

***DRAFT V3.4 for discussion***

***Prepared as at May 2011***

**EXTRACT FROM -**

**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.

**This document is an extract from a draft document which details the differences across the full range of topics reviewed: this document contains extracts relating only to:**

- introductory matters (topic 1)
- those charged with governance (topic 4)
- partners and staff joining an audit client (topic 13)
- partner rotation – KAPs (topics 19/20)
- preparing accounting records and financial statements (topic 23/24)
- valuation services (topic 25)
- tax return preparation (topic 26)
- tax calculation services (topic 27/28)
- tax planning advice (topic 29)
- assistance in the resolution of tax disputes (topic 31)
- internal audit services (topics 32/33)

- designing or implementing IT systems (topic 34)
- litigation support services (topic 35)
- other services
- reliance on fees from an audit client (topic 42)
- evaluating and compensating a KAP (topic 43)

## **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 necessary<sup>1</sup>, 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.*

<sup>1</sup> 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.*



## 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.

**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.

<b>FRANCE</b>
---------------

A prohibition applies, for 5 years, but <i>only to the audit partner who signs the audit report.</i>
--

<i>Accordingly, there is no equivalent provision relating to the firm's Senior or Managing Partner.</i>
---

**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 safeguards<sup>2</sup>. [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.

---

<sup>2</sup> The Code includes transitional provisions dealing with the situation where an audit client becomes a public interest entity. [290.154]



<b>JAPAN</b>
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.

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

## Non-Assurance services

### FRANCE

**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.

<b>FRANCE</b>
---------------

<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>
--

## **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.

## **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]**

<b>IESBA</b>
<b><i>Prohibited</i></b> Estimating damages or other amounts that would have a material effect on the financial statements. [290.208 and 290.180]

<b>USA</b>
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.

<b>FRANCE</b>
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.



**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

### 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.