

**Insolvency Practitioners Association of Singapore Limited  
Code of Professional Conduct and Ethics**

# CODE OF ETHICS FOR IPAS ASSOCIATES AND FELLOWS

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## **PREFACE**

The mission of IPAS is to be the premier professional body for the insolvency profession in Singapore and has been formed with the following objectives:

- Provision of a corporate identity and organization for insolvency practitioners.
- Associate, Fellow and Student registration.
- Support and advancement of the status and interest of insolvency practitioners.
- Provision of recognised qualifications for persons engaged in the practice of insolvency.
- Promotion of the technical competence of insolvency practitioners.
- Provision of updates on developments in insolvency legislation and proposals and latest insolvency judgments by Singapore Courts and other jurisdictions.

This Code of Ethics establishes ethical requirements for IPAS Associates and Fellows.

**PART A-GENERAL APPLICATION OF THE CODE**

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## PART A: GENERAL APPLICATION OF THE CODE

### Section 1

#### Introduction and Fundamental Principles

- 1.1 A distinguishing mark of the insolvency profession is its acceptance of the responsibility to act in the public interest. Therefore, an **insolvency practitioner's** responsibility is not exclusively to satisfy the needs of an individual client or employer. In acting in the public interest, an insolvency practitioner shall observe and comply with the ethical requirements of this Code.
- 1.2 This Code is in three parts. Part A establishes the fundamental principles of professional ethics for insolvency practitioners who are associates and fellows of the Insolvency Practitioners Association of Singapore Limited (IPAS) and provides a conceptual framework for applying those principles. Insolvency practitioners shall use professional judgment in applying this conceptual framework. The framework requires the insolvency practitioners to:
- (a) Identify threats to compliance with the fundamental principles;
  - (b) Evaluate the significance of the threats identified; and
  - (c) Apply safeguards, when necessary, to eliminate the threats or reduce them to an **acceptable level**.<sup>\*</sup> Safeguards are necessary when the Associate/Fellow determines that the threats are not at a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Associates/Fellows at that time, that compliance with the fundamental principles is not compromised.
- 1.3 Parts B and C describe how the conceptual framework is to be applied in specific situations. They provide examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles and also describe situations where safeguards are not available to address the threats and consequently the activity or relationship creating the threats shall be avoided. Part B applies to Associates/Fellows in public practice.\* Part C applies to Associates/Fellows in business.\* Associates/Fellows in public practice may also find Part C relevant to their particular circumstances.
- 1.4 The use of the word “shall” in this Code imposes a requirement on the Associate/Fellow or **firm**<sup>\*</sup> to comply with the specific provision in which “shall” has been used. Compliance is required unless prohibited by law or regulation or an exception is permitted by this Code.

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\* See Definitions.

\* See Definitions.

## **Fundamental Principles**

1.5 An Associate/Fellow is required to comply with the following fundamental principles:

(a) *Integrity*

An Associate/Fellow shall be straightforward and honest in all professional and business relationships.

(b) *Objectivity*

An Associate/Fellow shall not allow bias, conflict of interest or undue influence of others to override professional or business judgments.

(c) *Professional Competence and Due Care*

An Associate/Fellow shall maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent **professional services\*** based on current developments in practice, legislation and techniques. When such services are provided, an Associate/Fellow shall act diligently and in accordance with applicable technical and professional standards.

(d) *Confidentiality*

An Associate/Fellow shall 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 Associate/Fellow or third parties.

(e) *Professional Behavior*

An Associate/Fellow shall comply with relevant laws and regulations and avoid any action that discredits the profession.

Each of these fundamental principles is discussed in more detail below.

## **Conceptual Framework Approach**

1.6 The circumstances in which Associates/Fellows operate may create specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates threats to compliance with the fundamental principles and specify the appropriate action. In addition, the nature of engagements and work assignments may differ and, consequently different threats may be created, requiring the application of different safeguards. Therefore, this Code provides a conceptual framework that requires an insolvency professional to identify, evaluate and address threats to compliance with the fundamental principles. The

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\* See Definitions.

conceptual framework approach assists Associates/Fellows 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 an Associate/Fellow from concluding that a situation is permitted if it is not specifically prohibited.

- 1.7 When an Associate/Fellow identifies threats to compliance with the fundamental principles that are not at an acceptable level, the Associate/Fellow 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 Associate/Fellow 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 Associate/Fellow 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.
- 1.8 An Associate/Fellow shall evaluate any threats to compliance with the fundamental principles when the Associate/Fellow knows, or could reasonably be expected to know, of circumstances or relationships that may compromise compliance with the fundamental principles.
- 1.9 An Associate/Fellow shall take qualitative as well as quantitative factors into account when evaluating the significance of a threat. When applying the conceptual framework, an Associate/Fellow 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. If an Associate/Fellow cannot apply appropriate safeguards, the insolvency professional shall decline or discontinue the specific professional service involved or, when necessary, resign from the client (in the case of an **Associate/Fellow in public practice\***) or the employing organization (in the case of an **Associate/Fellow in business\***).
- 1.10 An Associate/Fellow may inadvertently violate a provision of this Code. Such an inadvertent violation, depending on the nature and significance of the matter, may not be deemed to compromise compliance with the fundamental principles provided, once the violation is discovered, the violation is corrected promptly and any necessary safeguards are applied.
- 1.11 In exceptional and unforeseen circumstances that are outside the control of the Associate/Fellow, 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

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\* See Definition.

\* See Definition.

the users of the output of the professional services. In such circumstances, the Associate/Fellow may judge it necessary to depart temporarily from that specific requirement. Such a departure would be acceptable only if all of the following conditions are met:

- The Associate/Fellow discusses the matter with **those charged with governance\***; the discussion shall include the nature of the exceptional and unforeseen circumstance, the fact that the circumstance is outside the control of the relevant parties, why in the Associate/Fellow's judgment it is necessary to depart temporarily from a specific requirement in the Code, and any safeguards that will be applied;
- The Associate/Fellow documents the matters discussed with those charged with governance;
- The nature of the departure and the reasons for the departure are appropriately disclosed to the users of the output of the professional services; and
- The Associate/Fellow complies with the requirements of the Code at the earliest date that compliance can be achieved.

The Associate/Fellow may wish to discuss the matter with the relevant regulatory authority. If the Associate/Fellow has such a discussion, the substance of that discussion shall be documented.

- 1.12 Parts B and C of this Code describe how the conceptual framework is to be applied. Parts B and C do not describe all the circumstances that could be experienced by an Associate/Fellow that creates or may create threats to compliance with the fundamental principles. Therefore, in any situation not explicitly addressed by Parts B or C, the Associate/Fellow shall apply the framework when evaluating the specific facts and circumstances.

### **Threats and Safeguards**

- 1.13 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, an Associate/Fellow's compliance with the fundamental principles. A circumstance or relationship may create more than one threat, and a threat may affect compliance with more than one fundamental principle. Many threats fall into the following categories:

- (a) Self-interest threat – the threat that a financial or other interest will inappropriately influence the Associate/Fellow's judgment or behavior;

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\* See Definition.



Self-review threat – the threat that an Associate/Fellow

- (b) will not appropriately evaluate the results of a previous judgment -made or service performed by the Associate/Fellow , or by another individual within the Associate/Fellow’s firm or employing organization, on which the Associate/Fellow will rely when forming a judgment as part of providing a current service;

Advocacy threat - the threat that

- (c) an Associate/Fellow will promote a client’s or employer’s position to the point that the Associate/Fellow’s objectivity is compromised;
- (d) Familiarity threat – the threat that due to a long or close relationship with a client or employer, an Associate/Fellow will be too sympathetic to their interests or too accepting of their work; and
- (e) Intimidation threat – the threat that an Associate/Fellow will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the Associate/Fellow.

Parts B and C of this Code explain how these categories of threats may be created for Associates/Fellows in public practice and Associates/Fellows in business, respectively. Associates/Fellows in public practice may also find Part C relevant to their particular circumstances.

1.14 Safeguards are actions or other measures that may eliminate threats or reduce them to an acceptable level. They fall into two broad categories:

- (a) Safeguards created by the profession, legislation or regulation; and
- (b) Safeguards in the work environment.

1.15 Safeguards created by the profession, legislation or regulation include:

- 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 by a legally empowered third party of the reports, returns, communications or information produced by an Associate/Fellow.

1.16 Parts B and C of this Code discuss safeguards in the work environment for Associates/Fellows in public practice and Associates/Fellows in business, respectively.

- 1.17 Certain safeguards may increase the likelihood of identifying or deterring unethical behavior. Such safeguards, which may be created by the insolvency profession, legislation, regulation or an employing organization, include:
- Effective, well publicized complaints systems operated by the employing organization, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behavior.
  - An explicitly stated duty to report breaches of ethical requirements.

### **Ethical Conflict Resolution**

- 1.18 An Associate/Fellow may be required to resolve a conflict in complying with the fundamental principles.
- 1.19 When initiating either a formal or informal conflict resolution process, an Associate/Fellow shall consider the following, either individually or together with others, as part of the resolution process:
- (a) Relevant facts;
  - (b) Ethical issues involved;
  - (c) Fundamental principles related to the matter in question;
  - (d) Established internal procedures; and
  - (e) Alternative courses of action.

Having considered these issues, an Associate/Fellow shall determine the appropriate course of action. The Associate/Fellow shall weigh the consequences of each possible course of action. If the matter remains unresolved, the Associate/Fellow shall consult with other appropriate persons within the firm\* or employing organization for help in obtaining resolution.

- 1.20 Where a matter involves a conflict with, or within, an organization, an Associate/Fellow shall determine whether to consult with those charged with governance of the organization, such as the board of directors or the audit committee.
- 1.21 It may be in the best interests of the Associate/Fellow to document the substance of the issue and details of any discussions held or decisions made concerning that issue.
- 1.22 If a significant conflict cannot be resolved, an Associate/Fellow may consider obtaining professional advice from IPAS, the relevant professional body or from legal advisors. The Associate/Fellow generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter

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\* See Definitions.

is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. Instances in which the Associate/Fellow may consider obtaining legal advice vary. For example, an Associate/Fellow may have encountered a fraud, the reporting of which could breach the Associate/Fellow's responsibility to respect confidentiality. The Associate/Fellow may consider obtaining legal advice in that instance to determine whether there is a requirement to report.

- 1.23 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, the Associate/Fellow shall, where possible, refuse to remain associated with the matter creating the conflict. The Associate/Fellow 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 organization.

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\* See Definitions.

## **Section 2**

### **Integrity**

- 2.1 The principle of integrity imposes an obligation on all Associates/Fellows to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.
  
- 2.2 An Associate/Fellow shall not knowingly be associated with reports, returns, communications or other information where the Associate/Fellow believes that the information:
  - (a) Contains a materially false or misleading statement;
  - (b) Contains statements or information furnished recklessly; or
  - (c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When an Associate/Fellow becomes aware that the accountant has been associated with such information, the Associate/Fellow shall take steps to be disassociated from that information.

- 2.3 An Associate/Fellow will not be deemed to be in breach of paragraph 2.2 if the Associate/Fellow provides a modified report in respect of a matter contained in paragraph 2.2.

## **Section 3**

### **Objectivity**

- 3.1 The principle of objectivity imposes an obligation on all Associates/Fellows not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.
  
- 3.2 An Associate/Fellow may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. An Associate/Fellow shall not perform a professional service if a circumstance or relationship biases or unduly influences the Associate/Fellow's professional judgment with respect to that service.

## **Section 4**

### **Professional Competence and Due Care**

- 4.1 The principle of professional competence and due care imposes the following obligations on all Associates/Fellows:
- (a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and
  - (b) To act diligently in accordance with applicable technical and professional standards when providing professional services.
- 4.2 Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:
- (a) Attainment of professional competence; and
  - (b) Maintenance of professional competence.
- 4.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical professional and business developments. Continuing professional development enables an Associate/Fellow to develop and maintain the capabilities to perform competently within the professional environments.
- 4.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
- 4.5 An Associate/Fellow shall take steps to ensure that those working under the insolvency professional's authority in a professional capacity have appropriate training and supervision.
- 4.6 Where appropriate, an Associate/Fellow shall make clients, employers or other users of the professional services aware of limitations inherent in the services.

## Section 5

### Confidentiality

- 5.1 The principle of confidentiality imposes an obligation on all Associates/Fellows to refrain from:
- (a) Disclosing outside the firm or employing organization 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
  - (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
- 5.2 An Associate/Fellow shall maintain confidentiality, including in a social environment. The Associate/Fellow shall be alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or **immediate family**\* member.
- 5.3 An Associate/Fellow shall maintain confidentiality of information disclosed by a prospective client or employer.
- 5.4 An Associate/Fellow shall be aware of the need to maintain confidentiality of information within the firm or employing organization.
- 5.5 An Associate/Fellow shall take all reasonable steps to ensure that staff under the Associate/Fellow's control and persons from whom advice and assistance is obtained respect the Associate/Fellow's duty of confidentiality.
- 5.6 The need to comply with the principle of confidentiality continues even after the end of relationships between an Associate/Fellow and a client or employer. When an Associate/Fellow changes employment or acquires a new client, the Associate/Fellow is entitled to use prior experience. The Associate/Fellow shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.
- 5.7 The following are circumstances where Associates/Fellows are or may be required to disclose confidential information or when such disclosure may be appropriate:
- (a) Disclosure is permitted by law and is authorized by the client or the employer;
  - (b) Disclosure is required by law, for example:

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\* See Definitions.

- (i) Production of documents or other provision of evidence in the course of legal proceedings; or
  - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
- (c) There is a professional duty or right to disclose, when not prohibited by law:
- (i) To comply with the quality review of a member body or professional body;
  - (ii) To respond to an inquiry or investigation by a member body or regulatory body;
  - (iii) To protect the professional interests of an Associate/Fellow in legal proceedings; or
  - (iv) To comply with technical standards and ethics requirements.

5.8 In deciding whether to disclose confidential information, an Associate/Fellow shall consider the following points:

- (a) Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the Associate/Fellow;
- (b) Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any; and
- (c) The type of communication that is expected and to whom it is addressed; in particular, Associates/Fellows shall be satisfied that the parties to whom the communication is addressed are appropriate recipients.



## **Section 6**

### **Professional Behavior**

- 6.1 The principle of professional behavior imposes an obligation on all Associates/Fellows to comply with relevant laws and regulations and avoid any action that the Associate/Fellow knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the Associate/Fellow at that time, would be likely to conclude affects the good reputation of the profession in a negative manner.
  
- 6.2 In marketing and promoting themselves and their work, Associates/Fellows shall not bring the profession into disrepute. Associates/Fellows shall be honest and truthful and not:
  - (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
  - (b) Make disparaging references or unsubstantiated comparisons to the work of others.
  
- 6.3 If there is a conflict in the above to the rules and regulations of the relevant professional body, the rules and regulations of the relevant professional body would prevail.

**PART B-ASSOCIATES/FELLOWS IN PUBLIC PRACTICE**

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## PART B: ASSOCIATES/FELLOWS IN PUBLIC PRACTICE

### Section 7

#### Introduction

- 7.1 This Part of the Code describes how the conceptual framework is to be applied by Associates/Fellows in public practice. This Part does not describe all of the circumstances and relationships that could be encountered by an Associate/Fellow in public practice that create or may create threats to compliance with the fundamental principles. Therefore, when the Associate/Fellow in public practice encounters a circumstance or relationship that is not explicitly addressed in this Part, the Associate/Fellow in public practice shall apply the conceptual framework approach described in Section 1 when evaluating the specific facts. The Associate/Fellow in public practice is encouraged to be alert for such circumstances and relationships.
- 7.2 An Associate/Fellow in public practice 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.

#### Threats and Safeguards

- 7.3 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to an **insolvency client\*** and whether the client is a **public interest entity\***.

Threats may fall into the following categories:

- (a) Self-interest;
- (b) Self-review;
- (c) Advocacy;
- (d) Familiarity; and
- (e) Intimidation.

These threats are discussed further in Section 1 of this Code.

- 7.4 Examples of circumstances that create self-interest threats for an Associate/Fellow in public practice include:

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\* See Definitions.

- A member of the **insolvency team** having a **direct financial interest\*** in the assurance client.
- A firm having undue dependence on total fees from a client.
- A member of the insolvency team having a significant close business relationship with an insolvency client.
- A firm being concerned about the possibility of losing a significant client.
- A member of the **insolvency team\*** entering into employment negotiations with the audit client.
- A firm entering into a **contingent fee\*** arrangement relating to an **insolvency engagement.\***
- An Associate/Fellow discovering a significant error when evaluating the results of a previous professional service performed by a member of the Associate/Fellow's firm.

7.5 Examples of circumstances that create self-review threats include:

- A firm issuing an assurance report on the effectiveness of the operation of financial systems after designing or implementing the systems.
- A firm having prepared the original data used to generate records that are the subject matter of the insolvency engagement.
- A member of the **engagement team\*** being, or having recently been, a **director or officer\*** of the client.
- A member of the engagement team being, or having recently been, employed by the client in a position to exert significant influence over the subject matter of the engagement.
- The firm performing a service for an insolvency client that directly affects the subject matter information of the insolvency engagement.

7.6 Examples of circumstances that create advocacy threats include:

- The firm promoting shares in an insolvency client.
- An Associate/Fellow acting as an advocate on behalf of an insolvency client in litigation or disputes with third parties.

7.7 Examples of circumstances that create familiarity threats include:

- A member of the engagement team having a close or immediate family relationship with a director or officer of the client.

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\* See Definitions.

\* See Definitions.

- A member of the engagement team having a close or immediate family relationship with an employee of the client who is in a position to exert significant influence over the subject matter of the engagement.
- A director or officer of the client or an employee in a position to exert significant influence over the subject matter of the engagement having recently been a partner of the firm.
- An Associate/Fellow accepting gifts or preferential treatment from a client, unless the value is trivial or inconsequential.
- Senior personnel having a long association with the insolvency client.

7.8 Examples of circumstances that create intimidation threats include:

- A firm being threatened with dismissal from a client engagement.
- An audit client indicating that it will not award a planned non-insolvency contract to the firm if the firm continues to disagree with the client's insolvency treatment for a particular transaction.
- A firm being threatened with litigation by the client.
- A firm being pressured to reduce inappropriately the extent of work performed in order to reduce fees.
- An Associate/Fellow feeling pressured to agree with the judgment of a client employee because the employee has more expertise on the matter in question.
- An Associate/Fellow being informed by a partner of the firm that a planned promotion will not occur unless the Associate/Fellow agrees with an insolvency client's inappropriate insolvency treatment.

7.9 Safeguards that may eliminate or reduce threats to an acceptable level fall into two broad categories:

- (a) Safeguards created by the profession, legislation or regulation; and
- (b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are described in paragraph 1.15 of Part A of this Code.

7.10 An Associate/Fellow in public practice shall exercise judgment to determine how best to deal with an identified threat that is not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level or by terminating or declining the relevant engagement. In exercising this judgment, an Associate/Fellow in public practice shall consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the Associate/Fellow at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of safeguards, such that compliance with the

fundamental principles is not compromised. This consideration will be affected by matters such as the significance of the threat, the nature of the engagement and the structure of the firm.

7.11 In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards comprise firm-wide safeguards and engagement specific safeguards.

7.12 Examples of firm-wide safeguards in the work environment include:

- Leadership of the firm that stresses the importance of compliance with the fundamental principles.
- Leadership of the firm that establishes the expectation that members of an engagement team will act in the public interest.
- Policies and procedures to implement and monitor quality control of engagements.

Documented policies regarding the need to identify threats to compliance with the fundamental principles, evaluate the significance of those threats, and apply safeguards to eliminate or reduce the threats to an acceptable level

- or, when appropriate safeguards are not available or cannot be applied, terminate or decline the relevant engagement.
- 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-insolvency services to an insolvency 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 Insolvency clients and related entities from which **independence**\* is required.

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\* See Definitions.

- 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.

7.13 Examples of engagement-specific safeguards in the work environment include:

- Having an Associate/Fellow who was not involved with the previous non-insolvency service review the non-insolvency work performed or otherwise advise as necessary.
- Having an Associate/Fellow who was not a member of the insolvency team review the work performed or otherwise advise as necessary.
- Consulting an independent third party, such as a committee of independent directors, a professional regulatory body or insolvency professional.
- 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 insolvency team personnel.

7.14 Depending on the nature of the engagement, an Associate/Fellow in public practice 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.

7.15 Examples of safeguards within the client's systems and procedures may include:

- The client requires persons other than management to ratify or approve the appointment of a firm to perform an engagement.
- 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-insolvency engagements.
- The client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's services.

## **Section 8**

### **Professional Appointment**

#### **Client Acceptance**

- 8.1 Before accepting a new client relationship, an Associate/Fellow in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavior may be created from, for example, questionable issues associated with the client (its owners, management or activities).
- 8.2 Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.
- 8.3 An Associate/Fellow in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.

Examples of such safeguards include:

- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
  - Securing the client's commitment to improve corporate governance practices or internal controls.
- 8.4 Where it is not possible to reduce the threats to an acceptable level, the Associate/Fellow in public practice shall decline to enter into the client relationship.
- 8.5 The Associate/Fellow in public practice shall periodically review acceptance decisions for recurring client engagements.

#### **Engagement Acceptance**

- 8.6 An Associate/Fellow in public practice shall agree to provide only those services that the Associate/Fellow in public practice is competent to perform. Before accepting a specific client engagement, an Associate/Fellow in public practice shall determine 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.



- 8.7 An Associate/Fellow in public practice shall evaluate the significance of identified threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards 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.
- 8.8 When an Associate/Fellow in public practice intends to rely on the advice or work of an expert, the Associate/Fellow in public practice shall determine whether such reliance is warranted. The Associate/Fellow in public practice 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**

- 8.9 An Associate/Fellow in public practice who is asked to replace another Associate/Fellow in public practice, or who is considering tendering for an engagement currently held by another Associate/Fellow in public practice, shall determine whether there are any reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an acceptable level by the application of safeguards. For example, there may be a threat to professional competence and due care if an Associate/Fellow in public practice accepts the engagement before knowing all the pertinent facts.
- 8.10 An Associate/Fellow in public practice shall evaluate the significance of any threats. Depending on the nature of the engagement, this may require direct communication with the **existing Associate/Fellow \*** to establish the facts and circumstances regarding the proposed change so that the Associate/Fellow in public practice can decide whether it would be appropriate to accept the engagement. For example, the apparent reasons for the change in appointment

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\* See Definitions.

may not fully reflect the facts and may indicate disagreements with the existing Associate/Fellow that may influence the decision to accept the appointment.

8.11 Safeguards shall be applied, when necessary, to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing Associate/Fellow 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 existing Associate/Fellow to provide known information on any facts or circumstances that, in the existing Associate/Fellow's opinion, the proposed Associate/Fellow needs to be aware of before deciding whether to accept the engagement; and
- Obtaining necessary information from other sources.

When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, an Associate/Fellow in public practice shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

8.12 An Associate/Fellow in public practice may be asked to undertake work that is complementary or additional to the work of the existing Associate/Fellow. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is notifying the existing Associate/Fellow of the proposed work, which would give the existing Associate/Fellow the opportunity to provide any relevant information needed for the proper conduct of the work.

8.13 An existing Associate/Fellow is bound by confidentiality. Whether the Associate/Fellow is permitted to or is required to discuss the affairs of a client with a proposed Associate/Fellow will depend on the nature of the engagement and on:

- (a) Whether the client's permission to do so has been obtained; or
- (b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

8.14 In the absence of specific instructions from the client, an existing Associate/Fellow shall not volunteer information about the client's affairs. Circumstances where it may be appropriate to disclose confidential information are set out in Part A of this Code.

- 8.15 An Associate/Fellow in public practice will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing Associate/Fellow. Once that permission is obtained, the existing Associate/Fellow shall comply with relevant legal and other regulations governing such requests. Where the existing Associate/Fellow provides information, it shall be provided honestly and unambiguously. If the proposed Associate/Fellow is unable to communicate with the existing Associate/Fellow, the proposed Associate/Fellow shall try 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 9

### Conflicts of Interest

- 9.1 An Associate/Fellow in public practice shall take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may create threats to compliance with the fundamental principles. For example, a threat to objectivity may be created when an Associate/Fellow in public practice competes directly with a client or has a joint venture or similar arrangement with a major competitor of a client. A threat to objectivity or confidentiality may also be created when an Associate/Fellow in public practice performs services for clients whose interests are in conflict or the clients are in dispute with each other in relation to the matter or transaction in question.
- 9.2 An Associate/Fellow in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level. Before accepting or continuing a client relationship or specific engagement, the Associate/Fellow in public practice shall evaluate the significance of any threat created by business interests or relationships with the client or a third party.
- 9.3 Depending upon the circumstances giving rise to the conflict, application of one of the following safeguards is generally necessary:
- (a) Notifying the client of the firm's business interest or activities that may represent a conflict of interest, and obtaining their consent to act in such circumstances; or
  - (b) Notifying all known relevant parties that the Associate/Fellow in public practice is acting for two or more parties in respect of a matter where their respective interests are in conflict, and obtaining their consent to so act; or
  - (c) Notifying the client that the Associate/Fellow in public practice does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service) and obtaining their consent to so act.
- 9.4 The Associate/Fellow shall also determine whether to apply one or more of the following additional safeguards:
- (a) The use of separate engagement teams;
  - (b) Procedures to prevent access to information (e.g., strict physical separation of such teams, confidential and secure data filing);
  - (c) Clear guidelines for members of the engagement team on issues of security and confidentiality;
  - (d) The use of confidentiality agreements signed by employees and partners of the firm; and

- (e) Regular review of the application of safeguards by a senior individual not involved with relevant client engagements.

9.5 Where a conflict of interest creates a threat to one or more of the fundamental principles, including objectivity, confidentiality or professional behavior, that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the Associate/Fellow in public practice shall conclude that it is not appropriate to accept a specific engagement or that resignation from one or more conflicting engagements is required.

9.6 Where an Associate/Fellow in public practice has requested consent from a client to act for another party (which may or may not be an existing client) in respect of a matter where the respective interests are in conflict and that consent has been refused by the client, the Associate/Fellow in public practice shall not continue to act for one of the parties in the matter giving rise to the conflict of interest.

## **Section 10**

### **Second Opinions**

- 10.1 Situations where an Associate/Fellow in public practice is 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 may create 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 Associate/Fellow, or is based on inadequate evidence. The existence and significance of any threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgment.
- 10.2 When asked to provide such an opinion, an Associate/Fellow in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level. Examples of such safeguards include seeking client permission to contact the existing insolvency professional, describing the limitations surrounding any opinion in communications with the client and providing the existing insolvency professional with a copy of the opinion.
- 10.3 If the company or entity seeking the opinion will not permit communication with the existing Associate/Fellow, an Associate/Fellow in public practice shall determine whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

## Section 11

### Fees and Other Types of Remuneration

- 11.1 When entering into negotiations regarding professional services, an Associate/Fellow in public practice may quote whatever fee is deemed appropriate. The fact that one insolvency professional in public practice 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.
- 11.2 The existence and significance of any threats created will depend on factors such as the level of fee quoted and the services to which it applies. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards 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.
- 11.3 Contingent fees are widely used for certain types of non-insolvency engagements. They may, however, create threats to compliance with the fundamental principles in certain circumstances. They may create a self-interest threat to objectivity. The existence and 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.

Contingent fees are allowed if not prohibited by any law, legislation, regulation or other code or rules of ethics or conduct (whether having the force of law or not) applicable to the Associate/Fellow.

- 11.4 The significance of any such threats shall be evaluated and safeguards applied when necessary to eliminate or reduce them to an acceptable level. Examples of such safeguards include:

- An advance written agreement with the client as to the basis of remuneration.
  - Disclosure to intended users of the work performed by the professional Associate/Fellow in public practice and the basis of remuneration.
  - Quality control policies and procedures.
  - Review by an objective third party of the work performed by the Associate/Fellow in public practice.
- 11.5 In certain circumstances, an Associate/Fellow in public practice may receive a referral fee or commission relating to a client. For example, where the Associate/Fellow in public practice does not provide the specific service required, a fee may be received for referring a continuing client to another Associate/Fellow in public practice or other expert. An Associate/Fellow in public practice may receive a commission from a third party (e.g., a software vendor) in connection with the sale of goods or services to a client. Accepting such a referral fee or commission creates a self-interest threat to objectivity and professional competence and due care.
- 11.6 An Associate/Fellow in public practice may also pay a referral fee to obtain a client, for example, where the client continues as a client of another Associate/Fellow in public practice but requires specialist services not offered by the existing Associate/Fellow. The payment of such a referral fee also creates a self-interest threat to objectivity and professional competence and due care.
- 11.7 The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:
- Disclosing to the client any arrangements to pay a referral fee to another Associate/Fellow for the work referred.
  - Disclosing to the client any arrangements to receive a referral fee for referring the client to another Associate/Fellow in public practice.
  - 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.
- 11.8 An Associate/Fellow in public practice 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 the paragraphs above.



## Section 12

### Marketing Professional Services

12.1 When an Associate/Fellow in public practice 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 behavior is created if services, achievements, or products are marketed in a way that is inconsistent with that principle.

12.2 An Associate/Fellow in public practice shall not bring the profession into disrepute when marketing professional services. The Associate/Fellow in public practice shall be honest and truthful and not:

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

If the Associate/Fellow in public practice is in doubt about whether a proposed form of advertising or marketing is appropriate, the Associate/Fellow in public practice shall consider consulting with the relevant professional body.

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\* See Definitions.

## Section 13

### Gifts and Hospitality

- 13.1 An Associate/Fellow in public practice, or an immediate or **close family\*** member, may be offered gifts and hospitality from a client. Such an offer may create threats to compliance with the fundamental principles. For example, a self-interest threat to objectivity may be created if a gift from a client is accepted; an intimidation threat to objectivity may result from the possibility of such offers being made public.
- 13.2 The existence and significance of any threat will depend on the nature, value, and intent of the offer. Where gifts or hospitality are offered that a reasonable and informed third party, weighing all the specific facts and circumstances, would consider trivial and inconsequential, an Associate/Fellow in public practice 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 Associate/Fellow in public practice may generally conclude that any threat to compliance with the fundamental principles is at an acceptable level.
- 13.3 An Associate/Fellow in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, an Associate/Fellow in public practice shall not accept such an offer.

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\* See Definitions.

## **Section 14**

### **Custody of Client Assets**

- 14.1 An Associate/Fellow in public practice 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 an Associate/Fellow in public practice holding such assets.
- 14.2 The holding of client assets creates threats to compliance with the fundamental principles; for example, there is a self-interest threat to professional behavior and may be a self interest threat to objectivity arising from holding client assets. An Associate/Fellow in public practice entrusted with money (or other assets) belonging to others shall therefore:
- (a) Keep such assets separately from personal or firm assets;
  - (b) Use such assets only for the purpose for which they are intended;
  - (c) 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
  - (d) Comply with all relevant laws and regulations relevant to the holding of and accounting for such assets.
- 14.3 In addition, Associates/Fellows in public practice shall be aware of threats to compliance with the fundamental principles through association with such assets, for example, if the assets were derived from illegal activities, such as money laundering. As part of client and engagement acceptance procedures for such services, Associates/Fellows in public practice shall make appropriate inquiries about the source of such assets and consider their legal and regulatory obligations. They may also consider seeking legal advice.

## Section 15

### Objectivity–All Services

- 15.1 An Associate/Fellow in public practice shall determine 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 its directors, officers or employees. For example, a familiarity threat to objectivity may be created from a family or close personal or business relationship.
- 15.2 An Associate/Fellow in public practice who provides an insolvency service is required to be independent of the insolvency client. Independence of mind and in appearance is necessary to enable the Associate/Fellow in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest or undue influence of others.
- 15.3 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 Associate/Fellow in public practice is performing.
- 15.4 An Associate/Fellow in public practice shall evaluate the significance of identified threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level. Examples of such safeguards 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, the Associate/Fellow shall decline or terminate the relevant engagement.

- 15.5 Independence requires:

#### *Independence of Mind*

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

#### *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 reasonably conclude a firm's,

or a member of the engagement team's, integrity, objectivity or professional skepticism had been compromised.

## **PART C-ASSOCIATES/FELLOWS IN BUSINESS**

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## **PART C: ASSOCIATES/FELLOWS IN BUSINESS**

### **Section 16A**

#### **Introduction**

- 16A.1 This Part of the Code describes how the conceptual framework is to be applied by Associates/Fellows in business. This Section does not purport to be exhaustive but is an illustration as to how the conceptual framework should be applied.
- 16A.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 Associates/Fellows in business. Associates/Fellows in business may be solely or jointly responsible for the preparation and reporting of financial and other information, which both their employing organizations 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.
- 16A.3 An Associate/Fellow in business may be a salaried employee, a partner, director (whether executive or non-executive), an owner manager, a volunteer or another working for one or more employing organization. The legal form of the relationship with the employing organization, if any, has no bearing on the ethical responsibilities incumbent on the Associate/Fellow in business.
- 16A.4 An Associate/Fellow in business has a responsibility to further the legitimate aims of Associate/Fellow's employing organization. This Code does not seek to hinder an Associate/Fellow in business from properly fulfilling that responsibility, but addresses circumstances in which compliance with the fundamental principles may be compromised.
- 16A.5 An Associate/Fellow in business may hold a senior position within an organization. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. An Associate/Fellow in business is expected, therefore, to encourage an ethics-based culture in an employing organization that emphasizes the importance that senior management places on ethical behavior.
- 16A.6 This Part does not describe all circumstances and relationships that could be encountered by an Associate/Fellow in business that create or may create threats to compliance with the fundamental principles. Therefore, when the Associate/Fellow in business encounters a circumstance or relationship that is not explicitly addressed in this Part, the Associate/Fellow in business shall apply the conceptual framework approach described in Section 1 when evaluating the specific facts. The Associate/Fellow in business is encouraged to be alert for such circumstances and relationships.

- 16A.7 An Associate/Fellow 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.
- 16A.8 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. Threats may fall into the following categories:
- (a) Self-interest;
  - (b) Self-review;
  - (c) Advocacy;
  - (d) Familiarity; and
  - (e) Intimidation.

These threats are discussed further in the General Application of this Code.

- 16A.9 Examples of circumstances that may create self-interest threats for an Associate/Fellow in business include:
- Holding a financial interest in, or receiving a loan or guarantee from the employing organization.
  - Participating in incentive compensation arrangements offered by the employing organization.
  - Inappropriate personal use of corporate assets.
  - Concern over employment security.
  - Commercial pressure from outside the employing organization.
- 16A.10 An example of a circumstance that creates a self-review threat is determining the appropriate insolvency treatment for a business combination after performing the feasibility study that supported the acquisition decision.
- 16A.11 When furthering the legitimate goals and objectives of their employing organizations Associates/Fellows in business may promote the organization's position provided any statements made are neither false nor misleading. Such actions generally would not create an advocacy threat.
- 16A.12 Examples of circumstances that may create familiarity threats include:
- An Associate/Fellow in business being responsible for the employing organization'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.
  - An Associate/Fellow accepting a gift or preferential treatment, unless the value is trivial and inconsequential.
- 16A.13 Examples of circumstances that may create intimidation threats include:



- Threat of dismissal or replacement of the Associate/Fellow in business or a close or immediate family member 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.

16A.14 Safeguards that may eliminate or reduce threats to an acceptable level fall into two broad categories:

- (a) Safeguards created by the profession, legislation or regulation; and
- (b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are detailed in Section 1.15 of this Code.

16A.15 Safeguards in the work environment include:

- The employing organization's systems of corporate oversight or other oversight structures.
- The employing organization's ethics and conduct programs.
- Recruitment procedures in the employing organization emphasizing the importance of employing high caliber competent staff.
- Strong internal controls.
- Appropriate disciplinary processes.
- Leadership that stresses the importance of ethical behavior 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 organization'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 organization any ethical issues that concern them without fear of retribution.
- Consultation with another appropriate Associate/Fellow.

16A.16 In circumstances where an Associate/Fellow in business believes that unethical behavior or actions by others will continue to occur within the employing organization, the Associate/Fellow in business shall consider obtaining 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, an Associate/Fellow in business may conclude that it is appropriate to resign from the employing organization.

## Section 16B

### Potential Conflicts

- 16B.1 An Associate/Fellow in business shall comply with the fundamental principles. There may be times, however, when an Associate/Fellow's responsibilities to an employing organization and professional obligations to comply with the fundamental principles are in conflict. An Associate/Fellow in business is expected to support the legitimate and ethical objectives established by the employer and the rules and procedures drawn up in support of those objectives. Nevertheless, where a relationship or circumstance creates a threat to compliance with the fundamental principles, an Associate/Fellow in business shall determine a response to the threat.
- 16B.2 As a consequence of responsibilities to an employing organization, an Associate/Fellow in business may be under pressure to act or behave in ways that could create threats to compliance with the fundamental principles. Such pressure may be explicit or implicit; it may come from a supervisor, manager, director or another individual within the employing organization. An Associate/Fellow in business may face pressure to:
- Act contrary to law or regulation.
  - Act contrary to technical or professional standards.
  - Facilitate unethical or illegal earnings management strategies.
  - Lie to others, or otherwise intentionally mislead (including misleading by remaining silent) others, in particular:
    - The auditors of the employing organization; or
    - Regulators.
  - Issue, or otherwise be associated with, a financial or non-financial report that materially misrepresents the facts, including statements in connection with, for example:
    - The financial statements;
    - Tax compliance;
    - Legal compliance; or
    - Reports required by securities regulators.
- 16B.3 The significance of any threats arising from such pressures, such as intimidation threats, shall be evaluated and safeguards applied, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:
- Obtaining advice where appropriate from within the employing organization, an independent professional advisor or a relevant professional body.
  - Using a formal dispute resolution process within the employing organization.
  - Seeking legal advice.

## Section 16C

### Preparation and Reporting of Information

- 16C.1 Associates/Fellows 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 organization. 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 during the audit of the entity's financial statements. An Associate/Fellow 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.
- 16C.2 An Associate/Fellow in business who has responsibility for the preparation or approval of the general purpose financial statements of an employing organization shall ensure that those financial statements are presented in accordance with the applicable financial reporting standards.
- 16C.3 An Associate/Fellow in business shall maintain information for which the Associate/Fellow in business is responsible in a manner that:
- (a) Describes clearly the true nature of business transactions, assets, or liabilities;
  - (b) Classifies and records information in a timely and proper manner; and
  - (c) Represents the facts accurately and completely in all material respects.
- 16C.4 Threats to compliance with the fundamental principles, for example self-interest or intimidation threats to objectivity or professional competence and due care, are created where an Associate/Fellow in business is pressured (either externally or by the possibility of personal gain) to become associated with misleading information or to become associated with misleading information through the actions of others.
- 16C.5 The significance of such threats will depend on factors such as the source of the pressure and the degree to which the information is, or may be, misleading. The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate them or reduce them to an acceptable level. Such safeguards include consultation with superiors within the employing organization, the audit committee or those charged with governance of the organization, or with a relevant professional body.
- 16C.6 Where it is not possible to reduce the threat to an acceptable level, an Associate/Fellow in business shall refuse to be or remain associated with information the Associate/Fellow determines is or may be misleading. If the Associate/Fellow in business becomes aware that the issuance of misleading information is either significant or persistent, the Associate/Fellow in business shall determine whether to inform appropriate authorities in line with the

guidance in Section 5. In determining whether there is a requirement to report, the Associate/Fellow in business may consider obtaining legal advice. In addition, the Associate/Fellow may consider whether to resign.

## Section 16D

### Acting with Sufficient Expertise

- 16D.1 The fundamental principle of professional competence and due care requires that an Associate/Fellow in business only undertake significant tasks for which the Associate/Fellow in business has, or can obtain, sufficient specific training or experience. An Associate/Fellow in business shall not intentionally mislead an employer as to the level of expertise or experience possessed, nor shall an Associate/Fellow in business fail to seek appropriate expert advice and assistance when required.
- 16D.2 Circumstances that create a threat to an Associate/Fellow in business performing duties with the appropriate degree of professional competence and due care include having:
- 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.
- 16D.3 The significance of the threat will depend on factors such as the extent to which the Associate/Fellow in business is working with others, relative seniority in the business and the level of supervision and review applied to the work. The significance of the threat shall be evaluated and, safeguards applied when necessary, to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards 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 organization;
    - Independent experts; or
    - A relevant professional body.
- 16D.4 When threats cannot be eliminated or reduced to an acceptable level, Associates/Fellows in business shall determine whether to refuse to perform the duties in question. If the Associate/Fellow in business determines that refusal is appropriate, the reasons for doing so shall be clearly communicated. The Associate/Fellow may choose to refer the duties to another insolvency professional, whether in public practice or business, with the relevant expertise.

## Section 16E

### Financial Interests

16E.1 Associates/Fellows in business may have financial interests, or may know of financial interests of immediate or close family members, 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 situations where the Associate/Fellow in business or an immediate or close family member:

- Holds a direct or indirect financial interest in the employing organization and the value of that financial interest could be directly affected by decisions made by the Associate/Fellow in business;
- Is eligible for a profit related bonus and the value of that bonus could be directly affected by decisions made by the Associate/Fellow in business;
- Holds, directly or indirectly, share options in the employing organization, the value of which could be directly affected by decisions made by the Associate/Fellow in business;
- Holds, directly or indirectly, share options in the employing organization which are, or will soon be, eligible for conversion; or
- May qualify for share options in the employing organization or performance related bonuses if certain targets are achieved.

16E.2 The significance of any threat 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 to eliminate the threat or reduce it to an acceptable level, an Associates/Fellows in business shall evaluate the nature of the financial interest. This includes evaluating the significance of the financial interest and determining whether it is direct or indirect. What constitutes a significant or valuable stake in an organization will vary from individual to individual, depending on 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 organization, in accordance with any internal policies.
- Consultation, where appropriate, with superiors within the employing organization.
- Consultation, where appropriate, with those charged with the governance of the employing organization or relevant professional bodies.
- Internal and external audit procedures.

- Up-to-date education on ethical issues and on the legal restrictions and other regulations around potential insider trading.

16E.4 An Associate/Fellow in business shall neither manipulate information nor use confidential information for personal gain.

## Section 16F

### Inducements

#### Receiving Offers

- 16F.1 An Associate/Fellow in business or an immediate or close family member may be offered an inducement. Inducements may take various forms, including gifts, hospitality, preferential treatment, and inappropriate appeals to friendship or loyalty.
- 16F.2 Offers of inducements may create threats to compliance with the fundamental principles. When an Associate/Fellow in business or an immediate or close family member is offered an inducement, the situation shall be evaluated. Self-interest threats to objectivity or confidentiality are created when an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behavior, 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 Associate/Fellow in business or an immediate or close family member.
- 16F.3 The existence and significance of any threats will depend on the nature, value and intent behind the offer. If a reasonable and informed third party, weighing all the specific facts and circumstances, would consider the inducement insignificant and not intended to encourage unethical behavior, then an Associate/Fellow in business may conclude that the offer is made in the normal course business and may generally conclude that there is no significant threat to compliance with the fundamental principles.
- 16F.4 The significance of any threats shall be evaluated and safeguards applied, when 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, an Associate/Fellow 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, additional safeguards shall be adopted. An Associate/Fellow in business shall evaluate any threats created by such offers and determine whether to take the following actions:
- (a) Informing higher levels of management or those charged with governance of the employing organization immediately when such offers have been made;
  - (b) Informing third parties of the offer – for example, a professional body or the employer of the individual who made the offer; an Associate/Fellow in business shall however, consider whether to seek legal advice before taking such a step; and



- (c) Advising immediate or close family members 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; and
- (d) Informing higher levels of management or those charged with governance of the employing organization where immediate or close family members are employed by competitors or potential suppliers of that organization.

### **Making Offers**

- 16F.5 An Associate/Fellow in business may be in a situation where the Associate/Fellow in business is expected, or is under other pressure, to offer inducements to influence the judgment or decision-making process of an individual or organization, or obtain confidential information.
- 16F.6 Such pressure may come from within the employing organization, for example, from a colleague or superior. It may also come from an external individual or organization suggesting actions or business decisions that would be advantageous to the employing organization, possibly influencing the Associate/Fellow in business improperly.
- 16F.7 An Associate/Fellow in business shall not offer an inducement to improperly influence professional judgment of a third party.
- 16F.8 Where the pressure to offer an unethical inducement comes from within the employing organization, the Associate/Fellow shall follow the principles and guidance regarding ethical conflict resolution set out in the General Application of this Code.

## DEFINITIONS

In this Code of Ethics for Associates/Fellows the following expressions have the following meanings assigned to them:

### *Acceptable level*

A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the Associate/Fellow at that time, that compliance with the fundamental principles is not compromised.

### *Advertising*

The communication to the public of information as to the services or skills provided by Associates/Fellows in public practice with a view to procuring professional business.

### *Insolvency team*

- (a) All members of the engagement team for the insolvency engagement;
- (b) All others within a firm who can directly influence the outcome of the insolvency engagement, including:
  - (i) those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the insolvency engagement partner in connection with the performance of the insolvency 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;
  - (ii) those who provide consultation regarding technical or industry-specific issues, transactions or events for the insolvency engagement; and
  - (iii) those who provide quality control for the insolvency engagement, including those who perform the engagement quality control review for the insolvency engagement; and
- (c) 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.

### *Close family*

A parent, child or sibling, who is not an immediate family member.

### *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.

### *Direct financial interest*

A financial interest:

- Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or

- Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control, or the ability to influence investment decisions.

*Engagement team*

All personnel performing an engagement, including any experts contracted by the firm in connection with that engagement.

*Existing Associate/Fellow*

An Associate/Fellow in public practice currently holding an insolvency appointment or carrying out accounting, taxation, consulting or similar professional services for a client.

*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.

*Firm*

- (a) A sole practitioner, partnership or corporation of Associates/Fellows;
- (b) An entity that controls such parties; and
- (c) An entity controlled by such parties.

*Immediate family*

A spouse (or equivalent) or dependant.

*Independence*

Independence is:

- (a) Independence of mind – the states of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity, and exercise objectivity and professional skepticism.
- (b) 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 insolvency team's, integrity, objectivity or professional skepticism had been compromised.

*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 or ability to influence investment decision.

*Listed entity*

An entity whose shares, stock or debt are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body.

*Network firm*

An entity under common control, ownership or management with the firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally or internationally.

*Office*

A distinct sub-group, whether organized on geographical or practice lines.

*Associate/Fellow*

An individual who is a member of IPAS.

*Associate/Fellow in business*

An Associate/Fellow 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 an insolvency professional contracted by such entities.

*Associate/Fellow in public practice*

An Associate/Fellow, irrespective of functional classification (e.g., audit, tax or consulting), in a firm that provides professional services.

This term is also used to refer to a firm of Associate/Fellows in public practice.

*Professional services*

Services requiring insolvency or related skills performed by an Associate/Fellow including accounting, auditing, taxation, management consulting and financial management services.

*Related entity*

An entity that has any of the following relationships with the client:

- (a) An entity that has direct or indirect control over the client provided the client is material to such entity;
- (b) An entity with a direct financial interest in the client if that such entity has significant influence over the client and the interest in the client is material to such entity;
- (c) An entity over which the client has direct or indirect control;
- (d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and

- (e) An entity which is under common control with the client (hereinafter a “sister entity”) if the sister entity and the client are both material to the entity that controls both the client and sister entity.

## **EFFECTIVE DATE**

The Code is effective on 4 May 2010. Earlier application is encouraged.