

IESBA

International  
Ethics Standards  
Board for Accountants®

# Tax Planning & Related Services

Jens Poll, Task Force Chair

IESBA CAG Meeting, March 7, 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)





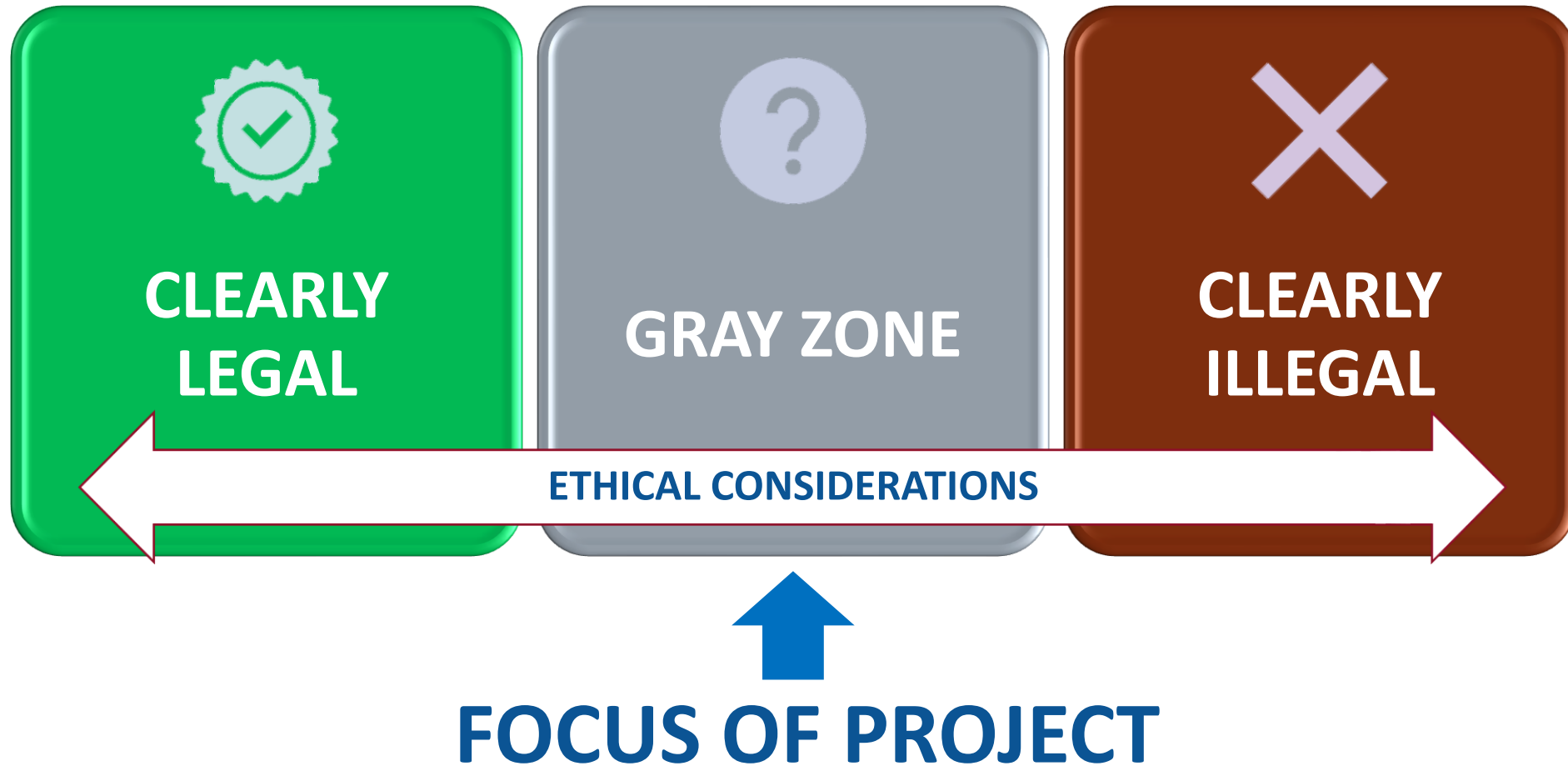
# FUNDAMENTAL ISSUES



# 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



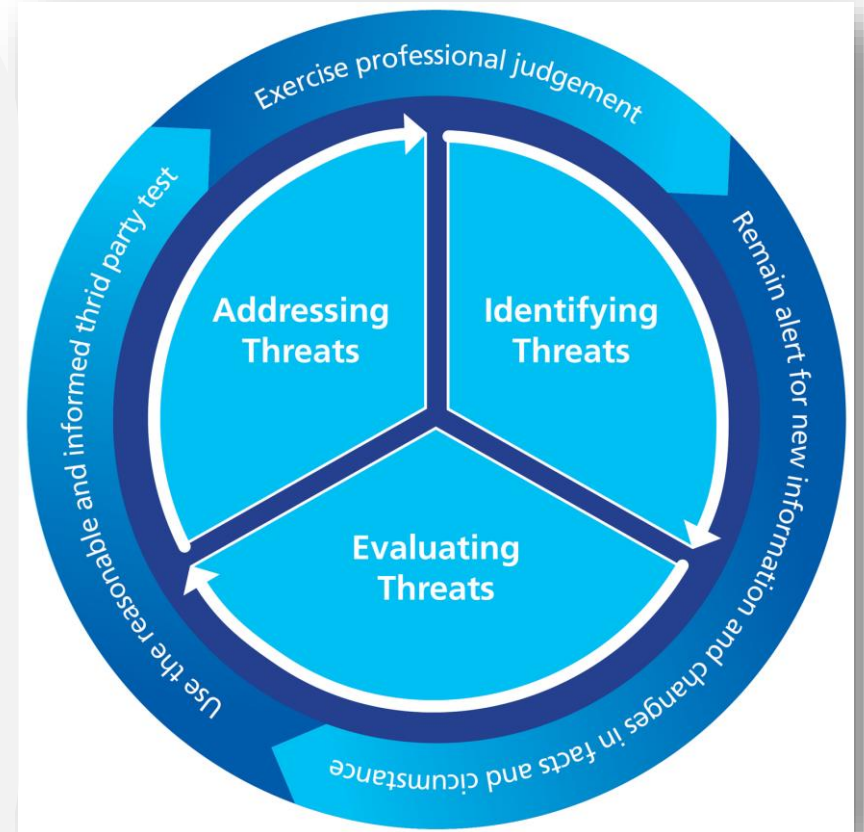
**“Uncertain”**

**“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



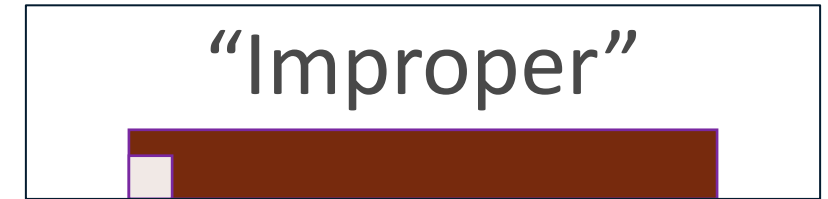
# Gray Zone – “Uncertain”

- 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 CAG representatives are asked to share any comments, questions, or reactions to the TPTF's preliminary views

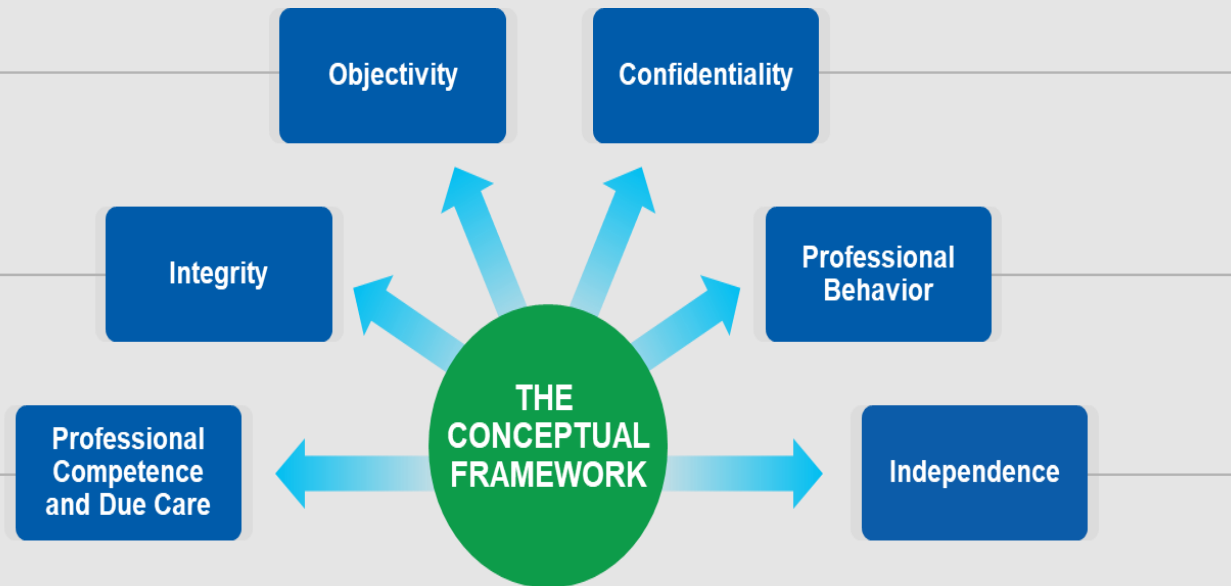




# RESPONSE FRAMEWORK



# Overview of Response Framework



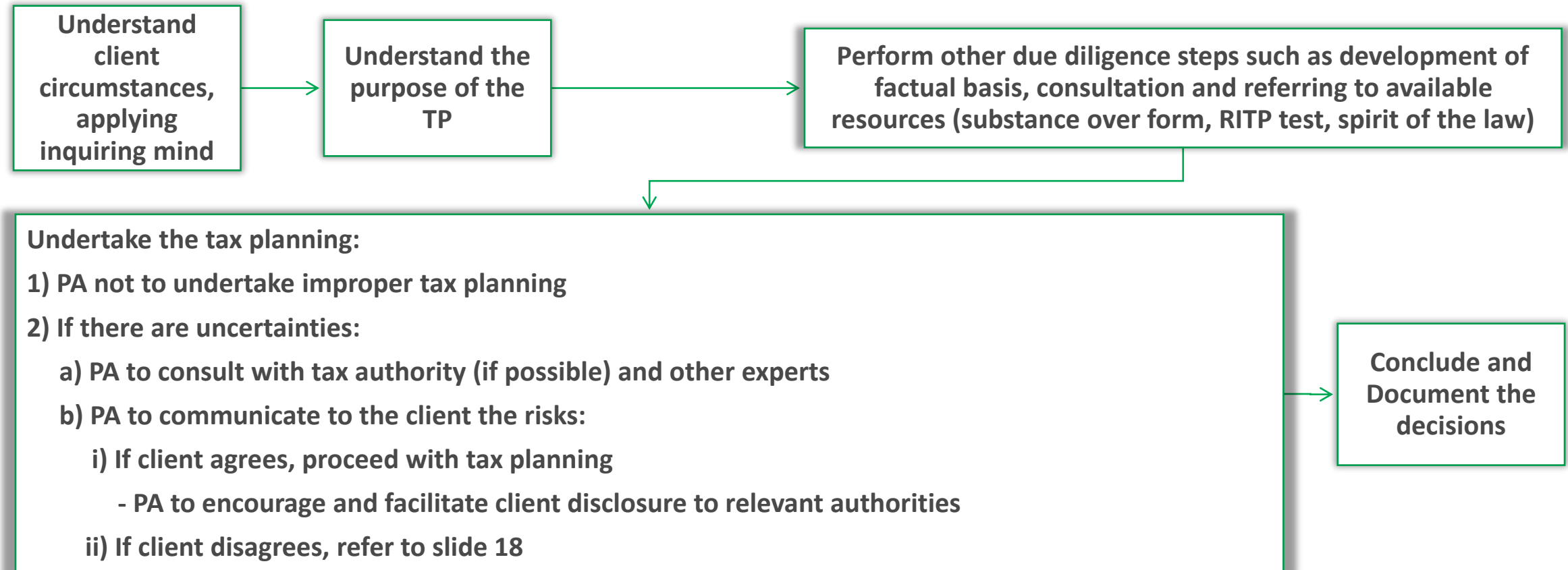
## Conduct expected of PAs under the Code

- 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];
```

- 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

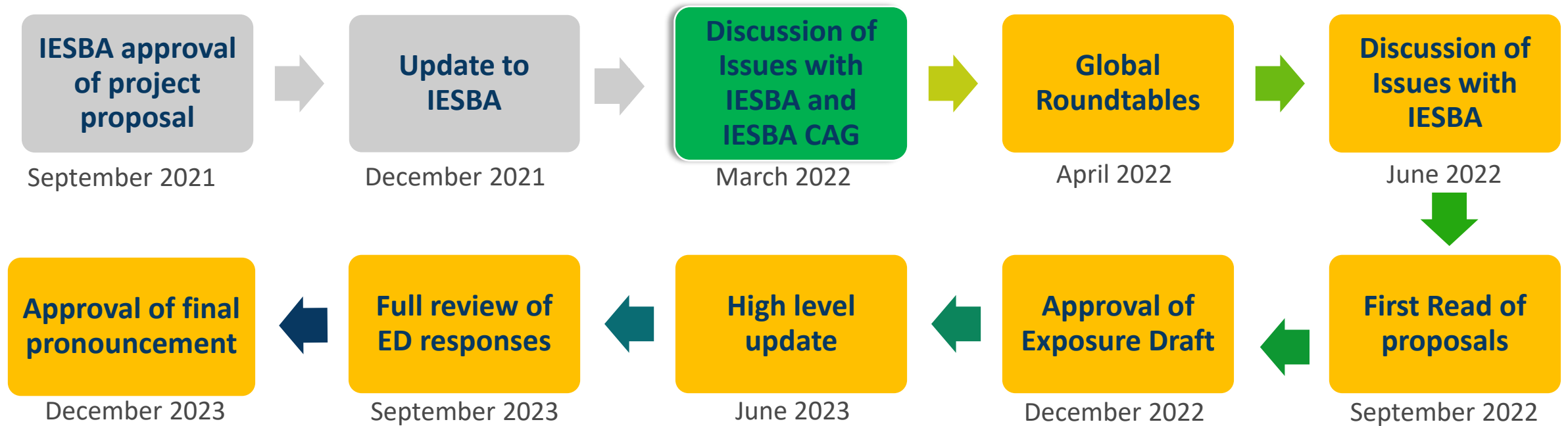
- Consider communicating with TCWG (where appropriate)
- Consider relevant internal or external escalation measures:
  - Consult with peers
  - Consider company whistle-blowing policies
  - Report to the internal and/or external auditors
  - Seek legal and professional body's advice
  - Consider resigning

## Matters for Consideration

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# 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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