

PROPOSED SECTION 220

SECTION 220

Conflicts of Interest

220.1 A professional accountant in public practice may be faced with a conflict of interest when performing a professional service. A conflict of interest creates a threat to objectivity and may create threats to other fundamental principles. Such threats may be created by:

- Conflicts between the interests of two or more clients; or
- Conflicts between the interests of the professional accountant in public practice including the firm and the interests of the client.

220.2 Examples of situations in which conflicts of interests may arise include:

- Advising two shareholders in dispute on the distribution of assets on the dissolution of the company;
- Preparing a valuation of assets for each spouse in a divorce proceeding;
- Performing litigation services for the plaintiff in connection with a lawsuit filed against a client of the professional accountant's firm;
- Representing two clients who are trying to acquire the same target company;
- Representing two clients who are in a legal dispute with each other;
- Recommending a client to invest in a business in which the professional accountant in public practice or firm has a financial interest; or
- Advising a client on the purchase of an information system while having a license agreement with a potential software vendor.

220.3 A professional accountant in public practice, including the firm, shall take reasonable steps to identify circumstances that might give rise to a conflict of interest. This includes potential conflicts of interest when accepting a new engagement and conflicts of interest that may arise during the course of an engagement. It is possible that the nature of an engagement may change during the course of the engagement. This is particularly true when a professional accountant in public practice is asked to conduct an engagement that is potentially adversarial, even though the parties who engage the professional accountant may not initially be in contention.

220.4 When identifying and evaluating the interests and relationships that might give rise to a conflict of interest and implementing safeguards, where necessary, the professional accountant in public practice, including the firm, shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that compliance with the fundamental principles is not compromised.

220.5 In identifying whether a conflict of interest exists or may be created, and evaluating the significance of any threat to objectivity or compliance with other fundamental principles, in particular before accepting a new client relationship, engagement or business relationship, a professional accountant in public practice, including the firm, shall:

- Understand the nature of the relationships between the parties involved and any relevant interests;
- Understand the nature of the service and its implication to relevant parties;
- Evaluate the significance or materiality of relevant interests or relationships;
- Evaluate the extent to which any professional service performed for more than one client subject to a conflicting interest is related to that interest. In general, the more direct the relationship between the professional service and the matter on which the clients' interests are in conflict, the more significant the threats arising; and
- Evaluate any potential conflicts that the professional accountant in public practice has reason to believe may be created by the interests and relationships of a network firm.

The professional accountant in public practice shall be alert to potential conflicts of interest that may arise during the course of an engagement.

220.6 An effective conflict identification process assists a professional accountant in public practice to identify potential conflicts prior to accepting an engagement and throughout an engagement. The earlier a potential conflict is identified, the greater the chance the professional accountant in public practice will be able to implement safeguards to eliminate the threat or reduce it to an acceptable level. The process by which a firm shares information in order to identify conflicts of interest will vary and depend on such factors as:

- The nature of the professional services provided;
- The size of the firm;
- The size and nature of the client base; and
- The structure of the firm, for example the number of office locations, whether the firm is a member of a network and whether or not the firm is multi-national.

220.7 The professional accountant in public practice, including the firm, shall evaluate the significance of the threat to objectivity and any threat to compliance with other fundamental principles created by a conflict of interest and shall apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. A safeguard that is generally necessary is to disclose the nature of the conflict to the client and all known relevant parties and to obtain written consent from the client and such parties to perform the professional service. If the consent is obtained verbally, the professional accountant is encouraged to document such consent. In certain circumstances the consent obtained

from any relevant party may be implied by the party's conduct in keeping with common commercial practice. Examples of other safeguards include:

- Use of separate engagement teams when performing professional services for two or more clients with conflicting interests;
- Implementing institutional mechanisms to prevent unauthorized disclosure of information when performing professional services for two or more clients with conflicting interests. This could include the creation of separate areas of practice for specialty functions within the firm, which may act as a barrier to the passing of confidential client information from one practice area to another within a firm. This could also include establishing policies and procedures to limit access to client files, the use of confidentiality agreements signed by employees and partners of the firm and/or the physical and electronic separation of confidential information;
- Seeking guidance of third parties such as consulting with a professional regulatory body or another professional accountant.

220.8 A professional accountant in public practice may be requested to undertake a professional engagement for a client in circumstances where the professional accountant, including the firm, has confidential information that might be relevant to the engagement which has been obtained in the course of providing another professional service to another client (including a former client). Particular care is needed where the clients' interests are opposed in the subject of the new engagement and disclosure of the confidential information held by the firm to the engagement team undertaking the new engagement could prejudice the interests of the other client. Such a situation might arise, for example, in the following circumstances:

- Where the professional accountant is requested to perform a transaction-related service for a client in connection with a takeover of another client of the firm, in particular where the takeover may become hostile;
- Where the professional accountant is requested to perform a forensic investigation for a client and the firm has confidential information obtained through having performed another professional service for one of the parties who would be the subject of the investigation.

In these circumstances, disclosure to both clients would normally be a necessary safeguard before accepting the new engagement, for example where the professional accountant is to perform services to both clients which are relevant to the subject of the adverse interests between the clients.

However, disclosure to one party in these circumstances would frequently breach a duty of confidentiality to the other party. In the specific circumstance where the potential conflict that arises is solely with respect to a duty of confidentiality, the professional accountant may be able to accept the new engagement without disclosure to the other party if, in the professional accountant's judgment, weighing all the specific facts and circumstances, a reasonable and informed third party would nevertheless conclude that it

is reasonable for the professional accountant to accept the engagement. Such may be the case where the inability of the professional accountant to perform the new service might compromise the ability of one client to pursue a legitimate commercial interest against another client (or former client) of the firm, for example because it is not practicable in the time available to make arrangements for another firm to undertake the engagement. In such circumstances, as a minimum, the professional accountant in public practice shall ensure that institutional mechanisms are in place to eliminate the risk of a breach of confidentiality, including the risk that the confidential information of one party could be used to the detriment of the other party.

220.9 If safeguards cannot eliminate or reduce the threat to an acceptable level, the professional accountant in public practice shall decline to perform or discontinue professional services that could result in the conflict of interests; or terminate certain relationships or dispose of certain interests to eliminate the conflict.

220.10 When identifying and evaluating conflicts of interest and implementing appropriate conflict management techniques, including making disclosures or sharing information within the firm or network and seeking guidance of third parties, the professional accountant in public practice shall be mindful of the fundamental principle of confidentiality.