

IESBA

International
Ethics Standards
Board for Accountants®

**Agenda Item
7-A**

Tax Planning & Related Services

Jens Poll, Task Force Chair

IESBA Meeting, March 14-16, 2022



Objectives of the Session

To provide feedback on the Task Force's preliminary consideration of:

- Matters relating to the ethical behavior expected of PAs performing tax planning and related services (TP); and
- The framework to guide their ethical judgments and actions when providing such services



Agenda of the Session



CONTEXT



FUNDAMENTAL
ISSUES



INDICATORS
OF GRAY
ZONE



RESPONSE
FRAMEWORK



TIMELINE



GLOBAL
ROUNDTABLES



CONTEXT



Context

- Reason for this project:
 - Recognize that PAs play a significant role in providing TP services
 - Respond to public interest (PI) concerns about perceived improper TP
- PI benefits of PAs being involved in providing TP services
 - Support and enhance effectiveness of the tax system
 - Enhance and facilitate compliance with tax laws and regulations
- Nature of PA's PI responsibility
 - Serving the interests of the client or employing organization in accordance with L&R
 - Also balancing the interests of the jurisdiction's treasury
- Code provisions to complement existing regulatory frameworks addressing TP
 - General Anti-avoidance Rules (GAAR) (jurisdictional specific)
 - OCED BEPS (Global)





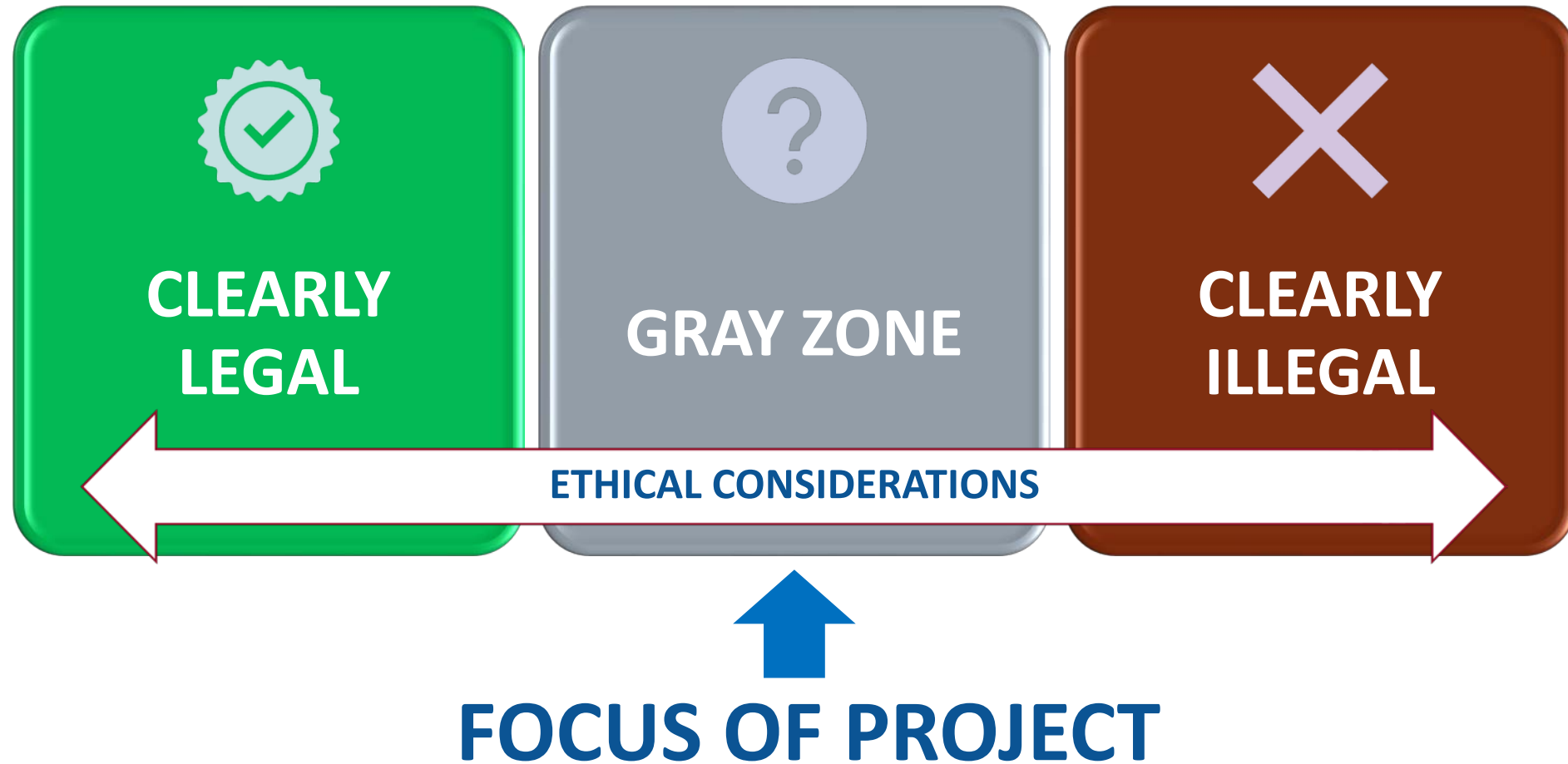
FUNDAMENTAL ISSUES



What is Tax Planning?

- Comprises a broad range of services provided to the client/employing organization on how to structure their tax affairs in the most tax-effective manner
- OECD “Arrangement of a person's business and /or private affairs in order to minimize tax liability”
- UK HMRC “Involves using tax reliefs for the purpose for which they were intended”
- CFE “Focus on delivering savings to clients using legal vehicles and financial transactions specifically established to exploit these technicalities”

Broad Spectrum of Tax Planning



Focus on Gray Zone



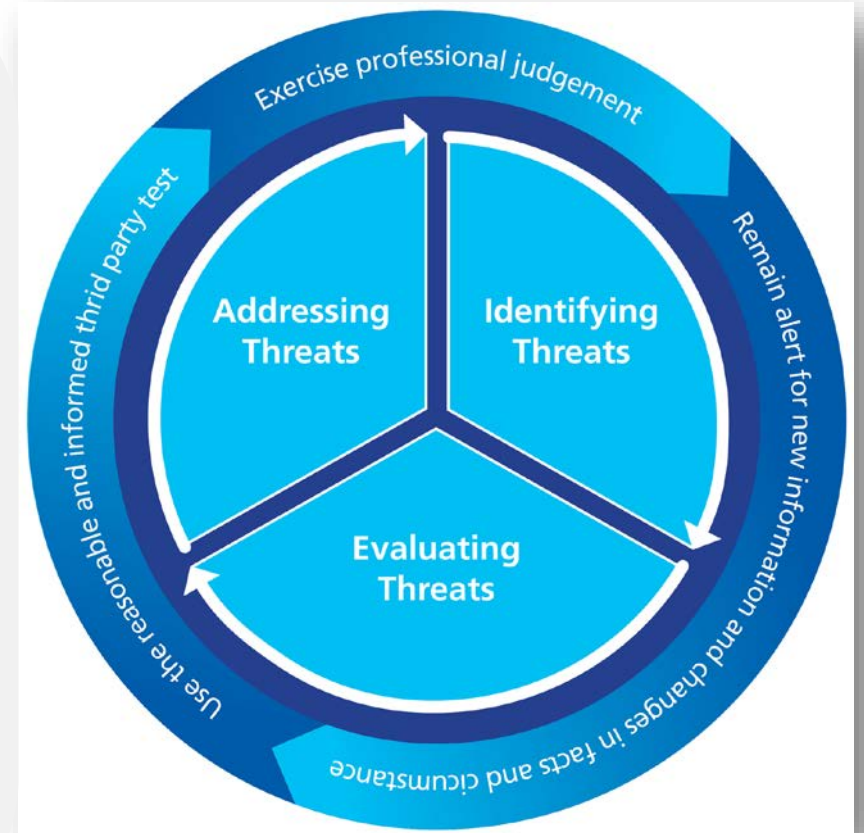
“Uncertain”

“Improper”

- Gray zone not necessarily illegal
- Why do PAs need to understand and be ethically mindful of the gray zone?
 - Issues around “the gray zone” can create threats to compliance with the fundamental principles (FPs)
 - PAs have a responsibility to comply with the Code

Gray Zone – Fundamental Principles Impacted

- Integrity, e.g.:
 - Self-Interest threat
 - Intimidation threat
 - Advocacy threat
- Professional competence/due care, e.g.:
 - Self-Interest threat
 - Intimidation threat
- Professional behavior, e.g.:
 - Self-Interest threat
 - Intimidation threat
- Objectivity, e.g.:
 - Self-Interest threat
 - Intimidation threat
 - Advocacy threat





INDICATORS OF GRAY ZONE



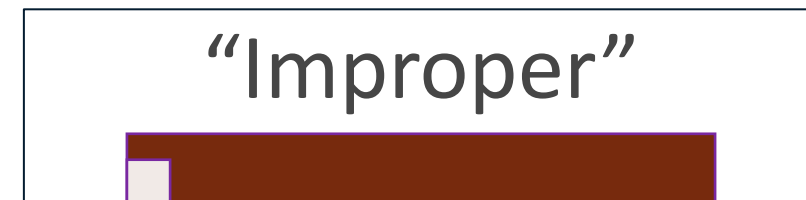
Gray Zone – “Uncertain”

- Various indicators of uncertainty:
 - Tax legislation
 - Gaps in the current legislation
 - New and recent changes which can be subject to different interpretation
 - Multi-jurisdictional scope (Complexity from technical or legal point of view)
 - Challenges to previous court rulings
 - No legal precedent
 - Recent court or tax rulings that cast doubt on similar arrangements
 - Conflicting laws within and across jurisdictions
 - New business models
 - Pace and impact of technology
 - Changing business landscape: e-commerce, cloud-based transactions, etc.
 - Public perceptions influencing what is considered “improper”



Gray Zone – “Improper”

- Improper? Aggressive? Unacceptable? Egregious?
- May be able to approach description through indicators/factors:
 - Lack of clarity about who the client is or troubling information about client or management integrity
 - Transactions are artificial
 - Without genuine commercial purpose (substance over form)
 - Reason to believe, based on facts and circumstances, that it is clearly not in the spirit of the law
 - Lack of transparency to relevant tax authorities
 - Lack of adequate factual basis (incomplete, unsupported, factually incorrect)
 - Common indicators of improper tax planning in the relevant jurisdiction
 - E.g., Clearly exploiting gaps in tax laws and regulations
 - E.g., Double non-taxation, unreasonably high pricing of intangibles (royalties), etc.



Matters for Consideration

IESBA members are asked to share any comments, questions, or reactions to the TPTF's preliminary views

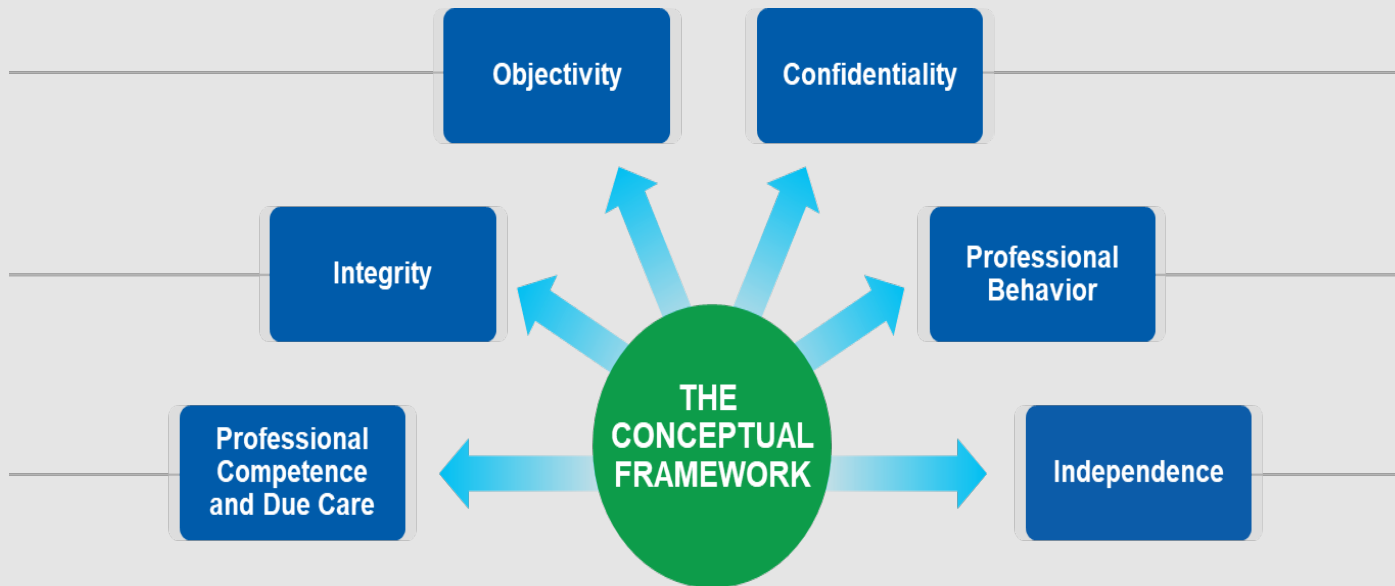




RESPONSE FRAMEWORK



Overview of Response Framework



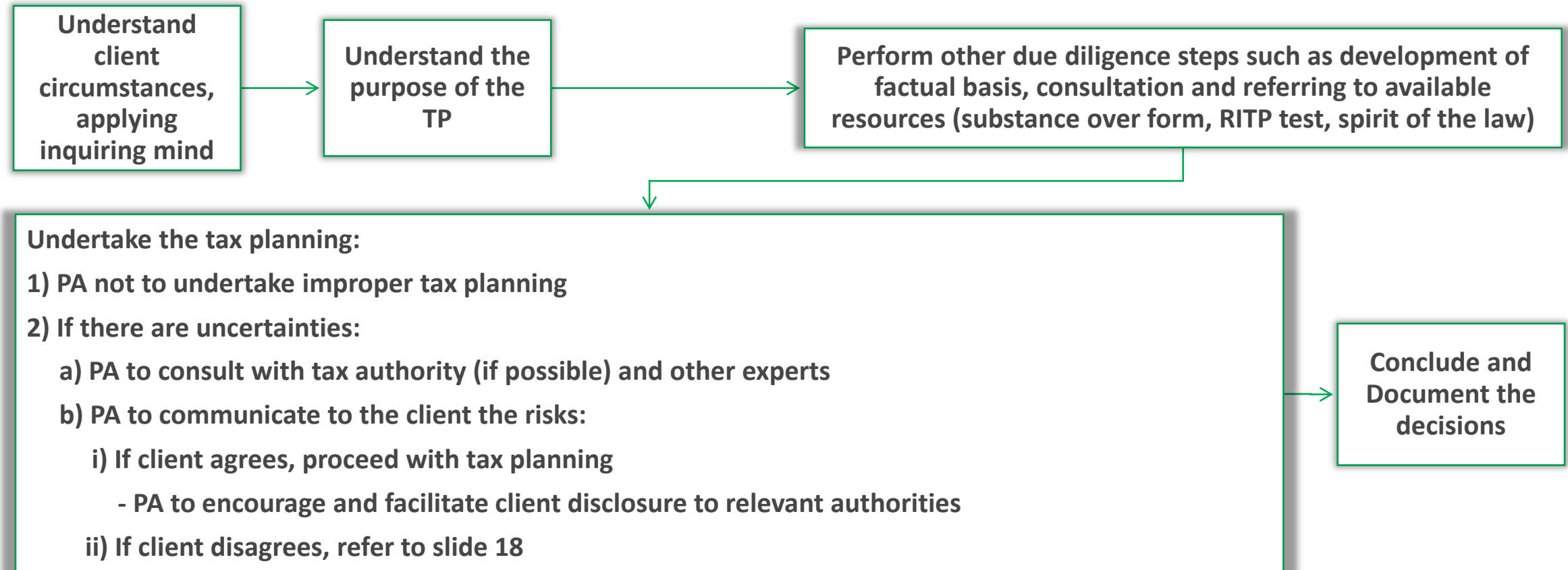
Conduct expected of PAs under the Code

- Identification, evaluation and consideration of relevant facts and issues
- Identification of risks and potential mitigating strategies
- Discussions with management/TCWG including consideration of transparency to relevant authorities
- Evaluation of management's/client's response
 - Is it adequate?
 - Need for escalation?
 - Consultation (internally/externally)
 - What further action?

Response Framework

➤ Scenario:

**Professional Accountant in Public Practice:
Client communicates their intent to maximize tax benefits**



Response Framework

➤ Scenario: If disagreement arises

Expectations of PA's response

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graph TD; A[Expectations of PA's response] --> B[Client]; A --> C[Employing Organization];
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- Client

- PA to consider relationship with client (i.e., continuance or resignation)
- Communicate with management and, where appropriate, TCWG
- Document discussions and decisions
- If resigning, disclose resignation to relevant parties if required by law or regulation

- Employing Organization

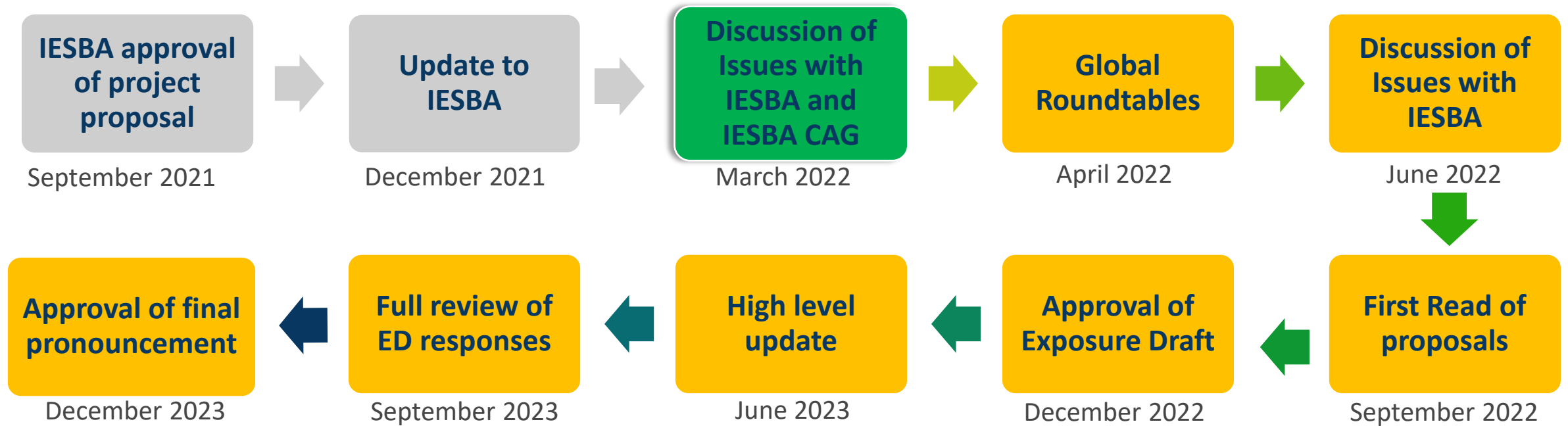
- Consider communicating with TCWG (where appropriate)
- Consider relevant internal or external escalation measures:
 - Consult with peers
 - Consider company whistle-blowing policies
 - Report to the internal and/or external auditors
 - Seek legal and professional body's advice
 - Consider resigning

Matters for Consideration

IESBA members are asked to share any comments, questions, or reactions to the TPTF's preliminary views



Timeline



GLOBAL ROUNDTABLES

Three virtual global roundtables:

- Monday April 25 11 am-3 pm EDT
- Tuesday April 26 8 am-12 pm EDT
- Thursday April 28 12-4 am EDT





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