

Structure of the Code – Remaining Issues and Task Force Proposals

How the Project Serves the Public Interest

Through the development of a restructured Code, the project serves the public interest by:

- Enhancing understandability of the Code, thereby facilitating compliance and enforcement; and
- Improving the usability of the Code, thereby facilitating adoption, effective implementation and consistent application.

Background

1. At its September 2017 meeting, the IESBA further deliberated significant comments received on the Exposure Draft for Phase 2 of the project, [*Improving the Structure of the Code of Ethics for Professional Accountants—Phase 2*](#) (Structure ED-2) and a revised set of proposals, taking into account the input from the IESBA Consultative Advisory Group (CAG) September 2017 meeting and a September 2017 comment letter from the IFAC Small and Medium Practitioner Committee (SMPC) comment letter. **Agenda Item 2-C** is the compilation of proposed texts that will constitute the restructured Code, and includes the Task Force's revised proposed text relating to the Structure project.
2. In preparing for this meeting the Task Force reflected on the overall objectives of the Structure project, including the significant comments received from respondents to the initial November 2014 Consultation Paper, [*Improving the Structure of the Code of Ethics*](#), as well as Structure ED-1 and Structure ED-2. The Task Force believes that its proposals are responsive to feedback from respondents to those various consultations and that its revised proposed text substantively reflects the Board's and CAG's input. A summary of significant comments raised, and the Task Force's related responses is included in Appendix 1 to this paper.
3. To address the Structure Task Force project objectives and be responsive to stakeholder input the proposals:
 - Increase the clarity of the language used in the extant Code to improve the Code's understandability and usability.
 - Distinguish "requirements" in the extant Code from "application material."
 - Increase the prominence of the principles basis of the Code and the conceptual framework (CF).
 - Increase the prominence of overarching requirements in the Code.
 - Increase the clarity of responsibilities, in particular in relation to independence.
 - Encourage consultation in certain circumstances.
 - Develop a new title to emphasize the International Independence Standards.
 - Improve navigability of the Code, including adding a Guide to the Code.
 - Avoid inadvertent changes in meaning of provisions in the extant Code.

- Avoid weakening the provisions in the extant Code.
- Identify various suggestions for improving the Code as “matters outside scope” for the Board’s future attention.

Matters Presented in this Paper

4. The remainder of this paper is organized as follows:

- I. Revisions to address specific matters raised by IESBA members
 - Consistency review.
 - Requirements to exercise professional judgment .
 - Use of “provisions” versus “requirements and guidance.”
 - Referring to application material in requirement paragraphs.
 - Use of “All Audit Clients” Versus “General” headings.
- II. Non-substantive revisions that are beyond editorial
- III. Other matters
 - Changes in meaning of extant code.
 - Draft Outline for Final Basis for Conclusions.
- IV. Due process matters
 - Appendix 1 – Summary of Significant Comments and Responses.
 - Appendix 2 – Draft Outline for Basis for Conclusions.

I. Revisions to Address Specific Matters Raised by IESBA Members

Consistency Review

5. The Board broadly supported the direction of the Structure Task Force’s proposals and asked that the Task Force continue to liaise with the Safeguards Task Force to undertake a consistency review of the proposed texts to be included in the restructured Code before the next meeting. The revised proposed text incorporates the results of this consistency review, as well as other suggestions made by Board members as appropriate.

Task Force Response

6. The Task Force revised the September 2017 version of the proposed texts and liaised with other task forces to ensure that the proposed texts in **Agenda Item 2-C** are drafted in a consistent manner. For example, all headings were reviewed by the Structure Task Force, and refinements were made as appropriate.
7. The Drafting Guidelines document in **Agenda Item 2-F** is updated to summarize the new format and drafting conventions that guided the restructuring project, including the safeguard-related revisions arising from the Safeguards project. While the document is not intended to be comprehensive, it memorializes important contextual and background information about the restructuring and safeguard-related revisions made to the extant Code. The Task Force refined and referred to the

approach summarized in this document throughout the project in order to achieve consistency, which was one of the key objectives of the restructuring project. The Task Force also used the Drafting Guidelines as the basis of several reviews of the approach and wording throughout the entire text of the restructured Code.

8. A key revision made in response to the consistency review was the inclusion of a table immediately after the Glossary summarizing the abbreviations used, and the titles of standards used in the Code. The Task Force believes that having a central location for this information is responsive to some questions raised by respondents to Structure ED-2 regarding the need for a consistent drafting approach to refer to the IAASB's standards.

Requirements to Exercise Professional Judgment

9. Some IESBA members pointed to the overarching requirement in the Code to exercise professional judgment in paragraph R120.5¹ and questioned whether that requirement should be repeated elsewhere in the Code (e.g. paragraph R310.9).²

Task Force Response

10. The Structure Task Force notes that in addition to the requirement to exercise professional judgment when applying the CF, the Code includes other requirements to exercise professional judgment as follows:
 - To consider certain matters in relation to preparing and presenting information when performing professional activities, especially those that do not require compliance with a relevant reporting framework in paragraph R220.6.³
 - To determine what steps to take, if any, to fulfill responsibilities relating to preparing or presenting information, when a PA intends to rely on the work of others, either internal or external to the employing organization in R220.7.
 - To determine the need for, and nature and extent of, further action in relation to NOCLAR and whether to disclose NOCLAR matters immediately to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach in R260.18,⁴ R260.22, R360.21,⁵ R360.27 and R360.38.
 - To determine whether the nature and significance of a conflict of interest are such that specific disclosure and explicit consent are necessary when addressing a threat created by the conflict of interest in paragraph R310.9.
 - To determine whether to end an audit or assurance engagement, or whether it is possible to take action that satisfactorily addresses the consequences of the breach, and whether such action can be taken and is appropriate in the circumstances in R400.80 and R900.50.

¹ Proposed restructured Code, Part 1 – Complying with the Code, Fundamental Principles and Conceptual Framework, Section 120, *The Conceptual Framework*, paragraphs R120.5

² Proposed restructured Code, Part 3 – Professional Accountants in Public Practice, Section 310, *Conflicts of Interest*

³ Proposed restructured Code, Part 2, Section 220, *Preparation and Presentation of Information*

⁴ Proposed restructured Code, Part 2, Section 260, *Responding to Non-Compliance with Laws and Regulations*

⁵ Proposed restructured Code, Part 3, Section 360, *Responding to Non-Compliance with Laws and Regulations*

11. The Task Force considered how the extant Code used each reference to the exercise of professional judgment noted above. The Task Force concluded that these references differed from the exercise of professional judgment that is required in the context of the CF and should be retained to emphasize the importance of exercising professional judgment in each of the described situations. The Task Force believed that deleting these references might change the meaning of the extant Code and so concluded that they should remain in the Code. In addition, the Task Force did not believe that it was necessary to repeat the overarching requirement (set out in paragraph R120.5) to exercise professional judgment in the context of applying the conceptual framework, as the CF applies throughout the Code.

Use of “Provisions” Versus “Requirements and Guidance”

12. During the September 2017 meeting, a comment was made about the use of the words “requirements and guidance” in paragraph R100.3 A1⁶ which states that “...Some might have requirements and application material that differ from or go beyond those set out in the Code...”. It was suggested that the words be replaced with the word “provisions”, a well understood general term, in order to distinguish them from the word “requirements” that is used in the Code with a very specific meaning.

Task Force Response

13. The Task Force agrees with the suggestion made and has replaced the words “requirements and guidance” with “provisions” in paragraph 9 of the Guide to the Code and in paragraph R100.3 A1.

Referring to Application Material in Requirement Paragraphs

14. An IESBA member was of the view that referring to application material in the requirement paragraphs of the Code might result in blurring the distinction between requirements and application material. This IESBA member made a specific reference to paragraphs 800.11⁷ and 800.13.

Task Force Response

15. The Task Force reviewed the proposed texts and maintained the distinction between requirements and guidance. With regard to paragraphs 800.11 and 800.13, the Task Force believes that these paragraphs are very specific provisions where it is helpful to use a modified reference to the application material to summarize the text so that users of the Code can see how the modifications work.

Use of “All Audit Clients” Versus “General” in Headings

16. A few IESBA members questioned the rationale for using two sets of headings titled “All Audit Clients” and “General” in the same sections of the Code, in particular in Section 600,⁸ to achieve what they envisioned to be a similar objective. These IESBA members agreed that the Code should be clear about which provisions apply in all circumstances and to all audit clients versus those that apply to

⁶ Proposed restructured Code, Part 1, Section 100, *Complying with the Code*

⁷ Proposed restructured Code, International Independence Standards, Part 4A, Section 800, *Reports on Special Purpose Financial Statements that Include a Restriction on Use and Distribution (Audit and Review Engagements)*

⁸ Proposed restructured Code, International Independence Standards, Part 4A, Section 600, *Provision of Non-assurance Services to an Audit Client*

audits of PIEs and non-PIEs only. It was acknowledged that there might be a need to consider a different approach for Section 600, in particular in relation to its subsections, to distinguish the provisions that apply to:

- “All Audit Clients”,
- “Audit Clients that are not Public Interest Entities”, and
- “Audit Clients that are Public Interest Entities.”

Task Force Response

17. The Task Force considered the comment and revised the proposed text so that the heading titled “General” is used in most sections of the Code to refer to general provisions that apply to all audit clients. However, in the sections of the Code that include different provisions for audits of non-PIE and audits of PIE entities (e.g., Sections 410, 524, 540 and the subsections within Section 600) the heading titled “All Audit Clients” is also used to clearly delineate the applicability of each set of provisions.

Matter for IESBA Consideration

1. Do IESBA members agree with the Task Force’s response to the issues discussed in Section I of this paper?

II. Non-substantive Revisions that are Beyond Editorial

18. In addition to several editorial refinements made throughout the proposed texts, the Task Force is proposing the following revisions to improve its proposals:

Guide to the Code

- Paragraph 4 – conforming changes to align with the revised proposed applicability paragraphs (see Agenda Item 3-A).

Part 1

- Within paragraph 120.12 A1 and in other places as appropriate, the words “Parts 4A and 4B” have been replaced with “*International Independence Standards*” to emphasize and promote references to independence in the Code.

Part 2

- Paragraph 200.5 A3⁹ – The first sentence that reads “All professional accountants have a responsibility to act in the public interest” repeats paragraph 100.1. The Task Force agreed with the Part C Task Force that the sentence should be deleted as it is already covered in Part 1.
- Paragraphs 220.8 A1 and 220.8 A2 – The Task Force accepted the drafting revisions from the Part C Task Force that are intended to clarify the application material for addressing information that is misleading.

⁹ Proposed restructured Code, Part 2, Section 200, *Application of the Conceptual Framework – Professional Accountants in Business*

- Paragraph 220.11 A2 – The Task Force accepted the Part C Task Force's suggestion to add a reference to the NOCLAR provisions.
- Paragraphs R260.21 and R260.26 – Responding to a suggestion from an IESBA member, the Task Force developed drafting refinements to refer to a related requirement in paragraph R114.1(d) and to avoid the use of the words “shall not constitute” and instead refer to the provision which allows disclosure.

Part 3

- Paragraphs R360.26, R360.27, R360.37 and R360.38 – Responding to a suggestion from an IESBA member, the Task Force developed drafting refinements to refer to a related requirement in paragraph R114.1(d) and to avoid the use of the words “shall not constitute” and instead refer to the provision which allows disclosure.

International Independence Standards

Part 4A

- Paragraph 524.4 A2¹⁰ – Addition of a reference to clarify which provisions are being referred to.

Part 4B

- Paragraph R900.13 Addition of a new paragraph to reflect feedback received during exposure that a portion of extant paragraph 291.1 had not been included in the restructuring.
- Paragraph R900.16¹¹ – Deletion of the first sentence and adjustment of the following sentence in response to a comment from a Board member at the September 2017 meeting.
- Paragraph R990.7 – Paragraph deleted as Section 990 does not provide any modification to the approach to network firms that is set out in paragraph R900.16.¹² The reference to network firm was deleted because it does not represent a modification of the provisions of Part 4B. The consideration of network firms is already covered by R900.16.
- Section 999 is renamed to be Section 990. The title of the section is unchanged.

III. Other Matters

Changes in Meaning of Extant Code

19. In developing its initial restructuring proposals the Task Force used a [mapping table](#) to compare the material in the extant Code to its restructured proposals in order to avoid an inadvertent change in the meaning of, and weakening of the provisions in the extant Code. To avoid any inadvertent change resulting from the current proposed revisions, the Task Force compared its revised proposed texts to the January 2017 EDs and agreed-in-principle-texts (see **Agenda Item 2-E**).

¹⁰ Proposed restructured Code, International Independence Standards, Part 4A, Section 524, *Employment with an Audit Client*

¹¹ Proposed restructured Code, International Independence Standards, Part 4B, Section 900, *Applying the Conceptual Framework to Independence for Other Assurance Engagements Other than Audit and Review Engagements*

¹² Proposed restructured Code, International Independence Standards, Part 4B, Section 990, *Reports that Include a Restriction on Use and Distribution (Assurance Engagements Other than Audit and Review Engagements)*

Draft Outline for Final Basis for Conclusions

20. A staff-prepared document, [Basis for Agreement in Principle for Improving the Structure of the Code of Ethics for Professional Accountants—Phase 1](#) (Structure BFAP) was released in January 2017 to summarize and explain the rationale for the IESBA's conclusions in relation to phase 1 of the Structure project. Subject to the Board's approval of the proposed texts, the Structure BFAP will be used as the starting point to develop the final Basis for Conclusions document for the Structure project.
21. The Task Force prepared an outline of the Basis for Conclusions (see Appendix 2 to this paper). Subject to approval of the proposed texts, the Task Force proposes that the Board provide input on this outline at this meeting.

Matters for IESBA Consideration

2. Do IESBA members agree with the Task Force's revisions to the proposed text summarized in Section II of this paper?
3. Do IESBA members agree that the proposed texts avoid inadvertent change in the meaning of, and weakening of the extant Code's provisions?
4. IESBA members are asked for views about matters that should be addressed in the Basis for Conclusions.

IV. Due Process Matters

Significant Matters Raised by Respondents

22. It is the Task Force's view that all significant matters raised by the respondents in the comment letters were identified and considered by the Task Force. The Task Force's analysis of the significant matters identified and its proposals have also been presented in public agenda papers for the Board's discussions. In the Task Force's view, there are no significant matters raised by respondents that have not been brought to the Board's attention.

Need for Further Consultation

23. The Task Force believes that all significant matters have been considered and resolved by the Board. Matters raised that were considered to be out of scope have been referred to the Planning Committee for its consideration. During its September 2017 meeting, the IESBA CAG did not raise any concerns about the Task Force's analysis of the significant matters or its proposals.
24. On the basis of the above, the Task Force does not believe there is a need for further consultation with stakeholders.

Consideration of the Need for Further Re-Exposure

25. The changes to the January compilation of Structure ED-2 and agreed-in-principle-text are set out in **Agenda Item 2-F** in mark-up. The Task Force is of the view that the revisions are limited to changes made to address respondents' comments and suggestions.
26. In light of the above, the Task Force believes that re-exposure is not warranted as the text changes post-exposure are in response to feedback from respondents to the Exposure Draft and do not substantively change the proposals in the Exposure Drafts.

Matter for Consideration

5. Do IESBA members agree that the revisions to proposed texts arising from the Structure project do not warrant re-exposure?

Summary of Significant Comments and Responses

1. It is the Task Force's view that all significant matters raised by the respondents to [Structure ED-1](#) and [Structure ED-2](#) have been identified, analyzed and summarized for consideration by the Board along with the Task Force's proposed responses in public agenda materials. Those agenda materials are available on the IESBA's website – see IESBA meeting pages for: [June 2016](#), [September 2016](#), [December 2016](#), [June 2017](#) and [September 2017](#). The table below is a summary of the more significant matters raised and the related responses, in particular from regulatory respondents.

#	Comment	Response
INCREASED CLARITY OF LANGUAGE IMPROVING UNDERSTANDABILITY AND USABILITY		
1.	Supported enhanced framework; UKFRC did not agree with “audit” applying to “review.”	Taking into account cumulative feedback from other stakeholders in response to CP and Structure ED-1, no change was made. An explanation for the Board's rationale for its decision will be included in Basis for Conclusions document.
2.	Definitions are characterized as application material and should be identified in the Code.	The Glossary of terms used in the Code is made more prominent and additional terms have been added to it.
REQUIREMENTS DISTINGUISHED FROM APPLICATION MATERIAL		
3.	Supported clarity of distinguishment/suggested network firm application material might be converted to requirements.	New format and drafting convention for the Code clearly distinguishes requirements from application material. In some cases, application material has been converted to requirements as appropriate.
INCREASED PROMINENCE OF THE PRINCIPLES BASIS OF THE CODE AND THE CF		
4.	Supported Code's principles basis/prominence of requirement to apply CF; suggested reducing CF references.	The CF requirement header on each page of the Code is dropped. Reference to the CF is made in the introductory paragraphs to each section of the Code. Provisions that are included in the CF are generally not repeated.
5.	Suggested individual ethical outcomes for each section; also	Compliance with the fundamental principles (FPs) is the overarching ethical outcome for the Code. This is in Part 1 of the Code and also

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#	Comment	Response
	suggested articulating independence in S120.	reference in the Guide to the Code. Consideration of whether additional outcomes are needed is deemed to be out of scope.
6.	LA provisions should give consideration to applying requirements to audit team members who have played a significant role in a public interest entity.	The principles-based approach to applying the provisions in the Code means that the LA provisions together with the provisions in the CF would apply to everyone on the audit team and not just the audit engagement partner. This will be explained in the Basis for Conclusion document.
PROMINENT OVERARCHING REQUIREMENTS		
7.	Supported giving independence requirement prominence	Support noted.
8.	Suggested emphasis of the CF and FPs and their linkage to detailed requirements and their relationship to ethical outcomes.	See responses to # 4 and 5 above.
INCREASED CLARITY OF RESPONSIBILITY		
9.	For audit firms the senior management of the firm should have overarching responsibility for ethical mindset/culture.	Revisions made to paragraph 400.4 to align the description of responsibility in the Code to the material in the IAASB's standards. The comment was referred to the IAASB's Quality Control Task Force for their further consideration.
NEW TITLE TO EMPHASIZE THE INTERNATIONAL INDEPENDENCE STANDARDS		
10.	Support for inclusion of "standards" in Code's title.	International Independence Standards added to the title of the Code.
ENFORCEABILITY, IMPROVED NAVIGABILITY, INCLUDING THE ADDITION OF A GUIDE TO THE CODE		
11.	Emphasize need to comply with "shall" paragraphs; welcomed clarity provided by the addition of the Guide.	Support for Guide noted. Paragraph 100.2 notes that the requirements in the Code are designated with a letter "R" impose obligations.
12.	More required to describe the purpose of the FPs/CF.	Section 110 include a more prominent discussion of the FPs, including explicit requirements for all PAs to comply with each FP.

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#	Comment	Response
		Section 120 notes that the CF assists PAs in complying with the FPs and specify an approach to identify, evaluate and address threats to compliance with the FPs. Additional material added to the Guide to explain “How to use the Code.”
13.	Authoritative material included in the Guide.	The Guide to the Code is a standalone non-authoritative document. All authoritative material is now included in the proposed texts for the restructured Code.
VARIOUS OUT OF SCOPE MATTERS COMMUNICATED TO BOARD		
1.	Sufficiency of application material.	
2.	Use of materiality and significance.	
3.	Modifications to Part 4B regarding references to and independence regarding assurance engagements.	
4.	Changes to documentation provisions.	
5.	Changes to reporting breaches.	
6.	Inappropriate requirement regarding close relationships of an engagement team member.	
7.	Regarding independence, treating close family the same as immediate family.	
8.	Avoid use of “generally necessary.”	
9.	Change definitions – “engagement period”/ “financial interest; “audit firm”/ “audit team”/ “audit client,”/“exceptional circumstances.”	

Draft Outline for the Structure of the Code Basis for Conclusions

I. Introduction

1. [Insert text]

II. Background

2. [Insert text]

III. Key Elements of the Restructuring

3. [Insert text]

IV. The Fundamental Principles, International Independence Standards and the Conceptual Framework

4. [Insert text]

V. Requirements

5. [Insert text]

VI. Clarity of Responsibility for Compliance with the Code

6. [Insert text]

VII. Readability Including Clarity of Language

7. [Insert text]

VIII. Navigability

8. [Insert text]

IX. Avoidance of Possible Meaning Changes

9. [Insert text]

X. Other Matters

10. [Insert text]

XI. Effective Date

11. [Insert text]