

Review of Part C of the Code, Phase 2—Update

How the Project Serves the Public Interest

Over half of the world's professional accountants are professional accountants in business (PAIBs) in the traditional sense – being accountants who do not work in public accounting practices. PAIBs are a very diverse constituency and work as employees or consultants in commerce, industry, financial services, education, and the public and not-for-profit sectors. Many are in a position of strategic or functional leadership, or are otherwise well placed to collaborate with colleagues in other disciplines to help their organizations toward long-term sustainable success.

Phase 1 of the project addresses the following issues:

1. All organizations require relevant and reliable information in order to conduct their affairs. In addition, interested external parties (such as investors, suppliers, customers, creditors and government agencies) require relevant and reliable information to assess an organization's financial situation in order to either ensure accountability to them or for them to make decisions about the organization. It is in the public interest that PAIBs who are responsible for the preparation of such information do so fairly and honestly, and that the information they present is not false, misleading, or prepared or presented recklessly or negligently.
2. Inquiries made by the Task Force indicated that a primary ethical issue that PAIBs face is pressure to breach the fundamental principles of the Code. Providing guidance to PAIBs about imposing pressure on others and on dealing with such pressure is in the public interest.

Phase 2 of the project addresses the following issues:

1. PAIBs and professional accountants in public practice (PAPPs) may offer or be associated with the offer of inducements to others with the intention of leading another individual or organization to act in a manner that is counter to the public interest or that results in actions that violate the legitimate objectives of another organization. Similarly, PAIBs and PAPPs may solicit or be offered inducements that may not be in the public interest or that may violate the legitimate objectives of the professional accountant's employing organization. It is not in the public interest for a PAIB to offer, solicit or accept inducements that could result in non-compliance with the fundamental principles of the Code.
2. Although the focus of Part C of the Code is on PAIBs, the Code is explicit that it applies to PAPPs in particular circumstances. It is in the public interest to clarify the applicability of Part C to PAPPs.

Project Proposal

1. The Part C project proposal is divided into two phases.

Phase 1 addresses the following:

- Section 300, *Introduction*
- Those parts of Section 310 which were deleted in the Conflicts of Interest project but which remain relevant to “pressure”

- Sections 320, *Preparation and Reporting of Information*
- Section 330, *Acting with Sufficient Expertise*
- Section 340, *Financial Interests*
- Section 370, *Pressure*

Phase 2 addresses:

- Section 350, *Inducements*
- A comparison of Sections 350 and 260
- The applicability of Part C to PAPPs

January 2015 Board Meeting

2. At the January 2015 Meeting, the Board made three key recommendations to the Part C Task Force:
 - A. To perform an analysis of Section 350 to identify where enhancements could be made.
 - B. To consider whether certain key terms require clear definitions to avoid ambiguity and to consider potential problems that may arise when translating these terms and definitions into different languages.
 - C. To consider any link between Sections 350 and the [proposed Section 370](#).¹

February 2015 Task Force Meeting

3. At its February 2015 meeting, the Task Force once again reviewed Section 350 to consider improvements that should be made to it. This agenda item includes the Task Force's analysis.

Analysis of Section 350

4. The remainder of this agenda item is an analysis of Section 350, as requested by the Board, along with recommendations on how to address its shortcomings.

TITLE OF SECTION 350

5. The Task Force is of the view that the current title of Section 350 (*Inducements*) is too limited and should be expanded to include the explicit mention of “gifts” and “hospitality.” The Task Force's reasoning is that PAIBs may be in a situation where they are receiving or offering “gifts” or “hospitality” without realizing that these may constitute inducements that may result in non-compliance with the fundamental principles, and hence there may be a need for the PAIB to consider Section 350 in the PAIB's actions. An expanded heading, with the explicit mention of “gifts” and “hospitality,” would remove any possible ambiguity.
6. In addition, The Task Force considered that, when utilizing the electronic code, a PAIB would be unlikely to perform a search using the word “inducement”. This is because this term is not typically used to describe the giving or receiving of an item or favor. A PAIB would more likely to search using

¹ Proposed Section 370, *Pressure to Breach the Fundamental Principles*
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the words “gifts” and “hospitality.” Hence, the inclusion of these words in the heading of Section 350 would ensure that such a search would return a reference to this section.

USE OF THE TERM “INDUCEMENT”

7. The Task Force considered whether the term “inducement” was appropriate and correctly conveyed the aim and essence of the guidance being given to the PAIB in Section 350. The Task Force’s view is that, if the term is retained, clarification of this term is required. The following observations were made:
 - A. There is no precise definition of what constitutes an inducement or guidance in the context in which an inducement may be given or received.
 - B. The term “inducement” appears to have a negative connotation, so that giving or receiving an inducement is interpreted as an adverse action. The Task Force was thus of the view that a more neutral term is required that covers both acceptable and unacceptable inducements. The word “benefit” could be considered an alternative, or be used as a holding term until a more appropriate term is agreed upon.
 - C. The Task Force noted Board Member comments that ambiguous terms would require clear definitions that could be translated into other languages. The Task Force is of the view that the word “inducement” and any accompanying definition may not be easy to translate, and that the word “benefit” may be more easily translated.
 - D. As a result of Board Member comments received at the January 2015 Board meeting relating to the term “advantage” and its use in the Transparency International (TI) presentation, an inquiry was made to TI to obtain their views on the suitability of the term “advantage” as an alternative to “inducement” in the Code. TI did not offer any advice on this matter.

CONSIDERATION OF THE PUBLIC INTEREST

8. The Task Force noted that the current Section 350 contains no reference to the need for a PAIB to consider the public interest as it relates to either offering or accepting inducements. Paragraphs 350.3 and 350.4 provide some guidance relating to the acceptance of inducements or benefits. With respect to offering or providing inducements, 350.7 states that “a professional accountant in business shall not offer an inducement to improperly influence professional judgment of a third party,” but makes no reference to the public interest rationale for this prohibition, and provides no guidance to the PAIB.

STRUCTURE OF SECTION 350

9. Section 350 should have an introductory paragraph that contains a statement indicating the objective of the section; namely to provide practical guidance to a PAIB as relates to the issue of inducements.
10. The current guidance provided in Section 350 is weighted toward the receipt of inducements by a PAIB. As part of an introductory paragraph, it would be beneficial to have a more balanced general discussion over the issues of inducements that covered both the receipt and provision of inducements.

THREATS

11. The Task Force believes that the discussion and guidance in paragraph 350.2 of how inducements could create threats to the fundamental principles should be improved. The Task Force made the following observations:
 - A. Self-interest threats: The circumstances listed in which a self-interest threat may arise are limited and could be more extensive.
 - B. Intimidation threats: Section 350.2 addresses intimidation threats only in relation to blackmail and in relation to receiving offers, whereas an intimidation threat may arise in numerous other circumstances, including the making of offers. The Task Force believes that other sources of intimidation threats should be included. A reference to proposed Section 370 should be made.
 - C. Advocacy threats: It is possible for an individual offering an inducement to compromise the objectivity of the recipient, be it intentionally or otherwise. As a result, an advocacy threat could arise. While reference is made to how a PAIB's objectivity could be compromised from the point of view of a self-interest and intimidation threat, no mention is made as to the possibility of an advocacy threat arising due to the actions of the offeror.
 - D. Familiarity threats: Familiarity threats are not addressed in Section 350. The Task Force concluded that it was possible for a familiarity threat to arise if a PAIB were too sympathetic or trusting of a colleague or third party due to a close relationship with them.

SAFEGUARDS

12. Paragraph 350.4 identifies a number of safeguards in relation to receiving inducements, but none in regards the offering of inducements. The Task Force believes that this Section should be enhanced by providing more examples of safeguards, relating to both receiving and offering inducements.

AWARENESS OF LAWS AND REGULATIONS

13. The presentations made by TI to the Task Force, at its November 2014 meeting, and to the Board, at its January 2015 meeting, focused on bribery of government officials and corruption. An important observation was that laws and regulations currently exist in virtually every jurisdiction to address corruption and bribery of governmental officials. These laws and regulations can be jurisdiction-specific or extra-territorial, with cross border applicability (e.g. the UK Bribery Act).
14. The TI presentations did not address commercial bribery (i.e., other than of government officials) and did not extend to inducements that, while not illegal, may present threats to compliance with the fundamental principles. The Task Force believes that the emphasis of Section 350 should be on these latter areas, i.e., Section 350 should provide guidance beyond the bribery of government officials and other illegal acts.
15. In the January 2015 Board meeting, several Board Members expressed a view that the Code did not need to repeat standards that were already contained within laws and regulations. Instead, it should aim to provide guidance on circumstances and situations that are not covered under such laws and regulations. The Task Force agrees with this view, but believes that Section 350 should contain a reminder to PAIBs to be mindful of the need to be aware of, and to abide by, applicable laws (be they jurisdictional or extra-territorial) of jurisdiction(s) in which the PAIB is operating in and those in which the PAIB's employing organization is headquartered.

16. In addition, the Task Force was of the view that Section 350 should contain a cross-reference to the proposed Section 360 (NOCLAR). This is primarily because proposed Section 360 as presented for the January 2015 Board meeting includes guidance to PAIBs when they believe non-compliance with laws and regulations may be about to occur. Section 350 should provide additional guidance to a PAIB (faced with a dilemma where the fundamental principles may be violated) which focuses on situations where laws or regulations either do not exist, or do not cover the particular circumstance in which the PAIB is in. For example, commercial bribery is not specifically covered by laws and regulations in some jurisdictions; and even where they do exist, laws and regulations do not provide a complete guide to ethical behavior.

TYPES OF INDUCEMENTS

17. Section 350 provides no guidance for distinguishing between acceptable and unacceptable inducements. The Task Force believes that it may be beneficial to include examples of acceptable and unacceptable inducements. Thought would be needed to address how specific examples of inducements could be perceived in different jurisdictions because of the existence of cultural differences amongst jurisdictions. It may be possible that the same benefit may be considered acceptable in one jurisdiction but not in another.
18. Paragraph 350.3 states that an inducement should be “insignificant and not intended to encourage unethical behavior.” The Task Force believes that the term “insignificant” is vague and does not constitute helpful guidance. The Task Force considered that while it would be unlikely that a PAIB would intentionally act in or encourage unethical behavior, unethical behavior could be an unintentional byproduct of an inducement that cannot easily be classified as “insignificant.”
19. The Task Force noted that the PAIB needs to consider not only the nature of the inducement, but also the perception associated with the inducement. It is possible for an inducement to be made for a genuine reason and with no inappropriate intention; however, the external perception of the inducement (including the perception of the recipient of the inducement) may be different. For example, companies organizing off-site staff events in low cost but attractive locations may be perceived negatively. From the organization’s perspective, it may be financially beneficial to gather large numbers of staff in such a location. However, from an external perspective this could be viewed as staff being treated to a holiday at the company’s expense, rather than legitimate work-related expenditure.

OFFERING AN INDUCEMENT

20. The Task Force noted that the majority of the guidance in Section 350 addressed the receipt by the PAIB of an inducement, with little helpful guidance on what would be considered an acceptable inducement when the inducement is (or may be) offered by the PAIB, or by others with whom the PAIB is associated with, to another party.
21. The Task Force believes that it would be beneficial to provide guidance to PAIBs on factors to consider when offering an inducement. Such factors include implementing the “informed third party test” or considering whether the inducement was universal or exclusive to the recipient.

RECEIVING AN INDUCEMENT

22. The Task Force believes that separate paragraphs should be maintained in Section 350 to address the different ethical issues related to the offering and receiving of inducements by PAIBs.
23. Paragraph 350.3 states that an inducement received in the “normal course of business” is acceptable. However, the Task Force considers this phrase to be vague and open to cultural interpretation. Additional wording could thus be beneficial to the PAIB.

GUIDANCE RELATING TO INAPPROPRIATE INDUCEMENTS

24. The Task Force believes that there is a need to address inducements that are intended to inappropriately influence the behavior of others and would thus conflict with the fundamental principles of the Code. The issue of facilitation payments, i.e., small payments made in order to assure that an agent does not interfere with lawful actions, but which are illegal in most jurisdictions, should be addressed here.
25. The Task Force believes that there is a lack of guidance within Section 350 on what a PAIB should do when faced with being offered or receiving an inappropriate inducement. While the current paragraph 350.4 dictates that safeguards should be used when an inappropriate inducement is being made, it does not provide any guidance on the nature of such safeguards and the circumstances on which they may need to be used.
26. The Task Force also observes the importance of intentions behind the offer of an inducement. On the one hand, only the offeror would know the intention behind the offer of an inducement, while on the other hand the offeree or recipient may need to interpret the intention of the offeror. It is thus possible for an inducement to be made with an inappropriate intention from the offeror, but be perceived as being perfectly appropriate by the recipient; or vice versa.

REFERENCE TO PRESSURE

27. As noted above, Section 350 contains guidance on pressure that a PAIB might face in relation to offering or accepting inducements. (For example, paragraph 350.2 addresses intimidation threats, but does not mention pressure from others.) The Task Force believes that Section 350 should focus on inducements, with the PAIB being directed to the proposed Section 370 for guidance on how to deal with pressure to offer or to accept inducements that may be threats to compliance with the fundamental principles.

COLLEAGUES

28. The Task Force noted that paragraph 350.1 does not refer to colleagues of the PAIB with whom a PAIB may be associated. The Task Force considered whether a PAIB should be expected to be accountable for the actions of colleagues, notably other PAIBs, especially when made aware that the colleague is accepting or giving inappropriate inducements that may breach the fundamental principles. In such a situation, a PAIB may be breaching, or become associated with a breach of, the fundamental principles. The Task Force believes that PAIBs should not be expected to be acting as “policemen” in reporting the act to responsible parties, beyond the guidance being proposed in Section 360.

Matters for Consideration

1. Board Members are asked to provide their views on the matters addressed in the analysis.
2. Board Members are asked to provide any additional suggestions on how Section 350 could be improved.

All views and suggestions are requested by email to Jim Gaa (james.gaa@ualberta.ca) and Kaushal Gandhi (kaushalgandhi@ethicsboard.org).

Way Forward

29. The Phase 1 Exposure Draft (ED) is open for comment until April 15, 2015. The Task Force will continue to work on Phase 2 while compiling and analyzing responses to Phase 1. The Task Force is due to meet in May 2015 to consider the responses to the Phase 1 ED, and, time permitting, to continue working on phase 2.
30. The June/July 2015 Board meeting is expected to have two Part C sessions:
 - (i) To address the public comments and Task Force recommendations relating to the Phase 1 ED, and
 - (ii) A discussion of Phase 2.