

Structure of the Code—Status Report**Background**

1. Various stakeholders have commented on issues associated with the structure, format and clarity of the Code. Some of these issues relate to the usability of the Code and may be impacting adoption and implementation.
2. In February 2012, the IESBA agreed to consider how it might improve the structure of the Code to raise the visibility of the requirements and prohibitions in the Code, and clarify who is responsible for meeting them. As a result of this discussion, the IESBA decided to add a Structure of the Code work stream to its 2011-2012 strategy and work plan.
3. In June 2012, the Planning Committee provided the IESBA with an example of a possible reformatting approach with respect to the requirements and prohibitions in the Code. It was noted that this was but one of various approaches that could be considered. Overall, IESBA members were supportive of the initiative and agreed that any steps to make the Code more understandable by users would be beneficial. Certain IESBA members noted that additional clarity steps should be considered as well.
4. The Planning Committee suggested that the IESBA consider outreach opportunities and develop an action plan to ensure the support of key stakeholders.
5. The Working Group (WG) was formed in January 2013. The WG presented an initial status report summarizing its preliminary thinking for taking the initiative forward and draft Terms of Reference at the March 2013 IESBA meeting.

Proposed Terms of Reference*General Considerations*

6. In developing and fine-tuning the proposed Terms of Reference, the Working Group has identified the following general considerations that it believes should guide its work:
 - The WG should be empowered to undertake appropriate research and then inform and advise the Board on ways to improve the usability of the Code.

The WG will focus on researching impediments to adoption, effective implementation and consistent application of the Code. In doing so, the WG will pay attention to matters such as drafting conventions, format, structure, and delivery media. The research will not be limited to seeking input on matters that will not involve changes to the standards in the Code as this will be unduly limiting.
 - It may be possible to enhance the presentation and navigation of the Code in the short term without revising the standards. Timely action would be important in this regard. The Board may direct the WG to pursue certain short term initiatives arising from the WG's recommendations without the need to form a specific project task force. Examples of such initiatives include the development of a set of "drafting conventions" (style guide) for new and revised standards, and hyperlinks within an electronic version of the Code.

- The mandate of the WG will not normally include making changes to the standards – any such revisions should normally be developed by one or more project task forces in accordance with due process.

If, taking into account the WG's research and advice, the Board decides to approve a project to revise the Code, the IESBA Chair may appoint one or more WG members to the project task force. Clarification of responsibility in the Code is an example of a topic that, depending on the results of the research and the WG's advice, may warrant a project.

- The timing of any action should take into account a number of factors, including the importance and urgency of matters warranting attention, relative priorities and available resources. Importance and urgency need to be considered in the context of managing the frequency and extent of changes as jurisdictions translate, adopt and implement the Code. Research performed now should help the WG assess the importance and urgency of matters warranting the Board's attention.
- It will be appropriate to communicate to stakeholders that the research is being performed to inform the Board as it reviews and revises its short term and longer term plans. Research and advice on matters warranting action in the near future may be more extensive in the short term than research and advice on matters to be addressed later. Further research may be required on matters to be addressed later.

Research that the IFAC Compliance Advisory Panel staff is undertaking over an extended period of time may be an additional source of input to the Board regarding matters being addressed in the longer term.

7. The relatively few refinements to the proposed Terms of Reference are set out in Appendix A.

Title for the Initiative

8. The Working Group considered a number of alternative titles for the initiative, including:

- Reformatting
- Clarity
- Usability
- Enhancing

9. The WG rejected all these options. "Reformatting" implies that the initiative is limited to superficial matters such as font size etc. "Clarity" has already been used by the IESBA as an alternative name for the narrow-scope Drafting Conventions project, and by the International Auditing and Assurance Standards Board (IAASB) for a project with a broad scope. The WG believes that to re-use the name could cause confusion.

10. "Usability" implies that the Code is not currently usable. While "Enhancing" might reflect the desire to improve the Code, the WG rejected it as being non-specific.

11. The Working Group is of the view that because the initiative potentially encompasses a number of limited short term initiatives and a consultation paper on more radical changes in the longer term, there is no word that can encompass all aspects of the initiative. It therefore proposes staying with the original name of "Structure of the Code."

Matter for Consideration

1. IESBA members are asked to approve the WG's proposed Terms of Reference.

Research Plan

12. The IESBA has in the past received feedback on the clarity and usability of the Code. For example, an IFAC Small and Medium Practices (SMP) Committee survey¹ stated that the biggest barrier faced by SMPs in fully adhering to the Code is “understanding the requirements of the Code.” Board representatives have also received feedback on outreach to stakeholders regarding the difficulties in translating some parts of the Code and the challenges to comprehension caused by complex and long sentences in the Code for those whose first language is not English. The WG will consider this feedback when performing the research.
13. The research will address whether there is a case for change and, if so, explore the nature of any changes that may be necessary. If the IESBA concludes that change is warranted, it will be important for the Board to assess the importance and urgency of matters to be addressed, bearing in mind that any changes will bring additional burden on stakeholders who have to translate, adopt and implement the Code. Unless more immediate action is appropriate, the research may lead to a consultation paper.
14. The case for change, if any, would be made by undertaking preliminary research into:
 - The complexity of the Code for standard setters who need to translate it.
 - Implementation problems faced by users such as professional accountants in business (PAIBs), large firms, SMPs, and IFAC member bodies.
 - The regulatory perspective.

The IESBA has heard from the regulatory community on different occasions that the Code is difficult to enforce. Regulatory stakeholders have suggested that this is in part because the Code leaves much to the judgment of the professional accountant who must comply with it. Some regulators have suggested separating the requirements from the application guidance and examples (also described as raising the visibility of requirements). Another reason that has been cited for the perceived difficulty in enforcing the Code is that it is not sufficiently clear who is responsible for complying with the requirements of the Code.
 - Alternative models.

The Dutch standard setter, Nederlandse Beroepsorganisatie van Accountants (NBA), and the American Institute of Certified Public Accountants (AICPA) are currently undertaking initiatives to revise their ethics codes. The WG could leverage the experience and lesson learned from these two national initiatives. The WG has noted in particular that the NBA's proposals do not include substantive changes to the national ethical standards but they do present those standards in a more condensed way.
 - The experience of other IFAC standard-setting boards.

¹ <http://www.ifac.org/sites/default/files/publications/files/IFAC-SMP-Quick-Poll-2012-Round-Up.pdf>

The WG will consult representatives of both the IAASB and the International Accounting Education Standards Board (IAESB) on their experiences in the rewriting of their standards. The IAESB model is very recent and that Board may have relevant experiences to share, for example, in how to develop common definitions, acceptable phrases and unacceptable phrases.

- The October 2011 IESBA SME/SMP Working Group report, which identifies implementation challenges faced by SMPs.
15. The WG proposes to focus the research into those specific areas on which the IESBA has received stakeholder comments regarding the usability of the Code, but excluding the meaning of the Code. These areas are:
- Consideration of clarifying who should bear responsibility for complying with the requirements and prohibitions in the Code, where the Board intended that such responsibility be assigned. The International Organization of Securities Commissions (IOSCO) has suggested a lack of precision in a number of requirements in the Code and the flexibility for auditors to exercise significant judgment in complying with the Code.
 - Consideration of how the visibility of the requirements and prohibitions in the Code or parts of the Code could be enhanced, for example, by providing a clear distinction between requirements and application guidance, possibly in the style of IAASB standards.
 - Delivery Media: consideration of the development of an electronic Code. Consideration could be given to the capabilities that could be built into this electronic version, including, but not limited to, navigational tools. Consideration could be given to other forms of delivery media, such as a high level summary of provisions of the Code that apply to SMPs.
 - The development of complementary materials to facilitate comprehension of the Code by users.
 - Packaging/structuring: consideration of effective ways in which the Code could be repackaged, for example, separating out the Code into distinct booklets applicable to professional accountants in public practice and PAIBs, or placing the existing interpretation 2005-01 and any additional ones apart from the Code. Consideration could also be given to rebranding the Code, for example, by renaming the individual sections within the Code as “International Standards on Ethics,” which may enhance perceptions of the accessibility of the Code.
 - Whether Independence should be separate from the rest of the Code.
 - The length, complexity, structure and style of wording (understandability).
 - Ease of translation.
16. The research will explicitly recognize that the research findings may differ between different parts of the Code (Parts A, B, and C, and Sections 290/291).²

² Section 290, *Independence – Audit and Review Engagements*, and Section 291, *Independence – Other Assurance Engagements*

17. The WG will examine available research sources to allow it to present its preliminary report to the IESBA by December 2013. The WG noted that a more comprehensive research project would require a longer timeline.
18. The WG members plan to interview individuals representing stakeholders from 11 jurisdictions outside Europe, including representatives from Australasia, Asia, North and South America, and Africa. Stakeholder groups will include regulators, national standard setters (NSS) and IFAC member bodies.
19. The Fédération des Experts-Comptables Européens (FEE) has formed a working group to input to this initiative in respect of Europe. The WG anticipates that while the responses will not be comprehensive, they will provide sufficient information to determine whether there would be merit in developing a consultation paper exploring longer term changes to the Code.
20. The WG has specifically included certain jurisdictions (other than those that have not adopted the Code and those that have adopted the Code verbatim) as potentially being the most fruitful to target relative to their experiences of challenges in converging with, or adopting, the Code. These jurisdictions include: Italy, Turkey, Japan, China, and Spain.
21. The WG also will take into account relevant feedback received from stakeholder outreach being undertaken by IESBA representatives.
22. The WG anticipates presenting a report on the preliminary research at the December 2013 IESBA meeting. This report will help the Board determine if there is a case for more extensive research based on a consultation paper. If so, the WG would plan on preparing this consultation paper for consideration at the April 2014 IESBA meeting.

Matter for Consideration

2. IESBA members are asked for views on the research plan.

Relevant Input Received from the IESBA 2014-2016 Strategic Review Survey

23. The WG has not yet reviewed in detail comments received from respondents to the IESBA 2014-2016 Strategic Review survey that are relevant to this initiative. Some of these comments include constructive suggestions. The comments are listed in Appendix B for information.
24. In addition, IOSCO also submitted the following comments relevant to this initiative in response to the Strategic Review Survey:

Clarity format

We believe that the IESBA should adopt a “clarity” format for the Code to provide clear mandatory objectives and a clear distinction between mandatory requirements and application guidance. The “clarity” format would also consistently use unequivocal language such as “shall” rather than “should”. This approach would ensure that the obligations of an auditor or an accountant are clearly communicated.

Enforceability of the Code

As securities regulators, we have concerns with the inability to enforce the Code due to, among other matters, the lack of precision of various requirements throughout the Code and the flexibility for

auditors to exercise significant judgment in complying. We believe the Board should review the requirements within the Code to enhance the Code's enforceability by securities regulators.

25. The WG will consider all of these comments as part of its analysis of the research findings in due course.

Short Term Initiatives

26. At the March 2013 meeting, the WG outlined a number of key elements that it believed could be addressed in the short term as these pertain more to matters of general clarification and presentation. These elements would be aimed at enhancing the accessibility of the Code, for example, by using highlighting, summaries and hyper-linking. The WG's preliminary views and recommendations on these are set out below.
27. The WG notes the importance of not underestimating the potential complexity of seemingly simple initiatives. In addition, the WG notes a view expressed at the April 2013 CAG meeting that work should not commence on short term initiatives before the preliminary research results are known. This is to avoid committing resources which may not have the support of stakeholders.

Plain English Style Guide (formerly described as Drafting Conventions)

28. As noted above, some users, especially those whose first language is not English, have indicated difficulty in understanding the Code, especially aspects that involve long and complex sentences. NSS and IFAC member bodies that translate the Code have commented similarly. A style guide for use on future projects may help reduce the complexity of language in future changes to the Code. The AICPA's April 2013 exposure draft, *Proposed Revised AICPA Code of Professional Conduct*, provides an example of style conventions that could be adopted:

AICPA: Proposed Style Guidance

- Avoid using legalistic terms (for example, including but not limited to).
- Use content in ethics rulings as examples in interpretations.
- Draft interpretations in active voice, in which the subject is doing the action. For example, an interpretation should read “the member should apply safeguards,” rather than “safeguards should be applied by the member.”
- Do not use present tense in an interpretation with regard to member actions or procedures that the member performs. For example, the interpretation should read “the member should....” rather than “the member does...” Present tense may be used for statements of fact not related to member actions.
- Requirements should apply to the member and not to others such as a client or management because the AICPA only has jurisdiction over the member. For example, refrain from statements such as “the client must...”
- Refrain from using qualifiers such as generally, ordinarily, normally, and usually in requirements because these create ambiguity.
- Keep footnotes to a minimum; reserve them for cross-references to other standards.

29. In considering this short term initiative, the WG is of the view that a style guide has the potential to improve the readability of future IESBA standards. However the current style of the Code may reflect the complexity of issues within the Code and plain English may not always provide the sophistication necessary to achieve consensus on the Board. Accordingly, it is not intended that the development of a style guide would include redrafting the extant Code in a plain English style, nor is it intended that this effort would duplicate the Drafting Conventions project of a few years ago. The style guide would only apply to future changes.
30. Alternatives to a style guide were identified. These include the use of professional writers, plain English editors, and legal drafters. As noted at the March 2013 IESBA meeting, these options would leave the IESBA to focus on the substance and not the drafting of the Code. However, the WG acknowledges that this matter may have wider IFAC implications from budgetary and standards development perspectives.

High Level Summaries of Independence Provisions for Public Interest Entities (PIEs) and Entities That Are Not PIEs

31. A high level summary of the independence requirements and prohibitions in Section 290 as they apply to PIEs was issued in 2011. The summary illustrates the robustness of the Code in a simple and effective way. Many CAG representatives have expressed support for this type of material.
32. A version which highlights the requirements and prohibitions that apply to entities that are not PIEs could make Code more accessible to SMPs. As an illustration, staff has developed the summary shown in Agenda Item 8-B. The WG will consider this summary in due course. The Board is not being asked to comment on the content of this summary at this time.

Hyperlinks for an Electronic Code

33. The WG notes that an IFAC member body has introduced hyperlinks for every use of a defined term in its code of ethics. However, the WG understands that this is a time consuming exercise. Other IFAC member bodies may have done similarly. It may be useful to research how the IESBA can learn from the experiences of those IFAC member bodies that have created electronic versions of the Code.
34. The WG plans to review the resources needed to create hyperlinks, enlist the assistance of IFAC's Communications Department to consult with web experts, and consider whether hyperlinks could change how the Code is interpreted if a potential cross linkage were omitted.
35. The WG notes that hyperlinking may not be the only option. Accordingly, consultation with the relevant experts and research into how an electronic Code would be used by stakeholders would be important before any significant resources are invested on this aspect of the initiative.

Responsibility

36. In February 2012, the IESBA agreed to consider how it might improve the structure of the Code and clarify who is responsible for meeting the requirements and prohibitions. This was included as a short term initiative in the WG's initial status report to the IESBA in March 2013.
37. At that meeting, it was noted that Section 290 does not, in most cases, prescribe the specific responsibilities of individuals within the firm for actions related to independence. Some IESBA

members were of the view that clarifying responsibility for meeting requirements would mean changes to the Code. This could therefore imply a separate project.

38. The WG notes that paragraph 290.12 of the Code states the following:

This section 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.

39. The WG has analyzed 149 “shall” statements in Section 290. These can be broadly categorized as follows:

- 69: Passive voice, where the responsibility is not specific
- 42: References to the Firm
- 16: Passive voice, where a change to the active voice would not appear to change the meaning
- 22: Other

40. The WG proposes that the urgency of addressing the matter of responsibility should be determined by the preliminary research. The WG notes that responses to the strategy survey include both those that encourage and those that discourage clarifying responsibility. The WG will consider how change, if any, could be achieved and whether this is within its remit or whether it would require a separate project proposal.

41. The WG believes that clarifying responsibility would not be a short term initiative.

Matters for Consideration

3. IESBA members are asked for views on:

- (a) Whether resources should be committed to short term initiatives before the preliminary research has been completed; and
- (b) The merits of the short term initiatives described above.

Input from NSS

42. At the May 2013 IESBA-NSS meeting, there were many indications of strong support for the initiative, several indications of support for rewriting the Code, and no indications of any lack of support for the initiative.

43. NSS participants also noted the following, amongst other matters:

- It is important that any short-term initiatives be aligned with longer-term initiatives.
- Although regulators may perceive a “threats and safeguards” approach as unenforceable, effective communication can demonstrate the strengths of this approach.
- There is a lack of awareness of the Code, although this may be because professional accountants are aware of the national codes in their jurisdictions.
- The length of the Code impedes understanding.

- If rewriting the Code, the Board should start with a succinct core and build on this base as appropriate. It should avoid undue length in a restructured Code, and it is important that the Board has a clear idea of the deliverable before commencing.
- Changing words will create the potential for a change in interpretation.
- Some regulators are concerned that the intermingling of requirements and guidance makes the Code unenforceable and several standard setters have separated requirements from guidance.
- If research indicates that a significant revision of the Code is appropriate and important, the Board will lose credibility if there is undue delay.
- The Board should consider applying the same principles of preliminary research to other projects. A clear rationale and criteria and consideration of costs as well as benefits, before a project starts, will increase the potential for support of a project.
- The NBA is consulting on a revised code, which retains convergence with the Code, but with the key principles brought together in a few pages. Contextual and explanatory material and other guidance are kept separate.

44. The WG will consider this input further in planning the way forward.

Tentative Timeline

45. The WG's tentative timeline is as follows:

Indicative Timing	Milestone
June-September/October 2013	Gather and compile relevant information.
September 2013	IESBA – Receive update
December 2013	IESBA – Receive and discuss WG's preliminary report
April 2014	IESBA – Receive WG's final report and recommendations; consider draft consultation paper on longer-term elements if this is to be developed; establish appropriate task force/working group to undertake project(s) to address agreed short-term elements
April 2014	Task force or working group to commence work on short-term elements
July 2014	IESBA – Approve consultation paper on longer term initiatives

APPENDIX A

IESBA Structure of the Code Working Group—Draft Terms of Reference

1.0 Objective

The objective is to identify and recommend to the Board ways to improve the ~~clarity and~~ usability of the Code, thereby facilitating ~~its adoption~~ or convergence, effective implementation and consistent application.

2.0 Approach

The Working Group will focus in particular on drafting conventions, format, structure, and delivery media taking into account impediments identified by stakeholders. It will develop and validate findings and recommendations based on research and communication with stakeholders. Timely reporting to the IESBA will be important to enable the IESBA itself to be suitably responsive.

3.0 Deliverables

The Working Group is responsible for reporting its findings and recommendations to the IESBA. Recommendations should be consistent with the importance of serving the public interest, reinforce the importance of high quality ethical standards, including independence standards, for professional accountants in public practice and in business and, where feasible, offer practical solutions.

4.0 Composition

The Working Group will be chaired by a member of the IESBA, with four additional members.

APPENDIX B

Relevant Input from Respondents to the IESBA Strategic Review Survey

COMMENTS IN RELATION TO POSSIBLE FUTURE PROJECTS

- We would suggest adding work streams on enforceability.
- We see a project to restructure the Code – increasing the visibility of the various requirements and prohibitions – as important, provided the scope of the project is sufficiently broad, and allows for the necessary research and consultation. We also see the visibility of the various requirements and prohibitions as important in the context of ongoing convergence activity.
- Increasing the visibility of the requirements and prohibitions of the Code is an important project and it could be dealt with by highlighting the situations where the application of the Code leads to a prohibition, and by adding application material.
- The Code is now too lengthy and this leads to practical problems in relation to application of the Code in practice. Therefore, there is a need to produce a concise summary which acts as the basis for users to then more easily access detailed information if required. We do appreciate that this might be covered by the project highlighted below at 2.2. but felt the need to highlight this issue such is its importance. The lengthier the Code, the more professional ethics is seen purely as a compliance exercise. Consideration should also be given to removing the independence sections of the Code (Sections 290 and 291) and creating separate standards for these specific areas.
- There is a great need to address the structure of the Code from the perspective of getting an easier overview. However, not only the structure as such but also to improve the readability and searchability. The Code should be adapted to website reading and searching. Many duplications of text in the Code could be avoided through a smarter structure.
- We would also urge there to be much more clarity as to who – i.e., which individual – is directly responsible for ensuring that ethical standards are adhered to in a particular engagement. The Code's suggestion simply that this varies according to the circumstances and nature of the organization seems markedly weak. To be clear, in our view in an audit engagement, this responsibility must rest with the audit partner (or the audit lead). These comments perhaps reflect what is intended by 'Structure of the Code' – which is why we rate this highly – but this is not entirely clear.
- The Code in its entirety is very hard to get a handle on. It is hard to understand the hierarchy of the principles and there are a lot of unnecessary repetitions. There is also a need for a graphical review of the Code, not least for making it more accessible and searchable on the website.

COMMENTS IN RELATION TO ADOPTION AND IMPLEMENTATION

- The development of additional materials (outside of the Code itself) is particularly important, as this may actually serve to raise standards of ethical behavior, rather than simply force adoption and implementation of a prescribed code.
- The development of “plain language” guidance and examples of the application of the Code to help member bodies understand how it applies in practice should remain a high priority.

- We would be receptive to any initiative taken by the IESBA which would lead to a simplification (of the wording) of the independence requirements applicable to assurance engagements and in particular to audit and review engagements in order to ensure a sound understanding.
- Also, it would be helpful to us if the IESBA would provide a flow chart, which represents proposed provisions graphically, to assist our understanding of an overview of proposed provisions.
- Guidance for SMPs could be in any number of forms including: useful summaries of key provisions of the Code; frequently asked questions for the SME/SMP sector; case studies; and decision-making flowcharts or models.
- Provide support for non-English speaking countries in understanding and translating the IESBA Code.
- Smaller practitioners are usually looking for material which, although technically and theoretically sound, is first and foremost practical, easily accessible and genuinely addresses the specific needs of smaller practitioners operating in smaller entities.

OTHER COMMENTS MADE OR MATTERS RAISED BY RESPONDENTS

- Three regulators stated that from an audit regulator's perspective, the enforceability of the provisions of the Code should be the primary priority.
- Although supportive of changing the structure of the Code, two respondents opposed clarifying responsibility:

We believe this project is important if the IESBA has been advised by regulators that a significant impediment to accepting the Code is its structure. If greater acceptance of the Code could be achieved by restructuring the Code, this is something we recommend the Board consider. The project description also refers to clarifying who is responsible for meeting them. We do not believe it is important to specify an individual who is responsible, as was discussed at length and rejected in connection with Independence Task Force 1. Thus, we would rate this very unimportant.
- Adoption, implementation and convergence initiatives should take priority for the foreseeable future and the IESBA should in particular seek to understand fully any barriers to full adoption of the Code as a preliminary step to embarking on any overhaul of the structure of the Code.
- Structure of the Code – We consider this to be important to address regulatory concerns that the prohibitions in the Code (in particular for public interest entities) lack visibility. This project should not be at the expense, however, of continuing to support the validity of the conceptual framework underpinning the Code, including section 290.
- IESBA should concentrate on the Structure project, including the consideration of a carve-out of independence standards, and the provision of guidance and Q&A with respect to application of the Code. ... I do propose to include in that project the question whether it would make sense to scope out sections 290 and 291 on independence in order to make them Independence Standards.
- If the structure of the Code is revisited then we believe that it is imperative that efforts are made to seek to reduce the length of the Code. Whilst some may see it as a cosmetic solution we do believe that there would be benefit in removing sections 290 and 291 from the Code and creating separate

standards for this material. Such a move may also be favorably received by regulators around the globe.