test and table of specific financial and employment prohibitions, a partner contravenes the law if circumstances (including interests or relationships) exist that impair the auditor's independence and the partner does not, soon as possible after becoming aware, take reasonable steps to ensure that the circumstances cease to exist. A partner may also contravene the law even if a prohibited interest or relationship is promptly eliminated, however in such a case, the individual may rely on a "quality controls" defence.

The auditor is required to provide the directors of the audit client with a written independence declaration stating either that there have been no contraventions of the Act or relevant ethical standards, or setting out the details of any contraventions that have occurred. The auditor is not required to disclose any matter that has been corrected promptly such that the law does not consider it a contravention. The auditor is also not required to disclose a contravention committed by an individual who can rely on the "quality controls" defence. All other contraventions, including all contraventions of the audit partner rotation and retiring partner provisions, must be reported to the client.

Regardless of the above, if the independence impairing circumstance does not cease to exist within 7 days of a partner becoming aware, the partner contravenes the law if ASIC is not informed in writing that the circumstance continues to exist.

JAPAN

Japanese laws do not permit any inadvertent violations. The JICPA Code states that it [a violation] COULD be deemed not to compromise independence, not WILL be deemed.

FRANCE

No equivalent provision. The absence of such a provision implies, in effect, that a violation of the Code(s) means that independence is impaired and the auditor cannot sign the opinion. In that respect it is more stringent. See topic 45.

Note - In relation to the interests addressed in 290.117, if the inadvertent violation of the provisions relating to a financial interest is due to external events the statutory auditor shall refer the matter to the *Haut Conseil du commissariat aux comptes* (French statutory auditors' oversight board. The outcome may be that the safeguards are considered sufficient to allow the statutory audit to continue – to that extent there is no difference from the Code.

Impact of client mergers and acquisitions [47]

IESBA

When, as a result of a merger or acquisition, an entity becomes a related entity of an audit client, the firm shall:

- Identify and evaluate previous and current interests and relationships with the related entity that, taking into account available safeguards, could affect its independence. [290.33]
- Take steps necessary to terminate, by the effective date of the merger or acquisition, any current interests or relationships that are not permitted under this Code.
- Evaluate the threat that is created by a current interest or relationship that cannot reasonably be terminated by the effective date.
- Discuss with those charged with governance the reasons why the interest or relationship cannot reasonably be terminated and the evaluation of the significance of the threat. [290.34] If those charged with governance request the firm to continue as auditor, the firm shall do so only if:
 - (a) the interest or relationship will be terminated as soon as reasonably possible and in all cases within six months of the effective date of the merger or acquisition;
 - (b) any individual who has such an interest or relationship, including one that has arisen through performing a non-assurance service that would not be permitted under this section, will not be a member of the engagement team for the audit or the individual responsible for the engagement quality control review; and
 - (c) appropriate transitional measures will be applied, as necessary, and discussed with those charged with governance. [290.35]

The firm may have completed a significant amount of work on the audit prior to the effective date of the merger or acquisition and may be able to complete the remaining audit procedures within a short period of time. In such circumstances, if those charged with governance request the firm to complete the audit while continuing with an interest or relationship identified, the firm shall do so only if it meets certain conditions specified in the Code. [290.36]

The firm shall determine whether, even if all the requirements could be met, the interests and relationships create threats that would remain so significant that objectivity would be compromised and, if so, the firm shall cease to be the auditor. [290.37]

The professional accountant shall document any relevant interests or relationships that will not be terminated by the effective date of the merger or acquisition and the reasons why they will not be terminated, the transitional measures applied, the results of the discussion with those charged with governance, and the rationale as to why the previous and current interests and relationships do not create threats that would remain so significant that objectivity would be compromised. [290.38]

USA

Not specifically addressed in SEC rules; however SEC independence rules require the auditor to be independent during the audit and professional engagement period. There are no exceptions in the SEC rule that would allow continuing an impermissible interest/relationship during the professional engagement period. But see topic 45.

GERMANY
Potentially more restrictive due to absence of such a provision

UK
<i>Not directly addressed but Standards give transitional relief on appointment as an audit client, allowing the contract/relationship etc to run to the end, or one year if earlier, subject to safeguards.</i>

FRANCE
<p>Note - There is no strictly equivalent provision in the French code but in case of mergers or acquisitions the auditor is required to seek advice. The issue would also be discussed with those charged with governance. Article 28 states (in relation to financial interests, loans etc). The code states (in relation to financial interests, loans etc);</p> <p>“As soon as the French statutory auditor becomes aware of any outside events that could create an incompatible relationship as described above, he/she shall seek advice from the Haut Conseil du Commissariat aux Comptes (Statutory Auditors High Council) on the safeguards he/she proposes to apply to avoid such a situation.”</p>

Financial interests received by way of gift etc [48]

IESBA

A prohibited financial interest received for example, by way of an inheritance, gift or as a result of a merger shall be disposed of immediately (or if received by an individual who is not a member of the audit team, as soon as possible). [290.116]

FRANCE

Note - See previous topic, same principle applies.

Non-assurance services prior to a client becoming a PIE [49]

IESBA

A non-assurance service that had been provided to an audit client when it was not a public interest entity does not compromise the firm's independence when the client becomes a public interest entity if:

- The service complied with the provisions of the Code applicable to clients that are not public interest entities;
- Services that are no longer permitted are terminated before or as soon as practicable after the client becomes a public interest entity; and
- The firm applies safeguards when necessary to eliminate or reduce to an acceptable level any threats to independence created by the service. [290.161]

USA

The SEC rules do not permit a prohibited non-audit service to be provided during the relevant audit and professional engagement period.

GERMANY

No equivalent provision.

UK

No equivalent provision.

JAPAN

No equivalent provision.

FRANCE

No equivalent provision due to the fact that French code does not differentiate between PIEs and non PIEs.

Definitions

Acceptable level [76]

IESBA
A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised.

USA
The SEC rules do not incorporate the threats and safeguards approach, although the rules refer to overarching principles to be considered from the perspective of a "...reasonable investor with knowledge of all relevant facts and circumstances...", where SEC rules do not explicitly address a circumstance that may raise an independence concern.

JAPAN
As Japanese legal provisions are not based on a conceptual framework approach but rather a rule based approach, similar consideration of an "acceptable level" does not apply.

Audit client [51]

IESBA

An entity in respect of which a firm conducts an audit engagement. When the client is a listed entity, audit client will always include its related entities. When the audit client is not a listed entity, audit client includes those related entities over which the client has direct or indirect control.

USA

The SEC's definition of audit client includes entities to which the firm provides audit, review and attestation services and any affiliates thereof. The IESBA approach is comparable in the case of Listed Entities, but is less inclusive in the case of non-listed PIES. The SEC definition also incorporates a broader scope of affiliates (see "Related entity" discussion) below.

FRANCE

The French regulation does not distinguish between listed and non listed entities.

In the French Code "entity" refers to the audited entity and not to the group the entity belongs to. Therefore the notion of audit client is restricted to the audited entity and when a specific provision applies to the group it is explicitly mentioned. Furthermore, the French code in application to a "group" explicitly deals with only with entity controlling or controlled by the audited entities. There are no specific requirements for all other entities, such as those over which the audit client has significant influence.

Audit engagement [52]

IESBA
<p>A reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an engagement conducted in accordance with International Standards on Auditing. This includes a Statutory Audit, which is an audit required by legislation or other regulation.</p>

Audit team [53]

IESBA

- (a) All members of the engagement team for the audit engagement;
- (b) All others within a firm who can directly influence the outcome of the audit engagement, including:
 - (i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the audit engagement including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);
 - (ii) Those who provide consultation regarding technical or industry-specific issues, transactions or events for the engagement; and
 - (iii) Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and
- (c) All those within a network firm who can directly influence the outcome of the audit engagement.

Close family [54]

IESBA

A parent, child or sibling who is not an immediate family member.

GERMANY

Less restrictive in that the provisions appear not to apply to such close family, and no mention of siblings.

FRANCE

The relevant provisions apply to family relationships.

“A family relationship is deemed to exist between two persons where one is an ascendant of the other, including in cases of adoption, or where both have a mutual ascendant to the first or second degree, including in cases of adoption. A family relationship is also deemed to exist between spouses, persons bound by a civil solidarity pact, and common law spouses. A family relationship also exists between one of these persons and the ascendants or descendants of his spouse, the person with whom he is bound by a civil solidarity pact, or his common law spouse.”

Contingent fee [55]

IESBA

A fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. A fee that is established by a court or other public authority is not a contingent fee.

Direct financial interest [56]

IESBA
A financial interest: <ul style="list-style-type: none">• Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or• Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control, or the ability to influence investment decisions.

GERMANY
Not defined.

Director or officer [57]

IESBA

Those charged with the governance of an entity, or acting in an equivalent capacity, regardless of their title, which may vary from jurisdiction to jurisdiction.

AUSTRALIA

“Officer” is defined as

- (1) For the purposes of this Division, a person is taken to be **an officer** of a company if:
 - (a) the person is an officer of:
 - (i) a related body corporate; or
 - (ii) an entity that the company controls; or
 - (b) the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of:
 - (i) the company; or
 - (ii) a related body corporate; or
 - (iii) an entity that the company controlled at that time.
- (2) Paragraph (b) does not apply if ASIC directs that it does not apply in relation to the person in relation to the company. ASIC may give the direction only if ASIC thinks that it is appropriate to do so in the circumstances of the case.

Engagement quality control review [58]

IESBA

A process designed to provide an objective evaluation, on or before the report is issued, of the significant judgments the engagement team made and the conclusions it reached in formulating the report.

Engagement team [59]

IESBA

All partners and staff performing the engagement, and any individuals engaged by the firm or a network firm who perform assurance procedures on the engagement. This excludes external experts engaged by the firm or a network firm.

UK

In relation to external experts the Standard states “This does not include internal audit personnel who are involved in directly assisting the external auditor in carrying out external audit procedures provided that appropriate quality control arrangements are established as described in ISA (UK and Ireland) 610.” Thus potentially more inclusive.

Engagement period [60]

IESBA

Independence from the audit client is required both during the engagement period and the period covered by the financial statements. The engagement period starts when the audit team begins to perform audit services. The engagement period ends when the audit report is issued. When the engagement is of a recurring nature, it ends at the later of the notification by either party that the professional relationship has terminated or the issuance of the final audit report.

USA

Audit and professional engagement period includes both:

- (i) The period covered by any financial statements being audited or reviewed (the "audit period"); and
- (ii) The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission (the "professional engagement period")

The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier. *The professional engagement period ends when the audit client or the accountant notifies the Commission that the client is no longer that accountant's audit client.*

AUSTRALIA

The Corps Act requires independence when the auditor "engages in audit activity" which is defined as when the auditor consents to appointment as auditor, acts as auditor, or prepares a report required under the Act (technically the engagement period). Such a period could start before the Code's "to perform audit services".

JAPAN

The existing rule is similar to IESBA Code but the period of time is slightly different - the period commences on the day of the start of the accounting period and ends once three months have elapsed from the end of the accounting period. An independent auditor's report, as required by law, is issued before three months have elapsed from the end of the accounting period.

External expert [61]

IESBA

An individual (who is not a partner or a member of the professional staff, including temporary staff, of the firm or a network firm) or organization possessing skills, knowledge and experience in a field other than accounting or auditing, whose work in that field is used to assist the professional accountant in obtaining sufficient appropriate evidence.

UK

See topic 59.

Financial interest [62]

IESBA
An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.

Financial statements [63]

IESBA
<p>A structured representation of historical financial information, including related notes, intended to communicate an entity's economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework. The related notes ordinarily comprise a summary of significant accounting policies and other explanatory information. The term can relate to a complete set of financial statements, but it can also refer to a single financial statement, for example, a balance sheet, or a statement of revenues and expenses, and related explanatory notes.</p>

Financial statements on which the firm will express an opinion [64]

IESBA

In the case of a single entity, the financial statements of that entity. In the case of consolidated financial statements, also referred to as group financial statements, the consolidated financial statements.

Firm [65]

IESBA

- (a) A sole practitioner, partnership or corporation of professional accountants;
- (b) An entity that controls such parties, through ownership, management or other means; and
- (c) An entity controlled by such parties, through ownership, management or other means.

USA

The SEC rule is more restrictive in that it specifically includes the firm's pension and retirement plans where as the Code does not (see 290.107 for application).

JAPAN

CPA Act defines an "Audit Corporation" which is an artificial person established under the Act for the purpose of systematically providing the following services: to audit or attest financial documents, to compile financial documents, to examine or plan financial matters, and to be consulted on financial matters. An Audit Corporation is not allowed to provide the other services.

Immediate family [66]

IESBA
A spouse (or equivalent) or dependent.

FRANCE
See Close family

Indirect financial interest [67]

IESBA

A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control or ability to influence investment decisions.

FRANCE

Indirect interests in (certain) mutual funds are excluded from the definition, irrespective of materiality (see topic 7).

Key audit partner [68]

IESBA

The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgments on significant matters with respect to the audit of the financial statements on which the firm will express an opinion. Depending upon the circumstances and the role of the individuals on the audit, "other audit partners" may include, for example, audit partners responsible for significant subsidiaries or divisions.

USA

The SEC definition of "audit partner" is more expansive than the IESBA definition of "key audit partner" in that it not only includes "other audit partners who make key decisions or judgments on significant audit matters" but also:

- Those partners who have a high level of contact with management and the audit committee of the issuer (e.g., relationship partners)
- Other audit engagement team partners who provide more than ten hours of audit, and
- Other audit engagement team partners who serve as the "lead partner" in connection with any audit or review related to the annual or interim financial statements of a subsidiary of the issuer whose assets or revenues constitute 20% or more of the assets or revenues of the issuer's respective consolidated assets or revenues.

GERMANY

Term KAP does not address:

- *Engagement quality control review.*
- *"Other" key decision or judgment makers*

Does not include: key audit partners at significant subsidiaries outside Germany (as the definition only focuses on German CPAs), which may be included under the IESBA code.

Specifically includes key audit partners at significant German subsidiaries whereas the Code states "may include".

UK

The Standards treat AEP and EQCR separately and thus are not specifically covered by the equivalent definition. The definition specifically includes a partner who is "is primarily responsible for the audit of a significant affiliate or division of the audited entity."

FRANCE

<p>The notion “the key audit partner” is not strictly equivalent to the definition of the IESBA code. The French definition refers to the definition provided by the SAD (article 2 §16) which effectively is to the “statutory auditor” (and not to a wider group of individuals).</p>

Listed entity [69]

IESBA

An entity whose shares, stock or debt are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body.

GERMANY

Definition would not include entities whose securities are listed on other markets such as those organized by local stock exchanges under national regulation (e.g., so called “open market” listings)

Materiality [70]

IESBA

For the purpose of determining whether an interest or relationship is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.

USA

The SEC independence rules do not contain a definition of materiality. However this term is defined in professional accounting literature and discussed in SEC Staff Accounting Bulletin (SAB) 99.

FRANCE

The term is not used in the Code (only the provisions on fees refers to “significance”).

Network [71]

IESBA
A larger structure: (a) That is aimed at co-operation; and (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.

Network firm [72]

IESBA

A firm or entity that belongs to a network.

Whether a network exists shall be determined in light of whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way that a network exists. This judgment shall be applied consistently throughout the network. [290.15]

Office [73]

IESBA
A distinct sub-group, whether organized on geographical or practice lines.

Public interest entity [74]

IESBA

- (i) A listed entity; and
- (ii) An entity (a) defined by regulation or legislation as a public interest entity or (b) for which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator.

Member bodies and firms are encouraged to determine whether to treat additional entities, or certain categories of entities, as public interest entities because they have a large number and wide range of stakeholders.

AUSTRALIA

Note only - There is currently discussion at the local professional body level whether to issue guidance on what would be considered a PIE. Consideration is being given to include "Publicly Accountable Entities" as defined in AASB 1053, and could include disclosing entities, co-ops that issue debentures, managed funds, superannuation funds, banks, building societies and insurance companies.

GERMANY

Definition would not include entities whose securities are listed on other markets such as those organized by local stock exchanges under national regulation (e.g., so called "open market" listings) nor any other entity whether regulated or not.

FRANCE

There is no definition of PIEs in the French Code(s).

Related entity [75]

IESBA

An entity that has any of the following relationships with the client:

- (a) An entity that has direct or indirect control over the client if the client is material to such entity;
- (b) An entity with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity;
- (c) An entity over which the client has direct or indirect control;
- (d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and
- (e) An entity which is under common control with the client (a “sister entity”) if the sister entity and the client are both material to the entity that controls both the client and sister entity.

USA

The SEC affiliate definition is more restrictive as materiality is not considered for control relationships, and ICC relationships are specifically addressed. Specifically,

- An entity that has control over the audit client is a related entity irrespective of the materiality of the audit client
- An entity that is under common control with the audit client is a related entity irrespective of the materiality
- It includes any entity that is part of an investment company complex (a defined term).

AUSTRALIA

In addition, the Corps Act states that the manager (the responsible entity) of an investment fund (called a registered scheme) is also a related entity of the fund.

UK

The Standards also has the concept of “connected parties” to which provision 1,8 applies

For this purpose an audited entity’s connected parties are:

- a. its affiliates;
- b. key members of management (including but not limited to directors and those charged with governance) of the audited entity and its significant affiliates; and
- c. any person or entity with an ability to influence (other than in their capacity as professional advisor), whether directly or indirectly, key members of management and those charged with governance of the audited entity and its significant affiliates.

1,8 Integrity requires that the auditor is not affected, and is not seen to be affected, by conflicts of interest.

Conflicts of interest may arise from personal, financial, business, employment, and other relationships which the audit engagement team, the audit firm or its partners or staff have with the audited entity and its connected parties.

BRAZIL

CMN 3198, Article 22 – For purposes of this regulation, an affiliated entity shall be understood as an entity connected directly or indirectly, through equity participation or effective operational control, characterized by common governance or management, or by acting in the market under the same brand or commercial name.

FRANCE

In the French Code “entity” refers to the audited entity and not to the group the entity belongs to. Therefore the notion of audit client is restricted to the audited entity and when a specific provision applies to the group it is explicitly mentioned. Furthermore, the French code explicitly deals with only with entity controlling or controlled by the audited entity. There are no specific requirements for other entities (i.e. the considerations do not extend to entities, upstream or downstream, of the client which are associated by “significant influence”).

Those charged with governance [76]

IESBA

The persons with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process.

JAPAN

Note - Corporations are subject to the Companies Act, have statutory auditors, separate from the appointment of external accountants, with unique powers including, but not limited to, the right to audit and investigate financial documents.