

# Code of Professional Ethics

## Contents

Foreword .....	3
Introduction.....	4
Glossary of Terms.....	6
Part A.           General Application of the Code .....	11
Section 100. Introduction and Code of fundamental principles.....	11
Section 110. Integrity.....	16
Section 120. Objectivity.....	17
Section 130. Professional competence and due care.....	18
Section 140. Confidentiality.....	19
Section 150. Professional behaviour.....	21
Section 160. Taxation.....	22
Part B.           Licensed members .....	24
Section 200. Introduction.....	24
Section 210. Professional appointment.....	29
Section 220. Conflicts of interest.....	33
Section 225. Responding to Non-Compliance with Laws and Regulations .....	37
Section 230. Second opinions.....	44
Section 240. Fees and other types of remuneration .....	45
Section 250. Marketing professional services.....	47
Section 260. Gifts and hospitality.....	48
Section 270. Custody of client assets .....	49
Section 280. Objectivity – all services.....	50
Section 290. Independence – review and assurance engagements .....	51
Part C.           Members in business .....	53
Section 300. Introduction.....	53
Section 310. Conflicts of interest.....	56
Section 320. Preparation and reporting of information .....	58
Section 330. Acting with sufficient expertise .....	59
Section 340. Financial interests, compensation and incentives linked to financial reporting and decision-making.....	60
Section 350. Inducements.....	62
Section 360. Responding to Non-Compliance with Laws and Regulations .....	64

## Foreword

Being a member of AAT is more than a qualification. AAT is well recognised and respected throughout a wide range of businesses and, in order to maintain this reputation and to continue to offer quality training and support, we require our members to have a professional and ethical approach throughout their lives. It is because of our exceptionally high standards, quality training and the professionalism of our members that we are so highly regarded. This is a benefit to us as an Association and to you as a member. To help our members maintain these standards and offer the highest levels of professional service at all times, we publish the *AAT Code of Professional Ethics* which set out a *Code* of fundamental ethical principles and supporting guidance.

The decisions you make in the everyday course of your professional lives can have real ethical implications. This is where the *Code* helps.

The *Code*:

- sets out the required standards of professional behaviour with guidance to help you achieve them
- helps you to protect the public interest
- helps you to maintain AAT's good reputation.

## Introduction

This *Code* was revised in 2017, and approved by AAT Council, to come into force on 15 July 2017..

It is based on the *Code of Ethics for Professional Accountants* approved by International Ethics Standards Board for Accountants (IESBA) which came into force on 1 January 2011. A number of revisions were made to this *Code* since, and these have been incorporated by AAT. AAT is a full member of IFAC. The mission of IFAC, as set out in its constitution, is “the worldwide development and enhancement of an accountancy profession with harmonised standards, able to provide services of consistently high quality in the public interest.” In pursuing this mission, the IFAC Board has established IESBA to develop and issue, under its own authority, high quality ethical standards and other pronouncements for members for use around the world. The *IESBA Code of Ethics* on which this *Code* is based establishes ethical requirements for IFAC members.

In keeping with the IESBA *Code*, this *Code* adopts a principles-based approach. It does not attempt to cover every situation where a member may encounter professional ethical issues, prescribing the way in which he or she should respond. Instead, it adopts a value system, focusing on fundamental professional and ethical principles which are at the heart of proper professional behaviour and which members must therefore follow. To supplement this, the *Code* also provides detailed guidance of specific relevance to AAT members to help ensure that they follow the fundamental principles both in word and in spirit in all of their professional activities.

This *Code* therefore:

- sets out a *Code* of five fundamental principles which members must follow:
  - integrity
  - objectivity
  - professional competence and due care
  - confidentiality
  - professional behaviour.
- provides a **conceptual framework** which members must apply to enable them to identify and evaluate threats to compliance with the fundamental principles and to respond appropriately to them
- provides guidance and illustrations on how to apply the conceptual framework in practice both generally and in specific problem situations. Members should consider these and apply them as appropriate to ensure that they adhere to the fundamental principles in their own situation.

The *Code* is in three parts:

- Part A applies to all members.
- Part B represents additional guidance which applies specifically to Licensed members.
- Part C applies specifically to members in business.

See the definitions of ‘Licensed member’ and ‘member in business’ in the glossary of terms below.

Three key words are used throughout this document to guide members in the action needed in order to comply with the fundamental principles:

- The word “consider” is used when members are required to think about several matters.
- The word “evaluate” is used when members are required to think about several matters and assess the positive and negative elements.
- The word “determine” is used when members are required to conclude and make a decision.

The *Code* is based on the laws effective in the UK which members are expected to comply with as a minimum requirement. Members working or living overseas are expected to know and apply the laws of the overseas country, having taken local legal advice if necessary. Where this *Code* refers to legal issues, it does not purport to give definitive legal advice or to cover every situation, nor does this *Code* highlight every legal issue that members may need to consider. Members who encounter problems in relation to legal aspects are recommended to seek their own legal advice.

There may be occasions when members, whether having sought independent advice or not, and having considered the application of the *Code of Professional Ethics* in a particular situation, are still in doubt about the proper course of action to be taken. In such cases they should contact the Ethics Advice line on: 0845 863 0787 (UK), +44 (0)20 7397 3014 (outside UK), e:[aatstandards@aat.org.uk](mailto:aatstandards@aat.org.uk) giving all the relevant facts.

Members should note that misconduct is defined as ‘professional or personal conduct, in breach of the *Code of Professional Ethics*, which poses a risk to the public or is likely to undermine public confidence in the *Association* or its *members*’. It is expected that members are familiar with the requirements of this *Code*.

Members should note that where they are also a member of another professional or regulatory body which is a member of a chartered or certified accountancy body, there may be differences in some areas between the professional and ethical conduct requirements of the different bodies. Where there are differences, members should follow the more stringent provision and must do so where the more stringent provision is an AAT requirement.

The accountancy profession, including the part represented by AAT members, is committed to the following objectives:

- the mastering of particular skills and techniques acquired through learning and education and maintained through continuing professional development
- development of an ethical approach to work as well as to employers and clients. This is acquired by experience and professional supervision under training and is safeguarded by strict ethical and disciplinary *Codes*.
- acknowledgement of duties to society as a whole in addition to duties to the employer or the client
- an outlook which is essentially objective, obtained by being fair minded and free from conflicts of interest
- rendering services to the highest standards of conduct and performance
- achieving acceptance by the public that members provide accountancy services in accordance with these high standards and requirements.

This *Code* aims to assist members to achieve these objectives.

## Glossary of Terms

In the *AAT Code of Professional Ethics* for members, the following expressions have the following meanings assigned to them:

AAT	Association of Accounting Technicians
Advertising	The communication to the public of information as to the services or skills provided by Licensed members with a view to procuring professional business.
Anti-money laundering legislation	The Proceeds of Crime Act 2002 (as amended), the Terrorism Act 2000 (as amended), the <i>Money Laundering Regulations</i> (as amended), related statutory instruments and any amending or superseding legislation.
Associate	Business partner or colleague
Assurance client	<p>The responsible party that is the person (or persons) who:</p> <ul style="list-style-type: none"><li>• in a direct reporting engagement, is responsible for the subject matter or</li><li>• in an assertion-based engagement, is responsible for the subject matter information and may be responsible for the subject matter.</li></ul> <p>(For an assurance client that is a financial statement audit client see the definition of financial statement audit client.)</p>
Assurance engagement	<p>An engagement in which a Licensed member expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.</p> <p>(For guidance on assurance engagements see the International Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board which describes the elements and objectives of an assurance engagement and identifies engagements to which International Standards on Auditing (ISAs), International Standards on Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs) apply.)</p>

Assurance team	<ul style="list-style-type: none"> <li>• All members of the engagement team for the assurance engagement</li> <li>• All others within a firm who can directly influence the outcome of the assurance engagement, including: <ul style="list-style-type: none"> <li>- those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the assurance engagement partner in connection with the performance of the assurance engagement. For the purposes of a financial statement audit engagement this includes those at all successively senior levels above the engagement partner through the firm's chief executive</li> <li>- those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement, and</li> <li>- those who provide quality control for the assurance engagement, including those who perform the engagement quality control review for the assurance engagement and</li> <li>- For the purposes of a financial statement audit client, all those within a network firm who can directly influence the outcome of the financial statement audit engagement</li> </ul> </li> </ul>
Clearly insignificant	A matter that is deemed to be both trivial and inconsequential.
Close or personal relation/relationship	A spouse (including a civil partner); a parent, child, grandparent, grandchild, sibling, aunt, uncle, nephew, niece or cousin (including in each case where applicable those related on a half, step or in-law basis); a dependant; or a person who would be regarded as a friend by a reasonable and informed third party having knowledge of all relevant information.
Contingent fee	A fee calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. A fee that is established by a court or other public authority is not a contingent fee.
Continuing Professional Development (CPD)	The process of a member continuously maintaining and developing knowledge, skills and competence to improve their performance at work.
Direct financial interest	A financial interest: <ul style="list-style-type: none"> <li>• owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others) or</li> <li>• beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control.</li> </ul>
Director or officer	A person charged with or otherwise having significant influence or control of the governance of an entity (including a shadow director), regardless of his or her title, which may vary from country to country.

Engagement partner	The partner or other person in the firm who is responsible for the engagement and its performance and for the report that is issued on behalf of the firm and who, where required, has the appropriate authority from a professional, legal or regulatory body.
Engagement quality control review	A process designed to provide an objective evaluation, before the report is issued, of the significant judgements the engagement team made and the conclusions they reached in formulating the report
Engagement team	<p>All partners and staff performing the engagement, and any individuals engaged by the firm or a network firm who perform assurance procedures on the engagement. This excludes external experts engaged by the firm or by a network firm.</p> <p>The term “engagement team” also excludes individuals within the client’s internal audit function who provide direct assistance on an audit engagement when the external auditor complies with the requirements of ISA 610 (Revised 2013), Using the Work of Internal Auditors.</p>
Existing accountant	A Licensed member, or an individual who is a member of another IFAC member body, currently holding an audit appointment or carrying out accounting, taxation, consulting or similar professional services for a client.
Fiduciary relationship	A relationship which arises between a Licensed member and his or her client where the trust and confidence in the relationship is such that the client is entitled to trust the member to act only in the client’s interests and not in the member’s own interest. This would be likely to include, for the purposes of these <i>Code</i> , where the member acts as the client’s agent.
Financial interest	An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.
Financial statements	The balance sheets, income statements or profit and loss accounts, statements of changes in financial position (which may be presented in a variety of ways, for example, as a statement of cash flows or a statement of fund flows), notes and other statements and explanatory material which are identified as being part of the financial statements.
Financial statement audit client	<p>An entity in respect of which a firm conducts a financial statement audit engagement.</p> <p>When the client is a listed entity, the financial statement audit client will always include its related entities.</p>
Financial statement audit engagement	A reasonable assurance engagement in which a Licensed member expresses an opinion whether financial statements are prepared in all material respects in accordance with an identified financial reporting framework, such as an engagement conducted in accordance with International Standards on Auditing. This includes a statutory audit, which is a financial statement audit required by legislation, other regulation or other documents.
Firm	A sole practitioner who is a member, or a partnership, or a body corporate or a limited liability partnership comprised in whole or in part of members, the business of whom or of which includes carrying on the profession of accountancy.



Independence	<p>Independence is:</p> <ul style="list-style-type: none"> <li>• independence of mind – the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity, and exercise objectivity and professional judgement</li> <li>• independence in appearance – the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional scepticism had been compromised.</li> </ul>
Indirect financial interest	A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control.
Listed entity	An entity whose shares, stock or debt are quoted or listed on a recognised investment exchange, or are marketed under the regulations of a recognised investment exchange. A domestic or overseas investment exchange is recognised in the UK if recognised by the Financial Services Authority..
Member	A student, affiliate, full or fellow member of AAT.
Member in business	A member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a member contracted by such entities. This includes AAT members who are employed by others in such areas, as well as AAT members who work (whether or not in an employed capacity) in fields other than accountancy.
Licensed member	A member who provides accountancy, taxation or related consultancy services to the public or to another business on a self-employed basis, whether as a sole trader, or trading through a partnership or a limited company. This includes all AAT members who are registered, or who are required to register, annually with AAT in accordance with the Licensing Regulations.
Money Laundering Regulations	The <i>Money Laundering Regulations 2017</i> or any superseding regulations. These regulations are included in the definition of anti-money laundering legislation but are specifically referred to throughout this guidance when necessary.
Money Laundering Reporting Officer (MLRO)	The officer within a firm who has been nominated to receive and assess internal reports of knowledge or suspicions of money laundering or terrorist financing.

Network firm	<ul style="list-style-type: none"> <li>• a firm that is part of a larger structure and: <ul style="list-style-type: none"> <li>- uses a name in its firm name that is common to the larger structure or</li> <li>- shares significant professional resources with other firms in the larger structure or</li> <li>- shares profits or costs with other firms within the larger structure</li> </ul> </li> <li>• an entity that controls, is controlled by, or is under common control with the firm through ownership, management or other means.</li> </ul>
Professional activity	An activity requiring accountancy or related skills undertaken by a member, including accounting, auditing, taxation, management consulting and financial management.
Professional services	Professional activities performed for clients
Relevant person	<p>As defined by Regulation 3 of the <i>Money Laundering Regulations</i>, including (but not exhaustively):</p> <ul style="list-style-type: none"> <li>• an external accountant - a firm or sole practitioner who by way of business provides accountancy services to other persons (Licensed members)</li> <li>• tax advisors - a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons</li> <li>• a trust or company service provider - a firm or sole practitioner who by way of business provides any of the following services to other persons: <ul style="list-style-type: none"> <li>- forming companies or legal persons</li> <li>- acting, or arranging for another person to act: <ul style="list-style-type: none"> <li>i. as a director or secretary of a company</li> <li>ii. as a partner of a partnership, or</li> <li>iii. in a similar position in relation to other legal persons</li> </ul> </li> <li>- providing a registered office for a company, partnership or any other legal person or arrangement</li> <li>- acting, or arranging for another person to act as: <ul style="list-style-type: none"> <li>i. a trustee of an express trust or similar legal arrangement</li> <li>ii. a nominee shareholder for a person other than a company whose securities are listed on a regulated market.</li> </ul> </li> </ul> </li> </ul>
Responsible party	<p>The person (or persons) who is either:</p> <ul style="list-style-type: none"> <li>• in a direct reporting assurance engagement, is responsible for the subject matter</li> <li>• in an assertion-based assurance engagement, is responsible for the subject matter information and may be responsible for the subject matter.</li> </ul>
NCA	National Crime Agency
Working papers and records	Papers, background notes and reference materials that are used to prepare or complete other documents.

## Part A. General Application of the Code

Section 100	Introduction and <i>Code</i> of fundamental principles
Section 110	Integrity
Section 120	Objectivity
Section 130	Professional competence and due care
Section 140	Confidentiality
Section 150	Professional behaviour
Section 160	Taxation services

### Section 100. Introduction and *Code* of fundamental principles

- 100.1** A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, your responsibility as a member is not exclusively to satisfy the needs of an individual client or employer. In acting in the public interest members shall observe and comply with the *Code* of ethical requirements set out in this *Code*.
- 100.2** This *Code* is in three parts. Part A establishes the *Code* of fundamental principles of professional ethics for members and provides a conceptual framework for applying those principles. The conceptual framework provides guidance on fundamental ethical principles. Members are required to apply this conceptual framework to enable them to identify threats to compliance with the fundamental principles, to evaluate their significance and, if such threats are not clearly insignificant, to apply safeguards to eliminate them or reduce them to an acceptable level such that compliance with the fundamental principles is not compromised.
- 100.3** Parts B and C describe how the conceptual framework applies in certain situations. They provide examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles. They also describe situations where safeguards are not available to address the threats and where the activity or relationship creating the threats shall be avoided. Part B applies to Licensed members. Part C applies to members in business. Licensed members may also find Part C relevant to their particular circumstances.
- 100.4** In this *Code* the use of the word “shall” imposes a requirement on the member to comply with the specific provision in which “shall” has been used. Compliance is required unless an exception is permitted by this *Code*.

## Fundamental principles

**100.5** A member shall comply with the following fundamental principles:

- **Integrity:** to be straightforward and honest in all professional and business relationships.
- **Objectivity:** to not allow bias, conflict of interest or undue influence of others to override professional or business judgements.
- **Professional competence and due care:** to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. A member shall act diligently and in accordance with applicable technical and professional standards when providing professional services.
- **Confidentiality:** to act, in accordance with the law, respect the confidentiality of information acquired as a result of professional and business relationships and not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships shall not be used for the personal advantage of the member or third parties
- **Professional behaviour:** to comply with relevant laws and regulations and avoid any conduct that discredits the profession

Each of these fundamental principles is discussed in more detail in Sections 110 – 150.

## Conceptual framework approach

**100.6** The circumstances in which members operate may give rise to specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates such threats and specify the appropriate mitigating action. In addition, the nature of engagements and work assignments may differ and consequently different threats may exist, requiring the application of different safeguards. Therefore, this *Code* establishes a conceptual framework that requires a member to identify, evaluate and address threats to compliance with the fundamental principles. The conceptual framework approach assists members in complying with the ethical requirements of this *Code* and meeting their responsibility to act in the public interest. It accommodates many variations in circumstances that create threats to compliance with the fundamental principles and can deter a member from concluding that a situation is permitted if it is not specifically prohibited.

**100.7** When a member identifies threats to compliance with the fundamental principles and, based on an evaluation of those threats, determines that they are not at an acceptable level, the member shall determine whether appropriate safeguards are available and can be applied to eliminate the threats, or reduce them to an acceptable level. In making that determination, the member shall exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at the time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of the safeguards, such that compliance with the fundamental principles is not compromised.

**100.8** A member shall evaluate any threats to compliance with the fundamental principles when the member knows, or could reasonably be expected to know, of circumstances or relationships that may compromise compliance with the fundamental principles.

- 100.9** A member shall take qualitative as well as quantitative factors into account when considering the significance of a threat. When applying the conceptual framework, a member may encounter situations in which threats cannot be eliminated or reduced to an acceptable level, either because the threat is too significant or because appropriate safeguards are not available, or cannot be applied. In such situations, a member shall decline or discontinue the specific professional service involved or, when necessary, resign from the engagement (in the case of a Licensed member) or the employing organisation (in the case of a member in business).
- 100.10** Sections 290 and 291 (as detailed within the associated document *Code of Professional Ethics: independence provisions relating to review and assurance engagements*) contain provisions with which a member shall comply if the member identifies a breach of an independence provision of the *Code*. If a member identifies a breach of any other provisions of this *Code*, the member shall evaluate the significance of the breach and its impact on the member's ability to comply with the fundamental principles. The member shall take whatever actions that may be available, as soon as possible, to satisfactorily address the consequences of the breach. The member shall determine whether to report the breach, for example, to those who may have been affected by the breach, a member body, relevant regulator or oversight authority.
- 100.11** When a member encounters unusual circumstances in which the application of a specific requirement of the *Code* would result in a disproportionate outcome or an outcome that may not be in the public interest, it is recommended that the member consult with AAT on the issue.

## Threats and safeguards

- 100.12** Threats may be created by a broad range of relationships and circumstances. When a relationship or circumstance creates a threat, such a threat could compromise, or could be perceived to compromise a member's compliance with the fundamental principles. A circumstance may create more than one threat, and a threat may affect compliance with more than one fundamental principle.

Threats fall into the following categories:

- Self-interest threats, which may occur where a financial or other interest will inappropriately influence the member's judgment or behaviour.
- self-review threats, which may occur when a previous judgement needs to be re-evaluated by the member responsible for that judgement
- advocacy threats, which may occur when a member promotes a position or opinion to the point that subsequent objectivity may be compromised
- familiarity threats, which may occur when, because of a close or personal relationship, a member becomes too sympathetic to the interests of others
- intimidation threats, which may occur when a member may be deterred from acting objectively by threats, whether actual or perceived.

Parts B and C of this *Code* explain how these categories of threats may be created for Licensed members and members in business respectively. Licensed members may also find Part C relevant to their particular circumstances.

- 100.13** Safeguards are actions or other measures that may eliminate threats or reduce them to an acceptable level. These fall into two broad categories:
- safeguards created by the profession, legislation or regulation
  - safeguards in the work environment.
- 100.14** Safeguards created by the profession, legislation or regulation include, but are not restricted to:
- educational, training and experience requirements for entry into the profession
  - continuing professional development requirements
  - corporate governance regulations
  - professional standards
  - professional or regulatory monitoring and disciplinary procedures
  - external review of the reports, returns, communications or information produced by a member and carried out by a legally empowered third party.
- 100.15** Parts B and C of this *Code*, respectively, discuss safeguards in the work environment for Licensed members and those in business.
- 100.16** Certain safeguards may increase the likelihood of identifying or deterring unethical behaviour. Such safeguards, which may be created by the accounting profession, legislation, regulation or an employing organisation, include, but are not restricted to:
- effective, well publicised complaints systems operated by the employing organisation, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behaviour
  - an explicitly stated duty to report breaches of ethical requirements.

## Conflicts of interest

- 100.17** A member may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:
- The member undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or
  - The interests of the member with respect to a particular matter and the interests of a party for whom the member undertakes a professional activity related to that matter are in conflict.
- 100.18** Parts B and C of this *Code* discuss conflicts of interest for Licensed members and business respectively.

**100.19** In evaluating compliance with the fundamental principles, a member may be required to resolve a conflict in the application of fundamental principles.

**100.20** When initiating either a formal or informal conflict resolution process, a member shall consider the following, either individually or together with others, as part of the resolution process:

- relevant facts
- ethical issues involved
- fundamental principles related to the matter in question
- established internal procedures and
- alternative courses of action.

Having considered these factors, a member shall determine the appropriate course of action that is consistent with the fundamental principles identified. The member shall also weigh the consequences of each possible course of action. If the matter remains unresolved, the member may wish to consult with other appropriate persons within the firm or employing organisation for help in obtaining resolution.

**100.21** Where a matter involves a conflict with, or within, an organisation, a member shall determine whether to consult with those charged with governance of the organisation, such as the board of directors or the audit committee.

**100.22** It may be in the best interests of the member to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

**100.23** If a significant conflict cannot be resolved, a member may consider obtaining professional advice from the relevant professional body or legal advisors on a confidential basis and thereby obtain guidance on ethical issues without breaching confidentiality. For example, a member may suspect that he has encountered a fraud and may need to discuss confidential information in order to satisfy himself whether his suspicions are justified. In such circumstances, the member shall also consider the requirement under the anti-money laundering legislation to submit a report to the NCA or to the firm's Money Laundering Reporting Officer (MLRO).

**100.24** If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a member shall, unless prohibited by law, refuse to remain associated with the matter creating the conflict. The member shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organisation.

## **Section 110. Integrity**

**110.1** The principle of integrity imposes an obligation on all members to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.

**110.2** A member shall not be associated with reports, returns, communications or other information where they believe that the information:

- contains a false or misleading statement
- contains statements or information furnished recklessly
- omits or obscures information required to be included where such omission or obscurity would be misleading.

When a member becomes aware that they have been associated with such information they shall take steps to be disassociated from the information.

**110.3** A member will not be considered to be in breach of paragraph 110.2 if the member provides a modified report in respect of a matter contained in paragraph 110.2.



## **Section 120. Objectivity**

- 120.1** The principle of objectivity imposes an obligation on all members not to compromise their professional or business judgement because of bias, conflict of interest or the undue influence of others.
- 120.2** A member may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. Relationships that bias or unduly influence the professional judgement of the member shall be avoided. A member shall not perform a professional service if a circumstance or relationship biases or unduly influences their professional judgment with respect to that service.

## **Section 130. Professional competence and due care**

- 130.1** The principle of professional competence and due care imposes the following obligations on members:
- to maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service and
  - to act diligently in accordance with applicable technical and professional standards when providing professional services.
- 130.2** Competent professional service requires the exercise of sound judgement in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:
- attainment of professional competence and
  - maintenance of professional competence.
- 130.3** The maintenance of professional competence requires continuing awareness and understanding of relevant technical, professional and business developments. Continuing professional development (CPD) develops and maintains the capabilities that enable a member to perform competently within the professional environment. To achieve this, Council expects all members to undertake CPD in accordance with the *AAT Policy on Continuing Professional Development*. This requires members to assess, plan, action and evaluate their learning and development needs. Licensed members should also refer to paragraph 200.3.
- 130.4** Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
- 130.5** A member shall take reasonable steps to ensure that those working under the member's authority in a professional capacity have appropriate training and supervision.
- 130.6** Where appropriate, a member shall make clients, employers or other users of the professional services aware of limitations inherent in the services to avoid the misinterpretation of an expression of opinion as an assertion of fact.

## Section 140. Confidentiality

In general terms, there is a legal obligation to maintain the confidentiality of information which is given or obtained in circumstances giving rise to a duty of confidentiality. There are some situations where the law allows a breach of this duty.

The following sections help to explain what this means in practice for members as well as giving guidance on the standards required of members from an ethical perspective.

**140.1** The principle of confidentiality imposes an obligation on members to refrain from:

- disclosing outside the firm or employing organisation confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose and
- using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

Information about a past, present, or prospective client's or employer's affairs, or the affairs of clients of employers, acquired in a work context, is likely to be confidential if it is not a matter of public knowledge.

**140.2** A member shall maintain confidentiality even in a social environment. The member shall be alert to the possibility of inadvertent disclosure, particularly in circumstances involving close or personal relations, associates and long established business relationships.

**140.3** A member shall maintain confidentiality of information disclosed by a prospective client or employer.

**140.4** A member shall maintain confidentiality of information within the firm or employing organisation.

**140.5** A member shall take all reasonable steps to ensure that staff under their control and persons from whom advice and assistance is obtained respect the principle of confidentiality. The restriction on using confidential information also means not using it for any purpose other than that for which it was legitimately acquired.

**140.6** The need to comply with the principle of confidentiality continues even after the end of relationships between a member and a client or employer. When a member changes employment or acquires a new client, the member is entitled to use prior experience. The member shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

**140.7** As a fundamental principle, confidentiality serves the public interest because it facilitates the free flow of information from the client to the member. Nevertheless, the following are circumstances where a member may be required to disclose confidential information or when such disclosure may be appropriate:

- where disclosure is required by law, and is authorised by the client or the employer (or any other person to whom an obligation of confidence is owed) for example:

- production of documents or other provision of evidence in the course of legal proceedings or
- disclosure to the appropriate public authorities (for example, HMRC) of infringements of the law that come to light
- disclosure of actual or suspected money laundering or terrorist financing to the member's firm's MLRO or to SOCA if the member is a sole practitioner, or
- where there is a professional duty or right to disclose, which is in the public interest, and is not prohibited by law. Examples may include:
  - to comply with the quality review of an IFAC member body or other relevant professional body
  - to respond to an inquiry or investigation by AAT or a relevant regulatory or professional body
  - to protect the member's professional interests in legal proceedings
  - to comply with technical and professional standards including ethical requirements.

This is a difficult and complex area and members are therefore specifically advised to seek professional advice before disclosing confidential information under c above.

**140.8** In deciding whether to disclose confidential information, members should consider the following points:

- whether the interests of all parties, including third parties, could be harmed even though the client or employer (or other person to whom there is a duty of confidentiality) consents to the disclosure of information by the member
- whether all the relevant information is known and substantiated, to the extent that this is practicable. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement should be used in determining the type of disclosure to be made, if any
- the type of communication or disclosure that may be made and by whom it is to be received; in particular, members should be satisfied that the parties to whom the communication is addressed are appropriate recipients.

Members who are in any doubt about their obligations in a particular situation should seek professional advice.

## **Section 150. Professional behaviour**

**150.1** The principle of professional behaviour imposes an obligation on members to comply with relevant laws and regulations and avoid any action that may bring disrepute to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affect the good reputation of the profession.

Members should note that conduct reflecting adversely on the reputation of AAT is a ground for disciplinary action under AAT's *Disciplinary Regulations*.

**150.2** An example of this principle is that in marketing and promoting themselves and their work, members shall be honest and truthful. They may bring the profession into disrepute if they:

- make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained
- make disparaging references or unsubstantiated comparisons to the work of others.

## Section 160. Taxation

- 160.1** Members performing taxation services in the UK, Ireland and in other member states of the EU will be dealing with compliance and advice on direct and indirect taxes based on income, gains, losses and profits. The administrative authorities and the legal basis for direct and indirect taxes vary substantially.
- 160.2** Professional members working in tax must comply with the fundamental principles of behaviour outlined in [Professional Conduct in Relation to Taxation \(PCRT\)](#). It is beyond the scope of this Code to deal with detailed ethical issues relating to taxation services encountered by members. The guidance that follows consists therefore of general principles for members which apply to both direct and indirect taxation.
- 160.3** A member providing professional tax services has a duty to put forward the best position in favour of a client or an employer. However, the service must be carried out with professional competence, must not in any way impair integrity or objectivity and must be consistent with the law.
- 160.4** A member shall not hold out to a client or an employer the assurance that any tax return prepared and tax advice offered are beyond challenge. Instead the member shall ensure that the client or the employer is aware of the limitations attaching to tax advice and services so that they do not misinterpret an expression of opinion as an assertion of fact.
- 160.5** A member shall only undertake taxation work on the basis of full disclosure by the client or employer. The member, in dealing with the tax authorities, must act in good faith and exercise care in relation to facts or information presented on behalf of the client or employer. It will normally be assumed that facts and information on which business tax computations are based were provided by the client or employer as the taxpayer, and the latter bears ultimate responsibility for the accuracy of the facts, information and tax computations. The member shall avoid assuming responsibility for the accuracy of facts, etc. outside his or her own knowledge.
- 160.6** When a member submits a tax return or tax computation for a taxpayer client or employer, the member is acting as an agent. The nature and responsibilities of the member's duties should be made clear to the client or employer, in the case of the former by a letter of engagement.
- 160.7** Tax advice or opinions of material consequence given to a client or an employer shall be recorded, either in the form of a letter or in a memorandum for the files.
- 160.8** In the case of a Licensed member, acting for a client, the member shall furnish copies of all tax computations to the client before submitting them to HMRC.
- 160.9** When a member learns of a material error or omission in a tax return of a prior year, or of a failure to file a required tax return, the member has a responsibility to advise promptly the client or employer of the error or omission and recommend that disclosure be made to HMRC. If the client or employer, after having had a reasonable time to reflect, does not correct the error, the member shall inform the client or employer in writing that it is not possible for the member to act for them in connection with that return or other related information submitted to the authorities. Funds dishonestly retained after discovery of an error or omission become

criminal property and their retention amounts to money laundering by the client or employer. It is also a criminal offence in the UK for a person, including an accountant, to become concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person. Other EU states have equivalent provisions. In each of these situations, the member shall comply with the duty to report the client's or employer's activities to the relevant authority, as explained in the following paragraphs.

- 160.10** A Licensed member whose client refuses to make disclosure of an error or omission to HMRC, after having had notice of it and a reasonable time to reflect, is obliged to report the client's refusal and the facts surrounding it to the MLRO if the member is within a firm, or to the appropriate authority (NCA in the UK) if the member is a sole practitioner. The member shall not disclose to the client or any one else that such a report has been made if the member knows or suspects that to do so would be likely to prejudice any investigation which might be conducted following the report.
- 160.11** An employed member in business whose employer refuses to make disclosure of an error or omission to HMRC:
- where the employed member in business has acted in relation to the error or omission, he or she should report the employer's refusal and the surrounding facts, including the extent of the member's involvement, to the appropriate authority as soon as possible, as this may provide the member with a defence to the offence of facilitating the retention of criminal property
  - where the employed member in business has not acted in relation to the error or omission, he or she is not obliged to report the matter to the authorities. However, if the member does make a report to the appropriate authority, such will not amount to a breach of the member's duty of confidentiality
- 160.12** Where a member in business is a contractor who is a 'relevant person' for the purposes of the *Money Laundering Regulations* in the UK or equivalent legislation in another EU State or other overseas jurisdictions, the member shall act in accordance with Paragraph 160.10 above, as though he were a Licensed member. However, where the member in business is not a 'relevant person', he should act in accordance with paragraph 160.11 above.
- 160.13** All members have a responsibility to make themselves familiar with anti-money laundering and terrorist financing legislation, sector specific guidance and guidance issued by AAT in this regard.
- 160.14** The tax authorities in many countries have extensive powers to obtain information. Members confronted by the exercise of these powers by the authorities should seek appropriate legal advice.

## Part B. Licensed members

Section 200	Introduction
Section 210	Professional appointment
Section 220	Conflicts of interest
Section 230	Second opinions
Section 240	Fees and other types of remuneration
Section 250	Marketing professional services
Section 260	Gifts and hospitality
Section 270	Custody of client assets
Section 280	Objectivity - all services
Section 290	Independence - assurance engagements

### Section 200. Introduction

**200.1** This part of the *Code* illustrates how the conceptual framework contained in Part A is to be applied in specific situations relevant to Licensed members. It should be read in conjunction with the general guidance in Part A.

The examples in the following sections are intended to illustrate how the conceptual framework is to be applied and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a Licensed member that may create threats to compliance with the fundamental principles. Therefore, it is not sufficient for a Licensed member merely to comply with the examples presented; rather, the framework must be applied to the particular circumstances faced.

**200.2** A Licensed member shall not knowingly engage in any business, occupation or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the rendering of professional services in accordance with the fundamental principles laid out in this *Code*.

**200.3** Members who provide accounting, taxation or related consultancy services on a self-employed basis in the UK must register on AAT's Scheme for Licensed members and comply with AAT's Regulations and policies for Licensed members. These AAT members are known as Licensed members. Although student and affiliate members (also full members who provide related self-employed services outside the UK) cannot register on the scheme, it is recommended that they comply with this *Code*, guidelines and regulations relating to Licensed members. Whether or not eligible for and required to register on AAT's Scheme for Licensed members, all members who provide self-employed accountancy, taxation or related consultancy services are included within the definition of 'Licensed members' in this *Code*.



**200.4** Members, unless appropriately authorised by a regulatory body recognised by statutory authority, may not, inter alia, perform the following functions in the UK:

- external audit of UK limited companies and other prescribed organisations in accordance with the provisions of the Companies Acts
- external audit of other bodies which require the services of a registered auditor
- activities regulated by the Financial Services Authority (FSA) including the undertaking of investment business and the provision of corporate finance advice to clients
- insolvency practice in accordance with the provisions of the relevant insolvency legislation.

### **Threats and safeguards**

**200.5** The nature and significance of the threats for a Licensed member may differ depending on whether they arise in relation to the provision of services to a financial statement audit client, a non-financial statement audit assurance client or a non-assurance client.

**200.6** Examples of circumstances that may create self-interest threats for a Licensed member include, but are not limited to:

- a financial interest in a client or jointly holding a financial interest with a client
- undue dependence on total fees from a client
- having a close business relationship with a client
- concern about the possibility of losing a client
- potential employment with a client
- contingent fees relating to an assurance engagement
- a loan to or from an assurance client or any of its directors or officers
- discovering a significant error when evaluating the results of a previous professional service performed by a member of staff working with or for the member.

**200.7** Examples of circumstances that may create self-review threats include, but are not limited to:

- the discovery of a significant error during a re-evaluation of the work of the Licensed member
- reporting on the operation of financial systems after being involved in their design or implementation
- having prepared the original data used to generate records that are the subject matter of the engagement
- a member of the assurance team being, or having recently been, a director or officer of that client
- a member of the assurance team being, or having recently been, employed by the client in a position to exert significant influence over the subject matter of the engagement
- performing a service for a client that directly affects the subject matter of the assurance engagement.

- 200.8** Examples of circumstances that may create advocacy threats include, but are not limited to:
- promoting shares in a listed entity when that entity is a financial statement audit client
  - acting as an advocate on behalf of an assurance client in litigation or disputes with third parties.
- 200.9** Examples of circumstances that may create familiarity threats include, but are not limited to:
- a member of the engagement team having a close or personal relationship with a director or officer of the client
  - a member of the engagement team having a close or personal relationship with an employee of the client who is in a position to exert direct and significant influence over the subject matter of the engagement
  - a former partner of the firm being a director or officer of the client or an employee in a position to exert direct and significant influence over the subject matter of the engagement
  - accepting gifts or preferential treatment from a client, unless the value is clearly insignificant
  - long association of senior personnel with the assurance client.
- 200.10** Examples of circumstances that may create intimidation threats include, but are not limited to:
- being threatened with dismissal or replacement in relation to a client engagement
  - an assurance client indicating that he will not award a planned non-assurance contract to the Licensed member if the Licensed member continues to disagree with the client's accounting treatment for a particular transaction
  - being threatened with litigation
  - being pressured to reduce inappropriately the quality or extent of work performed in order to reduce fees
  - feeling pressured to agree with the judgment of a client employee because the employee has more expertise on the matter in question.
- 200.11** A Licensed member may also find that specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorised. In either professional or business relationships, a Licensed member shall always be on the alert for such circumstances and threats.
- 200.12** Examples of safeguards created by the profession, legislation or regulation are described in paragraphs 100.12 to 100.16 of Part A of this *Code*.
- 200.13** In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards may be either firm-wide safeguards or safeguards which are specific to one particular engagement. A Licensed member shall in both cases exercise judgement to determine how to best deal with an identified threat.
- 200.14** Firm-wide safeguards in the work environment may include:
- development of a leadership culture within the firm that stresses the importance of compliance with the fundamental principles

- development of a leadership culture within the firm that establishes the expectation that members of an assurance team will act in the public interest
- policies and procedures to implement and monitor quality control of engagements
- documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level or when appropriate safeguards are not available or cannot be applied, terminate or decline the relevant engagement.
- for firms that perform assurance engagements, documented independence policies regarding the identification of threats to independence, the evaluation of the significance of these threats and the evaluation and application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level
- documented internal policies and procedures requiring compliance with the fundamental principles
- policies and procedures that will enable the identification of interests or relationships between the firm or members of engagement teams and clients
- policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single client
- using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client
- policies and procedures to prohibit individuals who are not members of an engagement team from inappropriately influencing the outcome of the engagement
- timely communication of a firm's policies and procedures, including any changes to them, to all partners and professional staff, and appropriate training and education on such policies and procedures
- designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's quality control system
- advising partners and professional staff of those assurance clients and related entities from which they must be independent
- a disciplinary mechanism to promote compliance with policies and procedures
- published policies and procedures to encourage and empower staff to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.

**200.15** Engagement-specific safeguards in the work environment may include:

- involving an additional member to review the work done or otherwise advise as necessary
- consulting an independent third party, such as a committee of independent directors, a professional regulatory body or another member
- discussing ethical issues with those charged with governance of the client
- disclosing to those charged with governance of the client the nature of services provided and extent of fees charged
- involving another firm to perform or re-perform part of the engagement
- rotating senior assurance team personnel.

**200.16** Depending on the nature of the engagement, a Licensed member may also be able to rely on safeguards that the client has implemented. However it is not possible to rely solely on such safeguards to reduce threats to an acceptable level.

**200.17** Safeguards within the client's systems and procedures may include: when a client appoints a Licensed member or a firm to perform an engagement, where appropriate persons other than management ratify or approve the appointment

- the client has competent employees with experience and seniority to make managerial decisions
- the client has implemented internal procedures that ensure objective choices in commissioning non-assurance engagements
- the client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's services.

## Section 210. Professional appointment

### Client acceptance and Continuance

**210.1** Before accepting a new client relationship, a licensed member shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, issues associated with the client (its owners, management or activities) that, if known, could threaten compliance with the fundamental principles.

Examples of such threats include:

- the client's involvement in illegal activities (such as money laundering)
- dishonesty
- questionable financial reporting practices
- other unethical behaviour.

**210.2** A licensed member shall evaluate the significance of any threats and if they are not clearly insignificant, safeguards shall be determined and applied as necessary to eliminate them or reduce them to an acceptable level.

Examples of safeguards include:

- obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities
- securing the client's commitment to address the questionable issues, for example, through improving corporate governance practices or internal controls.
- ensure that any concerns are addressed by way of a letter of engagement

**210.3** Quite separately from assessing the threat to compliance with the fundamental principles, the licensed member shall assess and mitigate the threat of the member's services being used to facilitate money laundering or terrorist financing, in accordance with the applicable anti-money laundering legislation. The *Money Laundering Regulations* apply when: a member enters a professional relationship with a client, which the member estimates will have an element of duration; the member acts in relation to a transaction or series of related transactions amounting to 15,000 euro or more; or there is a suspicion of money laundering.

**210.4** The requirements of a licensed member in ensuring compliance with their obligations under the *Money Laundering Regulations* can be found in AAT's Guidance on anti-money laundering legislation. Failure to comply with these requirements shall constitute a breach of the fundamental principle of professional behaviour.

**210.5** Where it is not possible to reduce the threats to an acceptable level, a licensed member shall decline to enter into the client relationship.

**210.6** Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the member to decline the engagement had that information been available earlier. A Licensed member shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a threat to compliance with the fundamental principles may be created by a client's unethical behaviour such as

improper earnings management or balance sheet valuations. If a Licensed member identifies a threat to compliance with the fundamental principles, the member shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the Licensed member shall consider terminating the client relationship where termination is not prohibited by law or regulation.

## Engagement acceptance

**210.7** The fundamental principle of professional competence and due care imposes an obligation on a licensed member to provide only those services that the licensed member is competent to perform. Before accepting a specific client engagement, a licensed member shall consider whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

**210.8** A licensed member shall evaluate the significance of identified threats and, if they are not clearly insignificant, safeguards must be applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:

- acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed
- acquiring knowledge of relevant industries or subject matters
- possessing or obtaining experience with relevant regulatory or reporting requirements
- assigning sufficient staff with the necessary competencies
- using experts where necessary
- agreeing on a realistic time frame for the performance of the engagement
- complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

**210.9** When a licensed member intends to rely on the advice or work of an expert, the licensed member shall determine whether such reliance is warranted. The licensed member shall consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

## Changes in a professional appointment

**210.10** A licensed member who is asked to replace an existing accountant, or who is considering tendering for an engagement currently held by an existing accountant, shall determine whether there are any reasons, professional or other, for not accepting the engagement, such as circumstances that threaten compliance with the fundamental principles. For example, there may be a threat to professional competence and due care if a licensed member accepts the engagement before knowing all the pertinent facts.

**210.11** A licensed member shall evaluate the significance of any threats. Safeguards shall be applied when necessary to eliminate any threats or reduce them to an acceptable level.

**210.12** Such safeguards may include:

- when replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing or predecessor accountant will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted.
- asking the predecessor accountant to provide known information on any facts or circumstances that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the predecessor accountant that may influence the decision to accept the appointment
- obtaining necessary information from other sources.

**210.13** If the proposed accountant is unable to communicate with the existing accountant, the proposed accountant should try to obtain information about any possible threats by other means such as through inquiries of third parties or background investigations on senior management or those charged with governance of the client.

**210.14** A licensed member may be asked to undertake work that is complementary or additional to the work of an existing accountant. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. In this circumstance a licensed member shall evaluate the significance of any such risks and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of a safeguard in this circumstance would be to notify the existing accountant of the proposed work which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

**210.15** An existing or predecessor accountant is bound by confidentiality, subject to legal exceptions. The extent to which the licensed member can, and should, as existing accountant, discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

- whether the client's permission to do so has been obtained
- the legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

In determining whether to communicate facts to a proposed accountant where he knows of suspects that a client is involved in money laundering or terrorist financing a licensed member shall be mindful of his responsibilities under Anti-Money Laundering legislation, particularly in relation to tipping off and prejudicing an investigation.

**210.16** The existing accountant In the absence of specific instructions by the client, an existing accountant should not ordinarily volunteer information about the client's affairs. Circumstances where it may be appropriate to disclose confidential information are set out in Section 140 of Part A of this *Code*.

**210.17** A Licensed member will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing or predecessor accountant. Once that permission is obtained, the existing or predecessor accountant shall comply with relevant laws and regulations governing such requests. Where the existing or predecessor accountant provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing or predecessor accountant, the proposed accountant shall take reasonable steps to obtain information about any possible threats by other means, such as through inquiries of third parties or background investigations of senior management or those charged with governance of the client.



## **Section 220. Conflicts of interest**

**220.1** A licensed member may be faced with a conflict of interest when performing a professional service. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- the licensed member provides a professional service related to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or
- the interests of the licensed member with respect to a particular matter and the interests of the client for whom the licensed member provides a professional service related to that matter are in conflict.

A licensed member shall not allow a conflict of interest to compromise professional or business judgment. When the professional service is an assurance service, compliance with the fundamental principle of objectivity also requires being independent of assurance clients in accordance with Sections 290 or 291 as appropriate.

**220.2** Examples of situations in which conflicts of interest may arise include:

- Providing a transaction advisory service to a client seeking to acquire an audit client of the firm, where the firm has obtained confidential information during the course of the audit that may be relevant to the transaction.
- Advising two clients at the same time who are competing to acquire the same company where the advice might be relevant to the parties' competitive positions.
- Providing services to both a vendor and a purchaser in relation to the same transaction.
- Preparing valuations of assets for two parties who are in an adversarial position with respect to the assets.
- Representing two clients regarding the same matter who are in legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership.
- Providing an assurance report for a licensor on royalties due under a licence agreement when at the same time advising the licensee of the correctness of the amount payable.
- Advising a client to invest in a business in which, for example, the spouse of the licensed member has a financial interest.
- Providing strategic advice to a client on its competitive position while having a joint venture or similar interest with a major competitor of the client.
- Advising a client on the acquisition of a business which the firm is also interested in acquiring.
- Advising a client on the purchase of a product or service while having a royalty or commission agreement with one of the potential vendors of that product or service.

**220.3** When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, a licensed member shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the licensed member at the time, would be likely to conclude that compliance with the fundamental principles is not compromised.

**220.4** When addressing conflicts of interest, including making disclosures or sharing information within the firm or network and seeking guidance of third parties, the licensed member shall remain alert to the fundamental principle of confidentiality.

**220.5** If the threat created by a conflict of interest is not at an acceptable level, the licensed member shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the licensed member shall decline to perform or discontinue professional services that would result in the conflict of interest; or shall terminate relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.

**220.6** Before accepting a new client relationship, engagement, or business relationship, a licensed member shall take reasonable steps to identify circumstances that might create a conflict of interest, including identification of:

- The nature of relevant interests and relationships between the parties involved; and
- The nature of the service and its implication for relevant parties.

The nature of the services and the relevant interests and relationships may change during the course of the engagement. This is particularly true when a licensed member is asked to conduct an engagement in a situation that may become adversarial, even though the parties who engage the member may not initially be involved in a dispute. The licensed member shall remain alert to such changes for the purpose of identifying circumstances that might create a conflict of interest.

**220.7** For the purpose of identifying interests and relationships that might create a conflict of interest, having an effective conflict identification process assists a licensed member to identify actual or potential conflicts of interest prior to determining whether to accept an engagement and throughout an engagement. This includes matters identified by external parties, for example clients or potential clients. The earlier an actual or potential conflict of interest is identified, the greater the likelihood of the member being able to apply safeguards, when necessary, to eliminate the threat to objectivity and any threat to compliance with other fundamental principles or reduce it to an acceptable level. The process to identify an actual or potential conflict of interest will depend on factors such as:

- The nature of the professional services provided.
- The size of the firm.
- The size and nature of the client base.
- The structure of the firm, for example, the number and geographic location of offices.

**220.8** If the firm is a member of a network, conflict identification shall include any conflicts of interest that the licensed member has reason to believe may exist or might arise due to interests and relationships of a network firm. Reasonable steps to identify such interests and relationships involving a network firm will depend on factors such as the nature of the professional services provided, the clients served by the network and the geographic location of all relevant parties.

**220.9** If a conflict of interest is identified, the licensed member shall evaluate:

- The significance of relevant interests or relationships; and
- The significance of the threats created by performing the professional service or services. In general, the more direct the connection between the professional service

and the matter on which the parties interests are in conflict, the more significant the threat to objectivity and compliance with the other fundamental principles will be.

**220.10** The licensed member shall apply safeguards, when necessary, to eliminate the threats to compliance with the fundamental principles created by the conflict of interest or reduce them to an acceptable level. Examples of safeguards include:

- Implementing mechanisms to prevent unauthorised disclosure of confidential information when performing professional services related to a particular matter for two or more clients whose interests with respect to that matter are in conflict. This could include:
  - Using separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality.
  - Creating separate areas of practice for speciality functions within the firm, which may act as a barrier to the passing of confidential client information from one practice area to another within a firm.
  - Establishing policies and procedures to limit access to client files, the use of confidentiality agreements signed by employees and partners of the firm and/or the physical and electronic separation of confidential information.
- Regular review of the application of safeguards by a senior individual not involved with the client engagement or engagements.
- Having a professional accountant who is not involved in providing the service or otherwise affected by the conflict, review the work performed to assess whether the key judgments and conclusions are appropriate.
- Consulting with third parties, such as a professional body, legal advisors, or another professional accountant.

**220.11** In addition, it is generally necessary to disclose the nature of the conflict of interest and the related safeguards, if any, to clients affected by the conflict and, when safeguards are required to reduce the threat to an acceptable level, to obtain their consent to the licensed member performing the professional services.

Disclosure and consent may take different forms, for example:

- General disclosure to clients of circumstances where the licensed member, in keeping with common commercial practice, does not provide services exclusively for any one client (for example, in a particular service in a particular market sector) in order for the client to provide general consent accordingly. Such disclosure might, for example, be made in the licensed member's standard terms and conditions for the engagement, as drafted into the mandatory letter of engagement.
- Specific disclosure to affected clients of the circumstances of the particular conflict, including a detailed presentation of the situation and a comprehensive explanation of any planned safeguards and the risks involved, sufficient to enable the client to make an informed decision with respect to the matter and to provide explicit consent accordingly.
- In certain circumstances, consent may be implied by the client's conduct where the licensed member has sufficient evidence to conclude that clients know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.

The licensed member shall determine whether the nature and significance of the conflict of interest is such that specific disclosure and explicit consent is necessary. For this purpose, the member shall exercise professional judgment in weighing the outcome of the evaluation of the circumstances that create a conflict of interest, including the parties that might be

affected, the nature of the issues that might arise and the potential for the particular matter to develop in an unexpected manner.

**220.12** Where a licensed member has requested explicit consent from a client and that consent has been refused by the client, the licensed member shall decline to perform or shall discontinue professional services that would result in the conflict of interest; or shall terminate relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level, such that consent can be obtained, after applying any relevant safeguards if necessary.

**220.13** When disclosure is verbal, or consent is verbal or implied, the licensed member is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the safeguards applied to reduce the threats to an acceptable level and the consent obtained.

**220.14** In certain circumstances, making specific disclosure for the purpose of obtaining explicit consent would result in a breach of confidentiality. Examples of such circumstances may include:

- Performing a transaction-related service for a client in connection with a hostile takeover of another client of the firm.
- Performing a forensic investigation for a client in connection with a suspected fraudulent act where the firm has confidential information obtained through having performed a professional service for another client who might be involved in the fraud.

The firm shall not accept or continue an engagement under such circumstances unless the following conditions are met:

- The firm does not act in an advocacy role for one client where this requires the firm to assume an adversarial position against the other client with respect to the same matter;
- Specific mechanisms are in place to prevent disclosure of confidential information between the engagement teams serving the two clients; and
- The firm is satisfied that a reasonable an informed third party, weighing all the specific facts and circumstances available to the licensed member at the time, would be likely to conclude that it is appropriate for the firm to accept or continue the engagement because a restriction on the firm's ability to provide the service would produce a disproportionate adverse outcome for the clients or other relevant third parties.

The licensed member shall document the nature of the circumstances, including the role that the licensed member is to undertake, the specific mechanisms in place to prevent disclosure of information between the engagement teams serving the two clients and the rationale for the conclusion that it is appropriate to accept the engagement.

## **Section 225. Responding to Non-Compliance with Laws and Regulations**

### **Purpose**

- 225.1** A member may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. The purpose of this section is to set out the member's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the member in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the client, including whether or not it is a public interest entity.
- 225.2** Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, by management or by other individuals working for or under the direction of a client which are contrary to the prevailing laws or regulations.
- 225.3** In some jurisdictions, there are legal or regulatory provisions governing how members should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the member has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.
- 225.4** A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the member are:
- to comply with the fundamental principles of integrity and professional behaviour
  - by alerting management or, where appropriate, those charged with governance of the client, to seek to:
    - enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
    - deter the commission of the non-compliance where it has not yet occurred; and
  - to take such further action as appropriate in the public interest.

## Scope

- 225.5** This section sets out the approach to be taken by a member who encounters or is made aware of non-compliance or suspected non-compliance with:
- laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and
  - other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which may be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

- 225.6** Some examples of laws and regulations which this section addresses include those that deal with:

- fraud, corruption and bribery
- money laundering, terrorist financing and proceeds of crime
- securities markets and trading
- banking and other financial products and services
- data protection
- tax and pension liabilities and payments
- environmental protection
- public health and safety.

- 225.7** Non-compliance may result in fines, litigation or other consequences for the client that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

- 225.8** A member who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders and the general public, is not required to comply with this section with respect to such matters.

- 225.9** This section does not address:

- Personal misconduct unrelated to the business activities of the client; and
- Non-compliance other than by the client or those charged with governance, management or other individuals working for or under the direction of the client. This includes, for example, circumstances where a member has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected non-compliance has been committed by that third party.

The member may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

## **Responsibilities of the Client's Management and Those Charged with Governance**

**225.10** Where a member becomes aware of a matter to which this section applies, the steps that the member takes to comply with this section shall be taken on a timely basis, having regard to the member's understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

## **Responsibilities of licensed members**

**225.11** Where a licensed member becomes aware of a matter to which this section applies, the steps that the member takes to comply with this section shall be taken on a timely basis, having regard to the member's understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

## **Determining Whether to Disclose the Matter to an Appropriate Authority**

**225.12** Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

**225.13** The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the licensed member may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- the entity is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts)
- the entity is regulated and the matter is of such significance as to threaten its license to operate
- the entity is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the entity's securities or pose a systemic risk to the financial markets
- products that are harmful to public health or safety would likely be sold by the entity
- the entity is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend on the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations

- whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation
- whether there are actual or potential threats to the physical safety of the member or other individuals.

**225.14** If the member determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this *Code*. When making such disclosure, the member shall act in good faith and exercise caution when making statements and assertions. The member shall also consider whether it is appropriate to inform the client of the member's intentions before disclosing the matter.

**225.15** In exceptional circumstances, the member may become aware of actual or intended conduct that the member has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the member shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this *Code*.

## Professional Services Other Than Audits of Financial Statements

### *Obtaining an Understanding of the Matter and Addressing It with Management and Those Charged with Governance*

**225.16** If a member engaged to provide a professional service other than an audit of financial statements becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the member shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may be about to occur.

**225.17** The member is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the member may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

**225.18** If the member identifies or suspects that non-compliance has occurred or may occur, the member shall discuss the matter with the appropriate level of management and, if the member has access to them and where appropriate, those charged with governance.

**225.19** Such discussion serves to clarify the member's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.



**225.20** The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:

- the nature and circumstances of the matter
- the individuals actually or potentially involved
- the likelihood of collusion
- the potential consequences of the matter
- whether that level of management is able to investigate the matter and take appropriate action.

*Communicating the Matter to the Entity's External Auditor*

**225.21** If the member is performing a non-audit service for an audit client of the firm, or a component of an audit client of the firm, the member shall communicate the non-compliance or suspected non-compliance within the firm, unless prohibited from doing so by law or regulation. The communication shall be made in accordance with the firm's protocols or procedures or, in the absence of such protocols and procedures, directly to the audit engagement partner.

**225.22** If the member is performing a non-audit service for an audit client of a network firm, or a component of an audit client of a network firm, the member shall consider whether to communicate the non-compliance or suspected non-compliance to the network firm. Where the communication is made, it shall be made in accordance with the network's protocols or procedures or, in the absence of such protocols and procedures, directly to the audit engagement partner.

**225.23** If the member is performing a non-audit service for a client that is not:

- an audit client of the firm or a network firm; or
- a component of an audit client of the firm or a network firm,

the member shall consider whether to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if any.

**225.24** Factors relevant to considering the communication in accordance with paragraphs 225.22 and 225.23 include:

- whether doing so would be contrary to law or regulation
- whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance
- whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action
- whether management or those charged with governance have already informed the entity's external auditor about the matter
- the likely materiality of the matter to the audit of the client's financial statements or, where the matter relates to a component of a group, its likely materiality to the audit of the group financial statements.

**225.25** In all cases, the communication is to enable the audit engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether and, if so, how it should be addressed in accordance with the provisions of this section.

*Considering Whether Further Action Is Needed*

**225.26** The member shall also consider whether further action is needed in the public interest.

**225.27** Whether further action is needed, and the nature and extent of it, will depend on factors such as:

- the legal and regulatory framework
- the appropriateness and timeliness of the response of management and, where applicable, those charged with governance
- the urgency of the matter
- the involvement of management or those charged with governance in the matter
- the likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.

**225.28** Further action by the member may include:

- disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so
- withdrawing from the engagement and the professional relationship where permitted by law or regulation.

**225.29** In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

- whether doing so would be contrary to law or regulation
- whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance
- whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.

**225.30** If the member determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this *Code*. When making such disclosure, the licensed member shall act in good faith and exercise caution when making statements and assertions. The licensed member shall also consider whether it is appropriate to inform the client of the licensed member intentions before disclosing the matter.

**225.31** In exceptional circumstances, the member may become aware of actual or intended conduct that the member has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the member shall exercise

professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this *Code*.

**225.32** Where the member determines that withdrawing from the engagement and the professional relationship would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the member's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the member and withdrawal may be the only available course of action.

**225.33** Where the member has withdrawn from the professional relationship they shall, on request by the proposed successor accountant, provide all such facts and other information concerning the identified or suspected non-compliance that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the audit appointment. The predecessor accountant shall do so, unless prohibited by law or regulation, for example the offence of 'tipping off' in relation to Anti Money Laundering. If the proposed successor accountant is unable to communicate with the predecessor accountant, the proposed successor accountant shall take reasonable steps to obtain information about the circumstances of the change of appointment by other means, such as through inquiries of third parties or background investigations of management or those charged with governance.

**225.34** As consideration of the matter may involve complex analysis and judgments, the licensed member may consider consulting internally, obtaining legal advice to understand the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

#### *Documentation*

**225.35** In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the member is encouraged to document:

- the matter
- the results of discussion with management and, where applicable, those charged with governance and other parties
- how management and, where applicable, those charged with governance have responded to the matter
- the courses of action the member considered, the judgments made and the decisions that were taken
- how the member is satisfied that the member has fulfilled the responsibility set out in paragraph 225.26.

## **Section 230. Second opinions**

- 230.1** A licensed member may be asked to provide a second opinion on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions by or on behalf of a company or an entity that is not an existing client. This may give rise to threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant, or is based on inadequate evidence. The significance of the threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgement.
- 230.2** When asked to provide such an opinion, a licensed member shall evaluate the significance of the threats. Unless they are not clearly insignificant, safeguards must be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include seeking client permission to contact the existing accountant, describing the limitations surrounding any opinion in communications with the client and providing the existing accountant with a copy of the opinion.
- 230.3** If the company or entity seeking the opinion will not permit communication with the existing accountant, a licensed member shall determine whether it is appropriate to provide the opinion sought, taking all the circumstances into account.

## **Section 240. Fees and other types of remuneration**

- 240.1** When entering into negotiations regarding professional services, a licensed member may quote whatever fee is deemed to be appropriate. The fact that one licensed member or member of another IFAC member body may quote a fee lower than another is not in itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards for that price.
- 240.2** The existence and significance of such threats will depend on factors such as the level of fee quoted and the services to which it applies. In view of these potential threats, safeguards shall be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Safeguards which may be adopted include:
- making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee
  - assigning appropriate time and qualified staff to the task.
- 240.3** Contingent fees are widely used for certain types of non-assurance engagements (contingent fees for non-assurance services provided to an assurance client are discussed in Section 290 of this part of the *Code*). They may, however, give rise to threats to compliance with the fundamental principles in certain circumstances. They may give rise to a self-interest threat to objectivity. The significance of such threats will depend on factors including:
- the nature of the engagement
  - the range of possible fee amounts
  - the basis for determining the fee
  - whether the outcome or result of the transaction is to be reviewed by an independent third party.
- 240.4** A licensed member shall evaluate the significance of such threats and, if they are not clearly insignificant, safeguards must be considered and applied as necessary to eliminate or reduce them to an acceptable level. Such safeguards may include:
- an advance written agreement with the client as to the basis of remuneration
  - disclosure to intended users of the work performed by the licensed member and the basis of remuneration
  - quality control policies and procedures
  - review by an objective third party of the work performed by the licensed member.

## Commission

- 240.5** In certain circumstances, a licensed member may receive a referral fee or commission relating to a client. For example, where the licensed member does not provide the specific service required, a fee may be received for referring a continuing client to another licensed member or member of another IFAC member body or other expert. A licensed member may receive a commission from a third party (for example, a software vendor) in connection with the sale of goods or services to a client.
- 240.6** A member who receives a commission or other reward in return for the introduction of a client should be aware that if such an introduction is made in the course of a fiduciary relationship with the client, the member will be accountable for the commission or reward to the client. That means that the member will, under UK and other common law regimes, be bound to pass over the commission or reward to the client, unless the latter, having been informed of the nature and amount of the commission or reward, agrees that the member can keep it.
- 240.7** Accepting such a referral fee or commission may give rise to self-interest threats to objectivity and professional competence and due care.
- 240.8** A licensed member may also pay a referral fee to obtain a client, for example, where the client continues as a client of another licensed member or member of another IFAC member body but requires specialist services not offered by the existing accountant. The payment of such a referral fee may also create a self-interest threat to objectivity and professional competence and due care.
- 240.9** A licensed member shall not pay or receive a referral fee or commission, unless the licensed member has established safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards may include:
- disclosing to the client any arrangements to pay a referral fee to another licensed member or member of another IFAC member body for the work referred
  - disclosing to the client any arrangements to receive a referral fee for referring the client to another licensed member
  - obtaining advance agreement from the client for commission arrangements in connection with the sale by a third party of goods or services to the client.
- 240.10** A licensed member may purchase all or part of another firm on the basis that payments will be made to individuals formerly owning the firm or to their heirs or estates. Such payments are not regarded as commissions or referral fees for the purpose of paragraphs 240.5 – 240.7 above.

## **Section 250. Marketing professional services**

**250.1** When a licensed member solicits new work through advertising or other forms of marketing, there may be potential threats to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behaviour is created if services, achievements or products are marketed in a way that is inconsistent with that principle.

**250.2** A licensed member shall not bring the profession into disrepute when marketing professional services. The licensed member shall be honest and truthful and should not:

- make exaggerated claims for services offered, qualifications possessed or experience gained
- make disparaging references or unsubstantiated comparisons to the work of another.

If the licensed member is in doubt whether a proposed form of advertising or marketing is appropriate, the licensed member shall consult with AAT.

## **Section 260. Gifts and hospitality**

- 260.1** A licensed member, or a close or personal relation, may be offered gifts and hospitality from a client. Such an offer ordinarily gives rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity may be created if a gift from a client is accepted; intimidation threats to objectivity may result from the possibility of such offers being made public.
- 260.2** The existence and significance of such threats will depend on the nature, value and intent behind the offer. Where gifts or hospitality which a reasonable and informed third party, having knowledge of all relevant information, would consider clearly insignificant are made, a licensed member may conclude that the offer is made in the normal course of business without the specific intent to influence decision making or to obtain information. In such cases, the licensed member may generally conclude that there is no significant threat to compliance with the fundamental principles.
- 260.3** If evaluated threats are not clearly insignificant, safeguards must be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a licensed member shall not accept such an offer.
- 260.4** A licensed member should also consider potential criminal offences under the Bribery Act 2010 which may be relevant.



## **Section 270. Custody of client assets**

- 270.1** A licensed member shall not assume custody of client monies or other assets unless permitted to do so by law and, if so, in compliance with any additional legal duties imposed on a licensed member holding such assets.
- 270.2** The holding of client assets creates threats to compliance with the fundamental principles; for example, there is a self-interest threat to professional behaviour and may be a self-interest threat to objectivity arising from holding client assets. A licensed member entrusted with money (or other assets) belonging to others shall therefore:
- keep such assets separately from personal or firm assets
  - use such assets only for the purpose for which they are intended
  - at all times be ready to account for those assets and any income, dividends, or gains generated, to any persons entitled to such accounting; and
  - comply with all relevant laws and regulations relevant to the holding of and accounting for such assets.
- 270.3** As part of client and engagement acceptance procedures for services that may involve the holding of client assets, a licensed member shall make appropriate inquiries about the source of such assets and consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the member shall comply with the provisions of section 225 of the *Code*.

## **Section 280. Objectivity – all services**

- 280.1** A licensed member shall consider, when providing any professional service, whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or directors, officers or employees of a client. For example, a familiarity threat to objectivity may be created from a close personal or business relationship.
- 280.2** A licensed member who provides an assurance service is required to be independent of the assurance client. Independence of mind and appearance is necessary to enable the licensed member to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest or undue influence of others. Sections 290 and 291 provides specific guidance on independence requirements for licensed members when performing review and assurance engagements.
- 280.3** The existence of threats to objectivity when providing any professional service will depend upon the particular circumstances of the engagement and the nature of the work that the licensed member is performing.
- 280.4** A licensed member shall evaluate the significance of identified threats and, if they are not clearly insignificant, safeguards must be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:
- withdrawing from the engagement team
  - supervisory procedures
  - terminating the financial or business relationship giving rise to the threat
  - discussing the issue with higher levels of management within the firm
  - discussing the issue with those charged with governance of the client.
- If safeguards cannot eliminate or reduce the threat to an acceptable level a licensed member shall decline or terminate the relevant engagement.

## Section 290. Independence – review and assurance engagements

Sections 290 and 291 provides specific guidance on independence requirements for licensed members when performing review and assurance engagements. The full provisions relating to this can be found within the: *AAT Code of Professional Ethics: independence requirements for review and assurance engagements*, which is available on the AAT website.

**290.1** These sections address the independence requirements for review and assurance engagements, which are assurance engagements in which a licensed member expresses a conclusion on financial statements. Such engagements comprise review engagements to report on a complete set of financial statements and a single financial statements and assurance engagements. Assurance engagements may be assertion-based or direct reporting. In either case they involve three separate parties: a licensed member or member of another IFAC member body, a responsible party and intended users.

**290.2** In certain circumstances involving review engagements where the review includes a restriction on use and distribution and provided certain conditions are met, the independence requirements in this section may be modified as provided for in paragraphs 290.500 to 290.514 of *the AAT Code of Professional Ethics: independence requirements for review and assurance engagements*.

**290.3** In the case of a review or assurance engagement it is in the public interest and, therefore, required by the fundamental principles set out in this *Code*, that members of review or assurance teams, firms and, when applicable, network firms be independent of review or assurance clients. The independence requirements that apply to audit and other insurance engagements are not applicable to compilation of financial statements. However, the fundamental principles apply to all professional and business activities.

**290.4** Licensed members shall be mindful that there are certain factors, which by their nature are a threat to independence and objectivity in any professional role and consider appropriate safeguard. These areas of risk include:

- family and other personal or business relationships
- loans
- beneficial interests in shares and other investments
- gifts and hospitality.

**290.5** Independence requires:

- **Independence of mind**

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity and exercise objectivity and professional scepticism.

- **Independence in appearance**

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would be likely to conclude weighing all the facts and circumstances, that a firm's, or a member of the review or assurance team's, integrity, objectivity or professional scepticism has been compromised.

## A conceptual approach to independence

**290.6** The conceptual framework approach shall be applied by members to:

- identify threats to independence
- evaluate the significance of the threats identified and if they are not clearly insignificant
- apply safeguards in cases when the threats are not clearly insignificant, identifying and applying appropriate safeguards to eliminate or reduce the threats to an acceptable level.

When a member determines that appropriate safeguards are not available or cannot be applied to eliminate the threats or reduce them to an acceptable level, the member shall eliminate the circumstance or relationship creating the threats or decline or terminate the review or assurance engagement.

A member shall use professional judgment in applying this conceptual framework.

**290.7** Many different circumstances, or combination of circumstances, may be relevant in assessing threats to independence. It is impossible to define every situation that creates threats to independence and specify the appropriate safeguarding action that should be taken. In addition, the nature of review or assurance engagements may differ and consequently different threats may exist, requiring the application of different safeguards. The conceptual framework approach accommodates many variations in circumstances that create threats to independence and can deter a member from concluding that a situation is permitted if it is not specifically prohibited.

**290.8** In deciding whether to accept or continue an engagement or whether a particular individual may be a member of the review team, a firm shall identify and evaluate threats to independence. If the threats are not at an acceptable level and the decision is whether to accept an engagement or include a particular individual on the review or assurance team, the firm shall determine whether safeguards are available to eliminate the threats or reduce them to an acceptable level. If the decision is whether to continue an engagement, the firm shall determine whether any existing safeguards will continue to be effective to eliminate the threats or reduce them to an acceptable level or whether other safeguards will need to be applied or whether the engagement needs to be terminated. Whenever new information about a threat to independence comes to the attention of the firm during the engagement, the firm shall evaluate the significance of the threat in accordance with the conceptual framework approach.

**290.9** Detailed guidance on the application of the conceptual framework to review and assurance engagements is contained within the *AAT Code of Professional Ethics: independence requirements for review and assurance engagements*, which is available on the AAT website.

## Part C. Members in business

Section 300 Introduction

Section 310 Potential conflicts

Section 320 Preparation and reporting of information

Section 330 Acting with sufficient expertise

Section 340 Financial interests

Section 350 Inducements

### Section 300. Introduction

- 300.1** This part of the *Code* illustrates how the conceptual framework contained in Part A is to be applied in specific situations relevant to members in business. It should be read in conjunction with the general guidance in Part A.
- 300.2** Investors, creditors, employers and other sectors of the business community, as well as governments and the public at large, all may rely on the work of members in business. Members in business may be solely or jointly responsible for the preparation and reporting of financial and other information, which both their employing organisations and third parties may rely on. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters.
- 300.3** A member in business may be, for example, a salaried employee, a partner, director (whether executive or non-executive) an owner manager, a volunteer or another working for one or more employing organisations. The legal form of the relationship between the member in business and the employing organisation has no bearing on the responsibility of the member to comply with the fundamental principles laid out in this *Code*.
- 300.4** A member in business has a responsibility to further the legitimate aims of their employing organisation. This *Code* does not seek to hinder a member in business from properly fulfilling that responsibility but consider circumstances in which conflicts may be created with the duty to comply with the fundamental principles.
- 300.5** A member in business may hold a senior position within an organisation. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A member in business is expected, therefore, to encourage an ethics-based culture in an employing organisation that emphasises the importance that senior management places on ethical behaviour.

**300.6** A member in business shall not knowingly engage in any business, occupation or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.

**300.7** The examples presented in the following sections are intended to illustrate how the conceptual framework is to be applied and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a member in business that may create threats to compliance with the principles. Consequently, it is not sufficient for a member in business merely to comply with the examples; rather, the framework must be applied to the particular circumstances faced.

### **Threats and safeguards**

**300.7** Examples of circumstances that may create self-interest threats for a member in business include, but are not limited to:

- financial interests, loans or guarantees
- receipt of incentive compensation arrangements
- inappropriate personal use of corporate assets
- concern over employment security
- commercial pressure from outside the employing organisation
- commissions.

**300.8** Circumstances that may create self-review threats include, but are not limited to, business decisions or data being subject to review and justification by the same member in business responsible for making those decisions or preparing that data.

**300.9** When furthering the legitimate goals and objectives of their employing organisations members in business may promote the organisation's position, provided any statements made are neither false nor misleading. Such actions generally would not create an advocacy threat.

**300.10** Examples of circumstances that may create familiarity threats include, but are not limited to:

- being responsible for the employing organisation's financial reporting when an immediate or close family member employed by the entity makes decisions that affect the entity's financial reporting.
- long association with business contacts influencing business decisions
- acceptance of a gift or preferential treatment, unless the value is clearly insignificant.

**300.11** Examples of circumstances that may create intimidation threats include, but are not limited to:

- threat of dismissal or replacement of the member in business or their close or personal relation or associate over a disagreement about the application of an accounting principle or the way in which financial information is to be reported

- a dominant personality attempting to influence the decision making process, for example with regard to the awarding of contracts or the application of an accounting principle.
- 300.12** Members in business may also find that specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorised. In all professional and business relationships, members in business shall always be on the alert for such circumstances and threats.
- 300.13** Examples of safeguards created by the profession, legislation or regulation are detailed from paragraphs 100.12 onwards (regarding 'Safeguards created by the profession, legislation or regulation').
- 300.14** Safeguards in the work environment include, but are not restricted to:
- the employing organisation's systems of corporate oversight or other oversight structures
  - the employing organisation's ethics and conduct programmes
  - recruitment procedures in the employing organisation emphasising the importance of employing high calibre competent staff strong internal controls
  - appropriate disciplinary processes
  - leadership that stresses the importance of ethical behaviour and the expectation that employees will act in an ethical manner
  - policies and procedures to implement and monitor the quality of employee performance
  - timely communication of the employing organisation's policies and procedures, including any changes to them, to all employees and appropriate training and education on such policies and procedures
  - policies and procedures to empower and encourage employees to communicate to senior levels within the employing organisation any ethical issues that concern them without fear of retribution
  - consultation with another appropriate professional.
- 300.15** There may be circumstances where a member in business believes that unethical behaviour or actions by others or by him or herself cannot be avoided or will continue to occur within the employing organisation. In such circumstances, the member in business shall consider seeking legal advice. In those extreme situations where all available safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a member in business may conclude that it is appropriate to resign from the employing organisation.

## **Section 310. Conflicts of interest**

**310.1** A member shall not allow a conflict of interest to compromise professional or business judgment. A member in business may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The member undertakes a professional activity related to a particular matter for two or more parties whose interests in respect of that matter are in conflict; or
- The interests of the member with respect to a particular matter and the interests of a party for whom the member undertakes a professional activity related to that matter are in conflict.

A party may include an employing organisation, a vendor, a customer, a lender, a shareholder or another party.

**310.2** Examples of situations in which conflicts of interest may arise include:

- serving in a management or governance position for two employing organisations and acquiring confidential information from one employing organisation that could be used by the member to the advantage or disadvantage of the other employing organisation.
- Undertaking a professional activity for each of two parties in a partnership employing the member to assist them to dissolve their partnership.
- Preparing financial information for certain members of management of the entity employing the member who are seeking to undertake a management buy-out.
- Being responsible for selecting a vendor for the member's employing organisation when an immediate family member of the member could benefit financially from the transaction.
- Serving in a governance capacity in an employing organisation that is approving certain investments for the company where one of those specific investments will increase the value of the personal investment portfolio of the member or an immediate family member.

**310.3** When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, a member in business shall exercise professional judgment and be alert to all interests and relationships that a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at the time, would be likely to conclude might compromise compliance with the fundamental principles.

**310.4** When addressing a conflict of interest, a member in business is encouraged to seek guidance from within the employing organisation or from others, such as a professional body, legal counsel or another professional accountant. When making disclosures or sharing information within the employing organisation and seeking guidance of third parties, the member shall remain alert to the fundamental principle of confidentiality.

**310.5** If the threat created by a conflict of interest is not at an acceptable level, the member in business shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the member shall decline to undertake, or discontinue the professional activity that would result in the conflict of interest;



or shall terminate the relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.

**310.6** In identifying whether a conflict of interest exists or may be created, a member in business shall take reasonable steps to determine:

- The nature of the relevant interests and relationships between the parties involved; and
- The nature of the activity and its implications for relevant parties.

The nature of the activities and the relevant interests and relationships may change over time. The member shall remain alert to such changes for the purposes of identifying circumstances that might create a conflict of interest.

**310.7** If a conflict of interest is identified, the member in business shall evaluate:

- The significance of relevant interests or relationships; and
- The significance of the threats created by undertaking the professional activity or activities. In general, the more direct the connection between the professional activity and the matter on which the parties interests are in conflict, the more significant the threat to objectivity and compliance with the other fundamental principles will be.

**310.8** The member in business shall apply safeguards, when necessary, to eliminate the threats to compliance with the fundamental principles created by the conflict of interest or reduce them to an acceptable level. Depending on the circumstances giving rise to the conflict of interest, application of one or more of the following safeguards may be appropriate:

- Restructuring or segregating certain responsibilities and duties.
- Obtaining appropriate oversight, for example, acting under the supervision of an executive or non-executive director. Withdrawing from the decision-making process related to the matter giving rise to the conflict of interest.
- Consulting with third parties, such as a professional body, legal counsel or another professional accountant.

**310.9** In addition, it is generally necessary to disclose the nature of the conflict to the relevant parties, including to the appropriate levels within the employing organisation and, when safeguards are required to reduce the threat to an acceptable level, to obtain their consent to the member in business undertaking the professional activity. In certain circumstances, consent may be implied by a party's conduct where the member has sufficient evidence to conclude that parties know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.

**310.10** When disclosure is verbal, or consent is verbal or implied, the member in business is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the safeguards applied to reduce the threats to an acceptable level and the consent obtained.

**310.11** A member in business may encounter other threats to compliance with the fundamental principles. This may occur, for example, when preparing or reporting financial information as a result of undue pressure from others within the employing organisation or financial, business or personal relationships that close or immediate family members of the member have with the employing organisation. Guidance on managing such threats is covered by Sections 320 and 340 of the *Code*.

## **Section 320. Preparation and reporting of information**

- 320.1** Members in business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include financial or management information, for example, forecasts and budgets, financial statements, management discussion and analysis and the management letter of representation provided to the auditors as part of an audit of financial statements. A member in business shall prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.
- 320.2** A member in business who has responsibility for the preparation or approval of the general purpose financial statements of an employing organisation shall be satisfied that those financial statements are presented in accordance with the applicable financial reporting standards.
- 320.3** A member in business shall take reasonable steps to maintain information for which the member in business is responsible in a manner that:
- describes clearly the true nature of business transactions, assets or liabilities;
  - classifies and records information accurately and in a timely and proper manner; and
  - represents the facts accurately and completely in all material respects.
- 320.4** Threats to compliance with the fundamental principles, for example self-interest or intimidation threats to integrity, objectivity or professional competence and due care, are created where a member in business is pressured (either externally or by the possibility of personal gain) to prepare or report information in a misleading way or to become associated with misleading information through the actions of others.
- 320.5** The significance of such threats will depend on factors such as the source of the pressure and the corporate culture of the organisation. The member in business shall be alert to the principle of integrity, which imposes an obligation on all members to be straightforward and honest in all professional and business relationships. Where the threats arise from compensation and incentive arrangements, the guidance in section 340 of the *Code* is relevant.
- 320.6** The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards include consultation with superiors within the employing organisation, the audit committee or those charged with governance, or with a relevant professional body.
- 320.7** Where it is not possible to reduce the threat to an acceptable level, a member in business shall refuse to be or remain associated with information the member determines is misleading. A member in business may have been unknowingly associated with misleading information. Upon becoming aware of this, the member in business shall take steps to be disassociated from that information. In determining whether there is a requirement to report the circumstances outside the organisation, the member in business may consider obtaining legal advice. In addition, the member in business may consider whether to resign.

## **Section 330. Acting with sufficient expertise**

**330.1** The fundamental principle of professional competence and due care requires that a member in business shall only undertake significant tasks for which the member in business has, or can obtain, sufficient specific training or experience. However, if the member in business has adequate support, usually in the form of supervision from an individual who has the necessary training and experience, then it may be possible to undertake appropriate significant tasks. A member in business shall not intentionally mislead an employer as to the level of expertise or experience possessed and a member in business shall seek appropriate expert advice and assistance when required.

**330.2** Circumstances that create a threat to the member in business performing duties with the appropriate degree of professional competence and due care include:

- insufficient time for properly performing or completing the relevant duties
- incomplete, restricted or otherwise inadequate information for performing the duties properly
- insufficient experience, training and/or education
- inadequate resources for the proper performance of the duties.

**330.3** The significance of such threats will depend on factors such as the extent to which the member in business is working with others, their relative seniority in the business and the level of supervision and review applied to the work. The member in business shall evaluate the significance of the threats and, if they are not clearly insignificant, shall consider and apply safeguards as necessary to eliminate them or reduce them to an acceptable level. Safeguards that may be considered include:

- obtaining additional advice or training
- ensuring that there is adequate time available for performing the relevant duties
- obtaining assistance from someone with the necessary expertise
- consulting, where appropriate, with:
  - superiors within the employing organisation
  - independent experts
  - the relevant professional body.

**330.4** Where threats cannot be eliminated or reduced to an acceptable level, members in business shall determine whether to refuse to perform the duties in question. If the member in business determines that refusal is appropriate the reasons for doing so shall be clearly communicated to the appropriate parties.

**330.5** Before resigning it is strongly recommended that members obtain appropriate legal advice.

## **Section 340. Financial interests, compensation and incentives linked to financial reporting and decision-making**

**340.1** Members in business may have financial interests, including those arising from compensation or incentive arrangements, or may know of financial interests of close or personal relations or associates, that, in certain circumstances, may create threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or confidentiality may be created through the existence of the motive and opportunity to manipulate price sensitive information in order to gain financially. Examples of circumstances that may create self-interest threats include, but are not limited to situations where the member in business or close or personal relation or associate:

- holds a direct or indirect financial interest in the employing organisation and the value of that financial interest could be directly affected by decisions made by the member in business
- is eligible for a profit related bonus and the value of that bonus could be directly affected by decisions made by the member in business
- holds, directly or indirectly, deferred bonus share entitlements or share options in the employing organisation, the value of which could be directly affected by decisions made by the member in business
- otherwise participates in compensation arrangements which provide incentives to achieve performance targets or to support efforts to maximise the value of the employing organisation's shares, for example, through participation in long-term incentive plans which are linked to certain performance conditions being met.

**340.2** Self-interest threats arising from compensation or incentive arrangements may be further compounded by pressure from superiors or peers in the employing organisation who participate in the same arrangements. For example, such arrangements often entitle participants to be awarded shares in the employing organisation at little or no cost to the employee provided certain performance criteria are met. In some cases the value of the shares awarded may be significantly greater than the base salary of the member in business.

**340.3** A member in business shall not manipulate information or use confidential information for personal gain or for the financial gain of others. The more senior the position that the member in business holds, the greater the ability and opportunity to influence financial reporting and decision making and the greater the pressure there might be from superiors and peers to manipulate information. In such situations, the member in business shall be particularly alert to the principle of integrity, which imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships.

**340.4** In evaluating the significance of such a threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, members in business shall evaluate the nature of the financial interest. This includes evaluating the significance of the financial interest and whether it is direct or indirect. Clearly, what constitutes a significant or valuable stake in an organisation will vary from individual to individual, depending on personal circumstances.

**340.5** The significance of any threat created by financial interests, shall be evaluated and safeguards applied, when necessary, to eliminate the threat or reduce it to an acceptable level. In evaluating the significance of any threat, and, when necessary, determining the appropriate safeguards to be applied, a member in business shall evaluate the nature of the interest. What constitutes a significant interest will depend upon personal circumstances. Examples of such safeguards include:

- policies and procedures for a committee independent of management to determine the level or form of remuneration of senior management
- disclosure of all relevant interests, and of any plans to trade in relevant shares to those charged with the governance of the employing organisation, in accordance with any internal policies
- consultation, where appropriate, with superiors within the employing organisation
- consultation, where appropriate, with those charged with the governance of the employing organisation or relevant professional bodies
- internal and external audit procedures
- up to date education on ethical issues and the legal restrictions and other regulations around potential insider trading.

## Section 350. Inducements

### Receiving offers

- 350.1** A member in business or their close or personal relation may be offered an inducement. Inducements may take various forms, including gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty.
- 350.2** Offers of inducements may create threats to compliance with the fundamental principles. When a member in business or an immediate or close family member is offered an inducement, the member in business shall evaluate the situation. Self-interest threats to objectivity or confidentiality are created where an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behaviour or obtain confidential information. Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the member in business or their close or personal relation.
- 350.3** The existence and significance of such threats will depend on the nature, value and intent behind the offer. If a reasonable and informed third party, having knowledge of all relevant information, would consider the inducement insignificant and not intended to encourage unethical behaviour, then a member in business may conclude that the offer is made in the normal course of business and may generally conclude that there is no significant threat to compliance with the fundamental principles. If evaluated threats are not clearly insignificant, safeguards shall be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a member in business shall not accept the inducement. As the real or apparent threats to compliance with the fundamental principles do not merely arise from acceptance of an inducement but, sometimes, merely from the fact of the offer having been made, the licensed member shall adopt additional safeguards. A member in business shall assess the risk associated with all such offers and consider whether the following actions should be taken:
- where such offers have been made, immediately inform higher levels of management or those charged with governance of the employing organisation
  - inform third parties of the offer – for example, a professional body or the employer of the individual who made the offer; a member in business shall, however, consider seeking legal advice before taking such a step
  - advise close or personal relations or associates of relevant threats and safeguards where they are potentially in positions that might result in offers of inducements, for example as a result of their employment situation
  - inform higher levels of management or those charged with governance of the employing organisation where close or personal relations are employed by competitors or potential suppliers of that organisation.

The attention of the members is drawn to the Bribery Act 2010 as referenced in section 260.4 above.

## **Making offers**

- 350.5** A member in business may be in a situation where the member in business is expected to, or is under other pressure to, offer inducements to influence the judgement of another individual or organisation, influence a decision-making process or obtain confidential information.
- 350.6** Such pressure may come from within the employing organisation, for example, from a colleague or superior. It may also come from an external individual or organisation suggesting actions or business decisions that would be advantageous to the employing organisation possibly influencing the member in business improperly.
- 350.7** A member in business shall not offer an inducement to improperly influence the professional judgement of a third party.
- 350.8** Where the pressure to offer an unethical inducement comes from within the employing organisation, the member shall follow the principles and guidance regarding ethical conflict resolution set out in Part A of this *Code*.

## Section 360. Responding to Non-Compliance with Laws and Regulations

### Purpose

**360.1** A member in business may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out professional activities. The purpose of this section is to set out the member's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the member in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the employing organisation, including whether or not it is a public interest entity.

**360.2** Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by the member's employing organisation or by those charged with governance, by management, or by other individuals working for or under the direction of the employing organisation which are contrary to the prevailing laws or regulations.

**360.3** In some jurisdictions, there are legal or regulatory provisions governing how members should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the member has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the relevant party prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

**360.4** A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the member are:

- To comply with the fundamental principles of integrity and professional behaviour;
- By alerting management or, where appropriate, those charged with governance of the employing organisation, to seek to:
  - enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
  - deter the commission of the non-compliance where it has not yet occurred; and
- To take such further action as appropriate in the public interest.



## Scope

- 360.5** This section sets out the approach to be taken by a member who encounters or is made aware of non-compliance or suspected non-compliance with:
- laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the employing organisation's financial statements; and
  - other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organisation's financial statements, but compliance with which may be fundamental to the operating aspects of the employing organisation's business, to its ability to continue its business, or to avoid material penalties.
- 360.6** Examples of laws and regulations which this section addresses include those that deal with:
- fraud, corruption and bribery
  - money laundering, terrorist financing and proceeds of crime
  - securities markets and trading
  - banking and other financial products and services
  - data protection
  - tax and pension liabilities and payments
  - environmental protection
  - public health and safety.
- 360.7** Non-compliance may result in fines, litigation or other consequences for the employing organisation that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.
- 360.8** A member who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the employing organisation, its stakeholders and the general public, is not required to comply with this section with respect to such matters.
- 360.9** This section does not address:
- personal misconduct unrelated to the business activities of the employing organisation; and
  - non-compliance other than by the employing organisation or those charged with governance, management, or other individuals working for or under the direction of the employing organisation.

The member may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

## **Responsibilities of the Employing Organisation's Management and Those Charged with Governance**

**360.10** It is the responsibility of the employing organisation's management, with the oversight of those charged with governance, to ensure that the employing organisation's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance by the employing organisation or by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the employing organisation.

## **Responsibilities of Members in Business**

**360.11** Many employing organisations have established protocols and procedures (for example, an ethics policy or internal whistle-blowing mechanism) regarding how non-compliance or suspected non-compliance by the employing organisation should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the member's employing organisation, the member shall consider them in determining how to respond to such non-compliance.

**360.12** Where a member becomes aware of a matter to which this section applies, the steps that the member takes to comply with this section shall be taken on a timely basis, having regard to the member's understanding of the nature of the matter and the potential harm to the interests of the employing organisation, investors, creditors, employees or the general public.

## **Responsibilities of Senior Members in Business**

**360.13** Senior professional accountants in business ("senior members") are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organisation's human, financial, technological, physical and intangible resources. Because of their roles, positions and spheres of influence within the employing organisation, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance than other professional accountants within the employing organisation.

### *Obtaining an Understanding of the Matter*

**360.14** If, in the course of carrying out professional activities, a senior member becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the member shall obtain an understanding of the matter, including:

- the nature of the act and the circumstances in which it has occurred or may occur;
- the application of the relevant laws and regulations to the circumstances; and
- the potential consequences to the employing organisation, investors, creditors, employees or the wider public.

**360.15** A senior member is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the member's role within the employing organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the member may cause, or take appropriate steps to cause, the matter to be investigated internally. The member may also consult on a confidential basis with others within the employing organisation or a professional body, or with legal counsel.

### *Addressing the Matter*

**360.16** If the senior member identifies or suspects that non-compliance has occurred or may occur, the member shall, subject to paragraph 360.11, discuss the matter with the member's immediate superior, if any, to enable a determination to be made as to how the matter should be addressed. If the member's immediate superior appears to be involved in the matter, the member shall discuss the matter with the next higher level of authority within the employing organisation.

**360.17** The senior member shall also take appropriate steps to:

- have the matter communicated to those charged with governance to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfil their responsibilities;
- comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority;
- have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated;
- reduce the risk of re-occurrence; and
- seek to deter the commission of the non-compliance if it has not yet occurred.

**360.18** In addition to responding to the matter in accordance with the provisions of this section, the senior member shall determine whether disclosure of the matter to the employing organisation's external auditor, if any, is needed pursuant to the member's duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

### *Determining Whether Further Action Is Needed*

- 360.19** The senior member shall assess the appropriateness of the response of the member's superiors, if any, and those charged with governance.
- 360.20** Relevant factors to consider in assessing the appropriateness of the response of the senior member's superiors, if any, and those charged with governance include whether:
- the response is timely
  - they have taken or authorised appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred
  - the matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- 360.21** In light of the response of the senior member's superiors, if any, and those charged with governance, the member shall determine if further action is needed in the public interest.
- 360.22** The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:
- the legal and regulatory framework
  - the urgency of the matter
  - the pervasiveness of the matter throughout the employing organisation
  - whether the senior member continues to have confidence in the integrity of the member's superiors and those charged with governance
  - whether the non-compliance or suspected non-compliance is likely to recur
  - whether there is credible evidence of actual or potential substantial harm to the interests of the employing organisation, investors, creditors, employees or the general public.
- 360.23** Examples of circumstances that may cause the senior member no longer to have confidence in the integrity of the member's superiors and those charged with governance include situations where:
- the member suspects or has evidence of their involvement or intended involvement in any non-compliance.
  - contrary to legal or regulatory requirements, they have not reported the matter, or authorised the matter to be reported, to an appropriate authority within a reasonable period.
- 360.24** In determining the need for, and nature and extent of any further action needed, the senior member shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at the time, would be likely to conclude that the member has acted appropriately in the public interest.

**360.25** Examples of circumstances that may cause the senior member no longer to have confidence in the integrity of the member's superiors and those charged with governance include situations where:

- the member suspects or has evidence of their involvement or intended involvement in any non-compliance
- contrary to legal or regulatory requirements, they have not reported the matter, or authorised the matter to be reported, to an appropriate authority within a reasonable period.

**360.26** Where the senior member determines that resigning from the employing organisation would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the member's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the member and resignation may be the only available course of action.

**360.27** As consideration of the matter may involve complex analysis and judgments, the senior member may consider consulting internally, obtaining legal advice to understand the member's options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

## Determining Whether to Disclose the Matter to an Appropriate Authority

**360.28** Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

**360.29** The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the senior member may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- the employing organisation is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts)
- the employing organisation is a regulated entity and the matter is of such significance as to threaten its license to operate
- the employing organisation is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the employing organisation's securities or pose a systemic risk to the financial markets
- products that are harmful to public health or safety would likely be sold by the employing organisation
- the employing organisation is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend upon the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations
- whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation
- whether there are actual or potential threats to the physical safety of the member or other individuals.

**360.30** If the senior member determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under Section 140 of this *Code*. When making such disclosure, the member shall act in good faith and exercise caution when making statements and assertions.

**360.31** In exceptional circumstances, the senior member may become aware of actual or intended conduct that the member has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the member shall exercise professional judgment and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation.

Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this *Code*.

*Documentation*

**360.32** In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the senior member is encouraged to have the following matters documented:

- the matter
- the results of discussions with the member's superiors, if any, and those charged with governance and other parties
- how the member's superiors, if any, and those charged with governance have responded to the matter
- the courses of action the member considered, the judgments made and the decisions that were taken
- how the member is satisfied that the member has fulfilled the responsibility set out in paragraph 360.21.

## Responsibilities of Members Other Than Senior Members in Business

- 360.33** If, in the course of carrying out professional activities, a member becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the member shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.
- 360.34** The member is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the member's role within the employing organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the member may consult on a confidential basis with others within the employing organisation or a professional body, or with legal counsel.
- 360.35** If the member identifies or suspects that non-compliance has occurred or may occur, the member shall, subject to paragraph 360.11, inform an immediate superior to enable the superior to take appropriate action. If the member's immediate superior appears to be involved in the matter, the member shall inform the next higher level of authority within the employing organisation.
- 360.36** In exceptional circumstances, the member may decide that disclosure of the matter to an appropriate authority is an appropriate course of action. If the member does so pursuant to paragraph 360.29, this will not be considered a breach of the duty of confidentiality under Section 140 of this *Code*. When making such disclosure, the member shall act in good faith and exercise caution when making statements and assertions.

### *Documentation*

- 360.37** In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the member is encouraged to have the following matters documented:
- the matter
  - the results of discussions with the member's superior, management and, where applicable, those charged with governance and other parties
  - how the member's superior has responded to the matter
  - the courses of action the member considered, the judgments made and the decisions that were taken.



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