

Revision of Part C, Phase 2—Proposed Section 250 (Revised Extant Section 350)

Mark-up from March 15, 2017 Draft

[Changes shown in mark-up are to the Agenda Paper presented at the second session of the March 2017 IESBA meeting and based on feedback received from the IESBA at that session]

Part 2 – PROFESSIONAL ACCOUNTANTS IN BUSINESS

Section 250, Inducements, including Gifts and Hospitality

Introduction

- 250.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.
- 250.2 The offering or accepting of inducements might create a self-interest, familiarity or intimidation threat to compliance with the fundamental principles, especially the principles of integrity, objectivity and professional behavior.
- 250.3 Section 250 ~~sets out~~focuses on requirements and application material relevant to applying the conceptual framework in relation to the offering or accepting of inducements ~~which that~~ does not constitute non-compliance with laws and regulations. However, this section also explicitly requires a professional accountant to comply with relevant laws and regulations when offering or accepting inducements.

Requirements and Application Material

General

250.4 A1 An inducement is an object, situation, or action that is used as a means to influence another individual's behavior, but not necessarily with an ~~improper~~ intent to improperly influence that individual. Inducements can range from minor acts of hospitality between business colleagues to non-compliance with laws and regulations. ~~and An inducement~~ can take many different forms, for example:

- Gifts.
- Hospitality.
- Entertainment.
- Political or charitable donations.
- Appeals to friendship and loyalty.
- Employment opportunities.
- Preferential treatment.
- Facilitation payments.

Inducements Prohibited by Laws and Regulations

~~250.4 A2—Depending on the circumstances, the offering or accepting of an inducement might create threats to a professional accountant's compliance with the fundamental principles~~

R250.5 In many jurisdictions, ~~there are laws and regulations concerned with bribery and corruption that prohibit the offering or accepting of inducements in certain circumstances.~~ ~~there are legal or regulatory provisions governing bribery and corruption.~~ Where tThe professional accountant encounters such circumstances, the accountant shall obtain an understanding of the relevant ~~provisions~~ laws and regulations and comply with them.

Application of the Conceptual Framework to Inducements Not Prohibited by Laws and Regulations

250.6 A1 ~~The offering or accepting of i~~nducements that are not ~~illegal~~ prohibited by laws and regulations might still create threats to compliance with the fundamental principles.

Inducements with Intent to Improperly Influence Behavior

R250.7 A professional accountant shall not offer, or encourage others to offer, any inducement that is made, or which the accountant believes a reasonable and informed third party would be likely to conclude is made, with the intent ~~of~~ to improperly influence~~ing~~ ing the recipient's behavior.

R250.8 A professional accountant shall not accept, or encourage others to accept, any inducement that the accountant has reason to believe is made, or believes a reasonable and informed third party would be likely to conclude is made, with the intent ~~of~~ to improperly influence~~ing~~ ing the recipient's behavior~~accountant~~.

~~250.9 A1—If the professional accountant were to offer or accept an inducement made with the intent to improperly influence behavior, threats to compliance with the fundamental principles would be created that could not be reduced to an acceptable level.~~

250.910 A1 ~~Factors that are relevant, individually and in combination, in~~ Relevant evaluating whether there exists an actual or perceived intent to improperly influence the recipient's behavior include the following factors to consider in determining whether there is actual or perceived intent to improperly influence behavior include:

- ~~—~~ The nature~~value~~, frequency and value~~nature~~ of the inducement.
- ~~The frequency of the inducements.~~
- Whether there is an special occasion that has given rise to the inducements, for example, whether it is customary practice in relation to a religious holiday or wedding.
- Whether the inducement is an ancillary~~integral~~ part of a professional activity, for example accepting a~~working~~ lunch in connection with a business meeting.
- Whether the offer of the inducement is limited to the individual recipient or available to a broader group. The broader group might be internal or external to the employing organization, such as other customers or vendors. ~~For example, the professional accountant accepting an inducement from a supplier that is available to other customers.~~

- The roles and positions of the individuals offering ~~or accepting~~ the inducements and individuals to whom the offer is made.
- Whether the professional accountant knows or has reason to believe, that accepting ~~an~~ the inducement would breach the policies and procedures of the counterparty's employing organization.

Applying the Conceptual Framework Where There is No Intent to Improperly Influence Behavior

Identifying Threats

~~R250.140 A1~~ Unless an inducement is trivial and inconsequential, the requirements and application material set out in the conceptual framework apply when ~~Where the~~ professional accountant believes ~~that~~ there is no actual or perceived intent to improperly influence behavior, ~~the accountant shall identify threats to compliance with the fundamental principles, unless the inducement is trivial and inconsequential.~~

250.11 A1 The following are examples of facts and circumstances in which threats might be created from offering or accepting an inducement:

a) ~~Self-interest threats might be created from the offering or accepting of an inducement if it can influence the professional accountant's objectivity or professional behavior. This might arise, for example, where~~

- Aa professional accountant accepts hospitality from a vendor during a procurement process.

b) ~~250.11 A2—Familiarity threats might be created if the offering or accepting of an inducement results in the relationship between the professional accountant and another individual, such as a vendor or customer, becoming too close, whether on a professional or personal level, and thus affecting the accountant's objectivity. This might arise, for example, where~~

- Aa professional accountant regularly offers complimentary tickets to attend sporting events to a customer or supplier.

c) ~~250.11 A3—Intimidation threats to the fundamental principles of objectivity and confidentiality might be created if the offering or accepting of an inducement is followed by threats to make that offer or acceptance public, potentially damaging the reputation of either the professional accountant or an immediate or close family member of the accountant. This might arise, for example, where~~

- Aa professional accountant accepts hospitality that would be perceived to be inappropriate were it to be publically disclosed.

Evaluating Threats

250.112 ~~A24~~ The factors that are relevant in to evaluate whether there is actual or perceived intent in paragraph 250.10 A1 are also relevant when evaluating the level of any threats created by offering or accepting an inducement are the same as the factors that are relevant in determining

whether there is actual or perceived intent to improperly influence behavior, as set out in paragraph 250.9 A1.

~~250.12 A2 Consultation with a colleague or an appropriate professional organization might assist the professional accountant in evaluating the level of the threat.~~

Addressing Threats

250.113 A34 Examples of actions that might be safeguards to address threats created by offering or accepting an inducement include:

- Registering the inducement, whether offered, or accepted ~~or declined~~, in a log monitored by senior management or those charged with governance ~~to ensure for the purposes of~~ transparency.
- Having an appropriate individual, who is not otherwise involved in the professional activity, perform a secondary review of any work performed or decisions made by the professional accountant with respect to the individual or organization from which the accountant accepted the inducement.
- Donating the inducement to charity after receipt and appropriately disclosing the donation, for example to those charged with governance or the individual who offered ~~ing~~ the inducement.

250.113 A42 An ~~example of an~~ action that might ~~address~~ eliminate threats created by offering or accepting an inducement is transferring responsibility for any business-related decision involving the counterparty to another individual who the professional accountant has no reason to believe would be, or would perceived to be, improperly influenced in making the decision.

~~R250.14 If the level of the threat created cannot be eliminated or reduced to an acceptable level, the professional accountant shall not offer or accept the inducement.~~

Immediate or Close Family Members

R250.125 A professional accountant shall remain alert to potential threats to the accountant's compliance with the fundamental principles arising from an inducement being offered:

- (a) ~~By Offered by the accountant's an~~ immediate or close family members of the accountant to a counterparty with whom the accountant has a professional relationship; ~~or-~~
- (b) ~~Accepted by the accountant's To an~~ immediate or close family members of the accountant from a counterparty with whom the accountant has a professional relationship.

Inducements with Intent to Improperly Influence Behavior

R250.136 Where the professional accountant ~~is aware of such potential threats, the accountant shall~~ ~~:Advise the immediate or close family member not to offer or accept the inducement where the~~ accountant has reason to believe that there is intent to improperly influence the behavior of the accountant or the counterparty, or that a reasonable and informed third party would be likely to conclude such intent exists, ~~an actual or a perceived intent to improperly influence behavior~~

~~exists~~ the accountant shall advise the immediate or close family member not to offer or accept the inducement.

~~(b) Identify threats unless the inducement is trivial and inconsequential where either:~~

- ~~I. The immediate or close family member offers or accepts the inducement contrary to the advice of the accountant, or~~
- ~~II. The accountant does not have reason to believe an actual or perceived intent to improperly influence behavior exists.~~

~~250.16 A1 Threats might arise where the inducement could improperly influence the behavior of either the professional accountant or the counterparty as relates to the counterparty's professional relationship with the accountant. Accordingly, the accountant might discuss any such threats with the relevant immediate or close family members.~~

~~250.136 A12~~ The factors set out in paragraph 250.9 A1 are relevant in determining whether there is actual or perceived intent to improperly influence the recipient's behavior. ~~In addition to the factors set out in paragraph 250.10 A1, another factor that is relevant in evaluating whether there exists an actual or perceived intent~~ A further factor that is relevant is the nature of the relationship, between:

- (a) The professional accountant and the immediate or close family member;
- (b) The immediate or close family member and the counterparty offering ~~or accepting~~ the inducement or to whom the inducement is being offered; and
- (c) The ~~professional~~ accountant and the counterparty offering ~~or accepting~~ the inducement or to whom the inducement is being offered.

For example, the offer of employment, outside of the normal recruitment process, to an immediate family member by a counterparty with whom the accountant is negotiating a significant contract might indicate such intent.

Applying the Conceptual Framework in Other Circumstances

~~250.164 A13~~ Unless the inducement is trivial and inconsequential, ~~t~~The application material in paragraphs 250.104 A1 to 250.113 A42 is relevant for the purposes of identifying, evaluating and addressing threats where:

- (a) The immediate or close family member offers or accepts the inducement contrary to the advice of the professional accountant in accordance with R250.13; or
- (b) The accountant does not have reason to believe an actual or perceived intent to improperly influence the behavior of the accountant or the counterparty exists.

~~250.14 A2~~ In addition, the relevant factors to consider in evaluating the level of threats in these circumstances include the nature of the relationships referred to set out in paragraph 250.136 A12 is also relevant.

Other Considerations

250.4715 A1 If a professional accountant encounters or is made aware of inducements that might result in non-compliance or suspected non-compliance with laws and regulations by other individuals working for or under the direction of the employing organization, Section 260 is also relevant.

250.4715 A2 A professional accountant might also face pressure to offer or accept inducements that might create threats (for example, intimidation threats) to compliance with the fundamental principles. In such situations, Section 270 is also relevant.

250.4715 A3 If a professional accountant ~~accepts~~ is offered an inducement ~~from~~ by the employing organization relating to financial interests, compensation and incentives linked to performance, Section 240 is also relevant.