



**By email < [EDComments@ifac.org](mailto:EDComments@ifac.org) > and by fax (0062 1 212 286 9570)**

Our Ref.: C/EC

12 December 2003

Mr. James M. Sylph  
IFAC Ethics Committee,  
545 Fifth Avenue, 14<sup>th</sup> Floor,  
New York,  
New York 10017,  
USA.

Dear Sir,

**Exposure Draft of Proposed Revised Code of Ethics for Professional Accountants**

The Hong Kong Society of Accountants (HKSA) welcomes the opportunity to provide the IFAC Ethics Committee with our comments on the captioned IFAC Exposure Draft.

We set out in the attachment our comments for the consideration of the IFAC Ethics Committee.

The HKSA has a policy of converging its Ethics Standards with the IFAC Code of Ethics. The standard setting due process applied in Hong Kong (details of which are available on the HKSA's website) acts to support this policy. The HKSA Ethics Committee issued an Invitation to Comment on the captioned IFAC Exposure Draft. Accordingly, the accompanying comments may reflect the views not only of members of the HKSA Ethics Committee but also of constituents in Hong Kong who provided comments to the HKSA.

We trust that the IFAC Ethics Committee will find our comments helpful. If you require any clarifications on our comments, please contact our Deputy Director (Ethics & Assurance), Stephen Chan < [schan@hksa.org.hk](mailto:schan@hksa.org.hk) >, in the first instance.

Yours faithfully,

WINNIE C. W. CHEUNG  
SENIOR DIRECTOR  
PROFESSIONAL & TECHNICAL DEVELOPMENT

WCC/SSLC/cy  
Encl.

**HONG KONG SOCIETY OF ACCOUNTANTS' COMMENTS ON  
THE IFAC EXPOSURE DRAFT OF  
PROPOSED REVISED CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS**

**A. GENERAL COMMENTS**

In general, we consider the structure of the proposed revised Code understandable and usable. We also agree to the framework approach adopted in the proposed revised Code.

While it is understood that the proposed revised Code is intended to be principles-based rather than prescribing a set of detailed rules, we consider that the proposed revised Code should suggest member bodies to seek legal advice when adopting the proposed revised Code to ensure that it is sufficiently clear and unambiguous to be enforceable against members in their own jurisdictions in disciplinary proceedings and legal proceedings in the form of judicial review. The enforceability of the proposed revised Code depends on the legal systems and regulatory frameworks in which member bodies operate which may vary by jurisdiction.

**B. PART B**

**1. Section 4 – Changes in a professional appointment**

a. Guidance on communications between the existing accountants and the proposed accountants

We consider that the proposed guidance in Section 4 of Part B about changes in a professional appointment too weak and inadequate to deal with public interest audits.

In summary, it requires a professional accountant who is asked to replace another professional accountant to determine whether there are any professional or other reasons for not accepting the engagement. This may require direct communication with the existing accountants. If the proposed accountants are unable to communicate with the existing accountants, they should try to obtain information about any possible threats by other means. If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Where the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, professional accountants in public practice should, unless there is satisfaction as to necessary facts by other means, consider whether to decline the engagement.

In considering communications with the proposed accountants, the proposed revised Code reminds the existing accountants of their obligation of confidentiality.

What is missing is a clear ethical requirement, subject to any legal restrictions, for the existing accountants to respond in full to requests for information from the proposed accountants. The proposed revised Code actually acts as a barrier to communications between the existing accountants and the proposed accountants. The proposed revised Code precludes disclosure unless it is required to comply with a technical standard or an ethical requirement, but it does not set out the ethical requirement.

Borrowing from the existing Hong Kong requirements (HKSA Ethics Statement 1.207 “Changes in a professional appointment” which is available at: < <http://www.hksa.org.hk/professionaltechnical/ethics/index.php> >), the proposed revised Code should also include guidance that:

- i. precludes the proposed accountants from accepting the nomination without first communicating in writing with the existing accountants to enquire whether there is any reason for or circumstance behind the proposed change of which they should be aware when deciding whether or not to accept nomination; and
- ii. requires the proposed accountants to decline to accept nomination unless they receive confirmation from the existing accountants that the client has waived all confidentiality obligations in respect of the existing accountants reply to the proposed accountants.

Only if the law or circumstances other than a refusal by the client to waive confidentiality requirements is the reason for the proposed accountants not being able to communicate with the existing accountants should the proposed accountants rely on other procedures.

We also draw to your attention that the HKSA is currently considering what additional guidance can be provided by the HKSA on how much and what sort of information should the existing accountants provide to the market and to the proposed accountants. We may write to the IFAC Ethics Committee again once we have identified the areas where additional guidance can be provided to our members.

b. Guidance on threats

- i. Paragraph 4.5 of Part B mentions identified threats without giving further guidance on what kinds of threats a professional accountant in public practice would need to consider when determining whether or not to accept an engagement, though one example is given in paragraph 4.1 of Part B. We suggest more examples of possible threats should be provided.
- ii. Paragraph 4.7 of Part B of the proposed revised Code suggests that the proposed accountants should try to obtain information about any possible threats by other means if they are unable to communicate with the existing accountants. However, the proposed revised Code does not further explain what the “other means” of obtaining information about possible threats are. We suggest that guidance is provided on how the proposed accountants can obtain the necessary information.

2. **Paragraphs 2.15 to 2.17 of Part B**

The proposed revised Code allows professional accountants and their immediate close family members to receive gifts from clients when the recipients consider the self-interest threat in accepting the gift is insignificant. To enhance the independence of assurance duties, we suggest that the proposed revised Code should explicitly advise professional accountants in public practice and their immediate close family members not to accept gift of value (except token gift) from clients during the course of assurance duties. This would effectively bring out the message that acceptance of gifts and hospitality by professional accountants in public practice is something exceptional and the act should be cautiously decided.

## C. Part C

### 1. General comments

- a. We suggest that there should be more guidance in relation to Part C.

The principles should be provided in the main body of Part C, supplemented by a separate section containing practical guidance which encompasses implementational issues and examples on the application of the principles to specific situations and safeguards to mitigate the threats (similar to the setting of section 8 of the existing Code). More specific examples, i.e. beyond generalised situational examples contained in the ED would be desirable. It should be made clear that any specific examples quoted are not intended to be and cannot be exhaustive.

Taking the section on potential conflicts (section 2 of Part C) as an example, we suggest that paragraph 2.3 can be expanded in the separate section to provide more practical implementation guidance to professional accountants in business (PAIBs) on what they should do if:

- there is no appropriate person within the employing organisation that the PAIBs can consult/obtain advice from;
- they have no access to an independent professional adviser or legal adviser except at their own expense; and
- there is no formal dispute resolution process within the employing organisation.

The guidance should deal with, for example, the appropriate actions for PAIBs to take when facing different ethical situations, such as:

- when they are aware of wrongdoing (misconduct/unethical practice) by their superiors who are non-accountants;
- when they are under pressure to act or behave in an unethical manner; or
- when they have a conflict with their employer.

It should cover the following areas, amongst other things:

- classification of the issue; and
- advice to PAIBs at different levels in an organisation, and working in different business set-ups (see also points (b) and (c) below), for example, those working in companies/organisations:
  - i. which have well-established channels of reporting and control and oversight structure;
  - ii. where there is no formal control, reporting and oversight structure; and
  - iii. where there is nobody whom the PAIBs can consult.

- b. PAIBs occupy positions at many different levels, ranging from junior accountants to senior management/board members or business owners, in companies/organisations of different sizes in a range of sectors. The system/structure and corporate culture of the companies/organisations that PAIBs work for also vary, for example, the system/structure and corporate culture of small and medium sized enterprises (SMEs), family-controlled corporations, local business entities and international conglomerates are different. Accordingly, PAIBs face a wide variety of ethical problems in their day-to-day work. They will also encounter implementation difficulties of the requirements of the proposed revised Code.

Therefore, the scope of Part C needs to be more clearly defined. It is noted that the definition of professional accountants [in business] (paragraph 1.4 of Part C) appears to be wider than that in Part A, as the latter covers not only **employed** professional accountants, but also owner managers, directors (executive or non-executive), etc. We believe that the scope of PAIBs should be wider rather than narrower.

- c. The threats and safeguards in respect of employed PAIBs are different from those of business owners, whilst those of PAIBs employed in large organisations and in SMEs are also likely to be different from each other. Therefore, the structure of Part C needs to cater for these various situations. While we appreciate that the proposed revised Code should not be too voluminous, Part C should go some way towards acknowledging and addressing these differences, at least in general terms.
- d. PAIBs are not operating in a vacuum but are working inside a system/structure, for example, systems of internal control and corporate governance structures (including channels for internal reporting, etc.), which may provide checks and balances and some support/protection for PAIBs in their working environment. It is noted that apart from in the introduction (paragraph 1.18 of Part C in respect of safeguards in the work environment), there appears to be no recognition of these organisational issues in the remaining content of Part C. We suggest that the proposed revised Code should provide examples of internal control and corporate governance structures to mitigate specific threats.

## 2. Specific and drafting comments

- a. The link between the types of threats outlined in paragraph 1.9 of Part C and the subsequent situational examples in sections 2 to 7 of Part C should be made clearer.
- b. Paragraph 1.2(a) of Part C: consideration could be given to separating “honesty” from “integrity”. It is noted however that this will also affect paragraph 1.14(a) of Part A as the fundamental principles apply to all parts of the proposed revised Code.

[c.f. the “Seven Principles of Public Life” from the *First Report of the Committee on Standards in Public Life* (“Nolan Committee”)(May 1995) in which integrity and honesty are defined independently of each other, as follows:

Integrity – one should not place himself under any financial or other obligation to outside individuals or organisations that might influence him in the performance of his official duties.

Honesty – one has a duty to declare any private interests relating to his public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.]

Although there may be a limit on how far the concepts of the above report can be used as a reference, given that it deals with ethics in the public sector, account is taken of the Nolan principles in the IFAC study: *Governance in the Public Sector: A Governing Body Perspective* (August 2001, paragraph .064-.068). In any case, honesty is such a basic part of ethics, and as a concept it is more straightforward than integrity, that it probably merits a specific mention.

- c. Section 7 should provide more information and guidance on the interface between “confidentiality” and “disclosure”, which may require legal input given that the issues on confidentiality and disclosure may have legal implications. This issue is important, particularly in relation to disclosing information in the public interest.
- d. The section on dispute resolution (paragraphs 1.21 to 1.25 of Part A) is too brief to provide much practical guidance. More information should be provided in Part C to assist PAIBs to deal with different situations. This section would be a possible location where the system of internal control, the corporate governance structure and the channels of communication within a company could be highlighted, in order to assist/guide PAIBs in identifying avenues for reporting matters/problems as well as in identifying the appropriate route to resolve disputes/problems.
- e. Definitions could be clearer and language more forceful in places. For example, paragraph 2.2 of Part C should define more clearly situations of “acting contrary to law or regulation”. In addition, in the fourth bullet point “misleading” should be replaced by “misrepresenting”, and reference should also be made here to shareholders and stakeholders.
- f. Paragraphs 7.4 to 7.6 should contain a more structured way to deal with the problem. These paragraphs should be further expanded to incorporate the internal processes that should be available to a PAIB under such circumstances. If these have been exhausted and the problems have not been resolved, a PAIB might consider making a discretionary disclosure. However, he may need to seek legal advice first.
- g. Further to (f) above, there is no provision in the proposed revised Code to safeguard/protect the professional accountants who try to comply with the ethical principles. PAIBs could well put their livelihood into jeopardy by making a disclosure, and there could be legal implications if the whistle-blower is later proved to be wrong. While the company may engage a team of lawyers, the PAIB who disclosed the information is not offered any obvious support. It is acknowledged however that a professional body, like HKSA, cannot provide any safeguard, such as legal protection, to professional accountants in this position. Therefore, when an ethical problem cannot be resolved, the PAIB concerned would in practice be more likely to resign from the company than spend money to consult legal advisers on a discretionary disclosure. In fact the proposed revised Code seems to be very non-committal on the whole issue of discretionary disclosures and it should be made clearer as to whether there are any situations in which it would be an appropriate course of action and, if so, examples should be given.
- h. In relation to paragraph 6.4 of Part C regarding receiving offers of inducements, we have similar concern as our comments on paragraphs 2.15 to 2.17 of Part B about relying on self-evaluation of the materiality of “clearly insignificant” by the recipients in accepting the inducements or not. There is a need for additional guidance in this respect. For instance, professional accountants dealing with public interest assignments should be prohibited from accepting any inducement, regardless of significance.

\*\*\*\*\*