



THE INSTITUTE  
OF CHARTERED  
ACCOUNTANTS  
IN ENGLAND AND WALES

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Dear Jan

### **CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS**

The Institute of Chartered Accountants in England and Wales is pleased to respond to your request for comments on the paper *Code of Ethics for Professional Accountants* published in July 2008.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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## ICAEW Representation

ICAEW REP 115/08

### CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS

Memorandum of comment submitted in October 2008 by the Institute of Chartered Accountants in England and Wales, in response to the International Ethics Standards Board for Accountants consultation paper: *Code of Ethics for Professional Accountants* published in July 2008.

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## **INTRODUCTION**

1. The Institute of Chartered Accountants in England and Wales (the 'Institute' or the 'ICAEW') welcomes the opportunity to comment on the International Ethics Standards Board for Accountants (IESBA) consultation paper: *Code of Ethics for Professional Accountants*, published in July 2008.

## **WHO WE ARE**

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.

## **OVERALL COMMENTS**

4. We endorse the retention of the structure and layout of the existing Code in the revised draft provided they are clearly seen to fit within the context of a principles-based code. The revised structure in the ISAs may be suited to standards largely concerned with procedure but the Code is more concerned with behaviour.
5. We also agree that there needs to be an allowance for circumstances where an exception from compliance with a detailed requirement is necessary. We comment on the exception in the revised draft below but believe that in addition, the relationship between the principles and the detailed requirements needs to be considered and explained. There is a significant danger that the wording changes will be read as implying that this is now a rules-based code, which would be regrettable and counter-productive. It must be clarified that in a principles-based code, which this is meant to be, failure to follow detailed requirements must be justifiable in those circumstances where to follow the precise prohibition or mandated action would result in failure to adhere to the fundamental principles.
6. The replacement of 'clearly insignificant' with 'an acceptable level' as an appropriate threshold for assessing which threats need addressing is a sensible move, which will help focus action on those actions actually needed to ensure compliance with the fundamental principles.
7. As well as responding to the questions asked we have set out a number of comments below on specific paragraphs of the revised draft Code. We are concerned that in a number of paragraphs the previous discussion on the interaction between the fundamental principles and the detailed requirements

has been reversed. The impression is given that the principles are now intended only to fill in the gaps between the detailed requirements: this could reinforce the suggestion that the Code is now fundamentally rules-based. That would be odds with our understanding of the IESBA's intent.

## **COMMENTS ON SPECIFIC QUESTIONS**

**Question 1 - The IESBA is of the view that identifying a requirement by the use of the word "shall" clarifies the Code and appropriately brings the language in line with that adopted by the IAASB. Do you agree? If you do not agree please provide an explanation.**

8. The change from 'should' to 'shall' is acceptable within the context of a principles-based code. It is not of itself of particular consequence: it is what that is considered to mean, and whether this represents a change in the underlying aim of the Code, that matters. In implementing the IFAC Code in 2006, the Institute found it useful to clarify the intent behind the word 'should', by noting "A professional accountant should also follow the requirements in the illustrations, including prohibitions or mandatory actions, where circumstances are the same as, or analogous to, those addressed by those illustrations. Failure to follow such guidance may be justified in those rare circumstances where to follow a precise prohibition or mandated action would result in failure to adhere to the fundamental principles."
9. The key issue is therefore in what circumstances the guidance need not be followed, which is addresses in question 3 below.

**Question 2 - The IESBA is of the view that separately presenting the objective to be achieved, the requirements designed to achieve that objective, and the application guidance as in the ISAs would not further improve the clarity of the Code. Do you agree? If you do not agree, please provide an explanation and an example of the separate presentation that you recommend.**

10. Agreed. The ISAs are largely concerned with procedural requirements designed to achieve a number of specific objectives. The Code is, or at least should be, concerned with the behaviour required to comply with a small number of overall principles. The retention of the existing structure is appropriate although any future changes should bear in mind the need to distinguish between principles and the requirements that apply them.

**Question 3 - The IESBA is of the view that in exceptional and unforeseen circumstances that are outside the control of the professional accountant, the firm or employing organization, and the client, the application of a specific requirement in the Code may result in an outcome that a reasonable and informed third party would not regard as being in the interest of the users of the output of the accountant's professional services. Therefore, the Board is proposing that the Code include a provision that would permit a professional accountant, in such circumstances, to depart temporarily from that specific requirement. This would not be the same as provisions in the Code that address situations in which a professional accountant has inadvertently**

**violated a provision of the Code. The departure would only be acceptable if all of the conditions set out in paragraph 100.11 are met.**

**(a) Do you agree that the Code should contain a provision that permits any exception to compliance with a requirement set out in the Code? If you do not agree, please provide an explanation.**

**(b) If you believe that the Code should contain a provision that permits an exception to compliance, are the conditions under which the exception would apply appropriate?**

**Should there be additional or fewer conditions and, if so, what are they?**

**(c) If you believe that the Code should not contain a provision that permits an exception, please explain how you would deal with the types of exceptional and unforeseen situations that may be covered by paragraph 100.11.**

**(d) Are there any other circumstances where you believe a departure from a requirement in the Code would be acceptable? For example, should an event that is within the control of one of the relevant parties qualify for an exception? If so, please provide an explanation and specific examples of the circumstances where you believe a departure would be acceptable.**

11. The exception as drafted appears to be addressing the situation where, for some external reason beyond control of those involved, it is agreed by all stakeholders that the Code should not be applied. This is not an unreasonable scenario though we question the detailed conditions proposed. The key requirement must be that stakeholders, or appropriate representatives of stakeholders such as audit committees, should be aware. However, while it is most likely that the situation would arise in audit or other assurance engagements (because of the number of detailed requirements), section 100 does cover the whole scope of the Code. Therefore it could apply to a wide variety of non-assurance engagements for non-audit clients, work for individuals, accountants in business, etc. In such circumstances there may not be an audit committee or equivalent. Similarly, given the wide range of potential matters, though documentation would clearly be needed in an assurance situation, it may only be advisable rather than necessary, in some other situations. The conditions set need to be more principles-based as to the precise steps to take. Thus the professional accountant should be required to implement safeguards including, particularly, that stakeholders (or appropriate representatives of stakeholders) have agreed or are at least informed.
12. In a principles-based code, compliance with the underlying principles must be the ultimate aim of all detailed requirements. In such a code there should always be an acknowledgement that there may be some occasions (albeit rare) where because of the particular circumstances, to follow the specific requirement would actually fail to comply with the fundamental principle. The exception as drafted could cover this scenario but we do not believe that it is clear that it does. It is important that the change to more 'black and white' wording is not seen as a change from a principles-based to a rules-based code. Therefore we believe this possibility should be explicitly stated. We have noted in our response to question 1 the wording used by the ICAEW to address this.
13. In these circumstances (not complying with the fundamental principle) we would also expect alternative safeguards to be applied.
14. This apart, we do not envisage any other circumstances where non-compliance would be appropriate.

**Question 4 -The IESBA is of the view that the proposed modification to focus the application of the conceptual framework throughout the Code, and the related documentation requirements in Sections 290 and 291, on threats that are not at an acceptable level will result in a more efficient and effective application of the framework approach. Do you agree? If you do not agree, please provide an explanation.**

15. We support the change in the wording: this is a welcome change. 'Clearly insignificant' was set at too low a level in determining what threats needed to be safeguarded against, with the possible result that significant threats were being obscured by a myriad of less significant ones.
16. However, the definition of 'acceptable level' focuses entirely on external perception. The professional accountant should be happy that threats are at an acceptable level, as well as the reasonable and informed third party.

**Question 5 - The IESBA is of the view that the selected point-in-time effective date with the proposed transitional provisions will provide the appropriate balance between firms and member bodies having sufficient time to implement the new standards and effecting change as soon as possible. Do you agree? If you do not agree, please provide an explanation of how you would revise the effective date or transitional provisions to achieve that balance.**

17. Assuming finalisation and publication in line with expectations, we agree that this is a reasonable timetable.

## **OTHER COMMENTS**

Numeric references below are to specific paragraphs in the draft included in the consultation paper.

18. 100.6 (and 290.8 and 291.7) – This now states that “The conceptual framework...can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.” We have no concern with the sentiment expressed but the wording appears to be rather high handed, implying that professional accountants would be very likely to take a 'ok unless banned' approach. Perhaps the wording could be refined.
19. 100.12 (and 200.1 and 300.6) - We note that the revised wording removes discussion of 'examples' and adopts wording which states that the specific requirements in B and C are specific requirements, with the overall framework being applied only when the specific circumstances are not addressed by the requirements in B and C. Although an apparently minor change in wording, this could be seen, together with the change to more 'black and white' wording, as an important (and regrettable) move away from considering the Code to be principles based, with some specific requirements deeming what appropriate actions are in some circumstances, to a rules-based code, with some principles to sweep up anything not thought about. The IESBA has not publicly suggested that there is a fundamental change of mindset along these lines and we hope this is not the case. We understand that there is a concern in some areas that the word 'examples' implies a more optional approach than is intended. However, we believe that the proposed change of wording can be revisited to clarify that the fundamental principles are paramount and that the detailed requirements explain

how these principles shall be applied in particular circumstances, which actually cover most of those typically faced by professional accountants.

20. 100.13 (b) - We note that a number of the rewritten sentences here and elsewhere have become very long. This does not assist with clarity of understanding.
21. 100.19 – It is unclear why the words “consistent with the fundamental principles identified” have been deleted. This wording was a useful reminder of the underlying purpose of the Code.
22. 110.3 (and a number of other places) – There are a number of statements in the draft Code that “A professional accountant will not be deemed to be...” We are aware that a similar construct is used by the SEC and in that context correctly implied that there was a central regulatory authority that would opine on the circumstances. The point of the Code is that the professional accountant makes the decision within an overall framework and this wording does not fit well. It can be resolved easily by deleting the words “be deemed to” to make a straightforward statement that the professional accountant will not be in breach...
23. 120.2 – The new wording refers to a situation which “biases or unduly influences...” It would be preferable to place the word “unduly” in front of “biases” as the potential problem with bias is as much a question of degree as influence.
24. 140.4 – The revised wording requires that the professional accountant “shall *be aware of* the need to maintain confidentiality”. This requirement to be aware something is a slightly odd constraint when the requirement is presumably to maintain confidentiality (as with 140.3).
25. 200.2 (and others, for example new paragraph 300.7 and, with use of ‘may compromise, 100.8) – This paragraph (200.2) has not changed substantially but perhaps should do given the very clear requirement. To require a professional accountant not to do something which “might” (or “may”) impair integrity etc is actually a very sweeping requirement. Almost anything might impair integrity if the circumstances turn out wrong. These should be rephrased to ensure the requirements are realistic.
26. 200.3 – In the rewrite the word “many” has been dropped, implying that all potential threats must fall into one of the five categories listed. In the spirit of dealing with all circumstances, we think “many” should be restored.
27. 200.4 – While the revised examples in this paragraph are not unreasonable, they are very biased towards assurance services. Section 200 is meant to address all services provided by practitioners.
28. 200.13 – It is unclear what the point of the word “previous” is in the first example.
29. 210.14 – Removal of the word “ordinarily” results in an illogical paragraph (a sentence giving an absolute requirement, followed by a sentence referring to when the requirement is not absolute).
30. 290.113 (and 291.33) – This previously did not specify who should give consideration to the potential threats. It now requires the firm to undertake this. Is this always appropriate?

31. 290.148 (and 291.137) -The logic of the revised second sentence does not quite flow correctly: 'despite [a prohibition], when permitted by law, the activity shall be limited to x,y,z'. Is it not despite [a prohibition], when permitted by law, the activity *may be carried out* if shall be limited to x,y,z?

32. 291.28 – We understand that the degree of threat has been retained at the 'trivial and inconsequential' level in this paragraph as it is intended that a two-stage process should be applied:

- assessment at this level of whether any aspects of Sections 290/291 need to be applied at all;
- followed by assessment in respect of those parties to which it does apply, of whether threats are at the acceptable level.

This has not been made entirely clear, however.

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