



## **APES GN 40 MEMBERS IN BUSINESS**

**(Issued XXXX 2011)**

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#### *Conformity with International Pronouncements*

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## 1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional guidance note APES GN 40 *Members in Business* (the Guidance Note), which is effective from XXXX. This Guidance Note supersedes GN 1 *Members in Business* Guidance Statement. Early adoption of this Guidance Note is permitted.
- 1.2 APES GN 40 provides guidance to Members in Business on the application of the fundamental principles contained within Part C – Members in Business of APES 110 *The Code of Ethics for Professional Accountants* (the Code). The Guidance Note provides examples for Members in Business of business situations that require professional judgment in the application of the principles of the Code.
- 1.3 Members in Business in Australia should follow the guidance in APES GN 40 when they provide Professional Services.
- 1.4 Members in Business working outside of Australia should follow the guidance in APES GN 40 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.
- 1.5 The Guidance Note is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.6 All references to Professional Standards and Guidance Notes are references to those provisions as amended from time to time.
- 1.7 Members in Business need to be familiar with relevant Professional Standards and Guidance Notes when providing Professional Services.
- 1.8 In applying the guidance outlined in APES GN 40, Members should be guided not merely by the words but also by the spirit of this Guidance Note and the Code.

## 2. Definitions

For the purpose of this Guidance Note:

**Acceptable Level** means a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that compliance with the fundamental principles is not compromised.

**Code** means APES 110 *Code of Ethics for Professional Accountants*.

**Employer** within the context of this Standard means an entity or person that employs, engages or contracts a Member in Business.

**Member** means a Member of a Professional Body that has adopted this Standard as applicable to their Membership as defined by that Professional Body.

**Member in Business** means a Member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or Professional Bodies, or a Member contracted by such entities.

**Professional Bodies** means the Institute of Chartered Accountants in Australia, CPA Australia and the National Institute of Accountants.

**Professional Services** means services requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services.

**Professional Standards** means all standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable Professional Body.

### **3. Fundamental responsibilities of Members in Business**

- 3.1 APES 110 *Code of Ethics for Professional Accountants* is the conceptual framework and foundation on which all other APESB pronouncements are based. Compliance with and application of the Code is fundamental to the professional behaviour of Members in Business. Non-compliance with the Code can lead to disciplinary proceedings being initiated by the professional body to which the Member belongs to.
- 3.2 Professional obligations and ethical requirements that Members in Business are required to comply with are based on the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour in the Code.
- 3.3 Professional Services is defined in the Code as services requiring accountancy or related skills performed by a Member. The definition makes reference to accounting, auditing, taxation, management consulting and financial management services. Whilst a number of these services are typically performed by Members in Public Practice, services performed by Members in Business are also captured by the definition of Professional Services. Such services include but are not limited to those performed by financial accountants, tax accountants, financial analysts, management accountants, internal auditors and financial controllers.
- 3.4 A Member in Business who provides Professional Services is required to comply with Section 100 *Introduction and Fundamental Principles* of the Code and relevant law or regulation.
- 3.5 A Member in Business who provides Professional Services is required to comply with *Part A – General Application of the Code* and *Part C – Members in Business* of the Code. Part C of the Code is specific to Members in Business and describes the application of fundamental principles to some of the more common commercial situations.

### **4. Framework approach**

- 4.1 The environment in which Members in Business operate may give rise to specific threats to compliance with the fundamental principles. This Guidance Note uses the framework in the Code to assist Members in Business to identify, evaluate and respond to threats to compliance with the fundamental principles. Members in Business are required to implement safeguards to eliminate the threats or reduce them to an Acceptable Level so that compliance with the fundamental principles is not compromised. The Guidance Note provides a range of examples dealing with a variety of circumstances in which threats may arise and provides guidance on safeguards that can be adopted. Members in Business need to use the framework to address ethical issues arising from their work at an early stage. This will then enable them to adopt appropriate safeguards which are suitable to the circumstance.
- 4.2 When considering their own circumstances, Members in Business are advised to use the following model which provides a structured approach to ethical decision making:
  - Gather the facts and identify the problem;
  - Define the fundamental principles involved;
  - Identify the affected parties;

- Determine whether a procedure of conflict resolution exists within the organisation;
  - Identify who should be involved in the conflict resolution process;
  - Discuss the ethical dilemma and the conflict with the relevant parties, in accordance with the prescribed procedures;
  - Consider courses of action and associated consequences;
  - Decide on a preferred course of action; and
  - Implement the appropriate course of action.
- 4.3 When resolving an ethical dilemma, a Member in Business needs to document the substance of the issue and details of any discussions held, and conclusions reached, concerning that issue.
- 4.4 The case studies in Section 13 illustrate the application of the fundamental principles and the types of safeguards that can be implemented. These case studies are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances likely to be experienced by Members in Business that create threats to compliance with the fundamental principles of the Code. Consequently, it is not sufficient for Members in Business to merely comply with these case studies. Members in Business need to apply the principles of the Code to the particular circumstance they face.

## **5. Threats and safeguards**

### **Threats**

- 5.1 Compliance with the Code may potentially be threatened by a broad range of circumstances and relationships. A Member in Business is required to implement safeguards to eliminate the threats or reduce them to an Acceptable Level so that compliance with the fundamental principles is not compromised.
- 5.2 Threats may be created by a broad range of relationships and circumstances. Any given circumstance may in fact create more than one threat, and the threats that arise may affect compliance with more than one fundamental principle.
- 5.3 Threats to the fundamental principles are discussed in Part A – *General Application of the Code* of APES 110. Threats fall into one or more of the following categories:
- (a) Self-interest – the threat that a financial or other interest will inappropriately influence the judgment or behaviour of a Member in Business;
  - (b) Self-review – the threat that a Member in Business will not appropriately evaluate the results of a previous judgment or service performed by the Member or another individual within the employing organisation, on which the Member in Business will rely upon when performing the current task;
  - (c) Advocacy – the threat that a Member in Business will promote the Employer's position to the point that the Member's objectivity is compromised;
  - (d) Familiarity – the threat that due to a long or close relationship with the Employer, a Member in Business will be too sympathetic to their interests or will accept the Employer's view on certain matters without sufficient scrutiny; and
  - (e) Intimidation – the threat that a Member in Business will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the Member.

### **Safeguards**

- 5.4 The Code classifies safeguards that may eliminate or reduce threats faced by Members in Business to Acceptable Levels into two broad categories:
- safeguards created by the profession, legislation or regulation; and
  - safeguards in the work environment.

Examples of such safeguards are outlined in paragraphs 100.12 and 300.16 of the Code.

- 5.5 In addition to the categories above, safeguards may also be created by the Member. Such safeguards include but are not restricted to:
- keeping records of contentious issues and the approach adopted to resolve them;
  - maintaining a broader perspective on how similar organisations function through establishing business relationships with other professionals;
  - using an independent mentor; and
  - discussing ethical issues with legal advisors and Professional Bodies.

## **6. Overview of APES 110 PART C: Members in Business**

- 6.1 APES 110 Part C illustrates how the conceptual framework contained in APES 110 Part A is to be applied by Members in Business.
- 6.2 APES 110 Part C Section 300 provides an overview of the various types of threats encountered by Members in Business in their work environment and appropriate safeguards that can be considered
- 6.3 APES 110 PART C Section 310-350 specifies professional obligations of Members in Business in the following circumstances:
- Section 310 – Potential Conflicts
  - Section 320 – Preparation and Reporting of Information
  - Section 330 – Acting with Sufficient Expertise
  - Section 340 – Financial Interests
  - Section 350 - Inducements

## **7. Potential conflicts arising from responsibilities to the Employer**

- 7.1 Potential conflicts may arise from the Member's obligation to comply with the fundamental principles of the Code whilst fulfilling responsibilities to the Employer. Ordinarily a Member in Business is required to support the legitimate and ethical objectives established by the Employer and rules and procedures in support of those objectives. However, as a consequence of these obligations, a Member in Business may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles of the Code.
- 7.2 Where potential conflicts arise, a Member in Business is required to comply with section 310 *Potential Conflicts* of the Code. Examples and the potential approaches to resolving such conflicts are shown in Case Study 1 and Case Study 2.

## **8. Preparation and reporting of information to be used by internal and external parties**

- 8.1 Members in Business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. When preparing and reporting such information, Members in Business

are required to comply with section 320 *Preparation and Reporting of information* of the Code.

- 8.2 A Member in Business is required to prepare or present such information fairly, honestly and in accordance with relevant Professional Standards so that the information will be understood in its context. Threats to the Member's ability to do so may arise from pressure (intimidation or self-interest) to become associated with misleading information. Where the threats have been evaluated and have not been reduced to an Acceptable Level, safeguards such as those discussed in section 320 *Preparation and Reporting of information* of the Code need to be applied. A practical example showing the analysis of threats and application of safeguards is shown in Case Study 3. An additional example of reporting conflicts is detailed in Case Study 4.

[Editorial Note: May need to modify draft paragraph 7.2 if the Board agrees to AUST 320.2.1 of APES 110]

## **9. Member in Business's responsibility to Act with sufficient expertise**

- 9.1 The fundamental principle of professional competence and due care requires that a Member in Business should only undertake tasks for which they have, or can obtain, sufficient specific training or experience. A Member in Business should not intentionally mislead Employers as to how much expertise or experience they have, nor should they fail to seek appropriate expert advice and assistance when required.
- 9.2 Where the ability of a Member in Business to perform duties with the appropriate degree of professional competence and due care is threatened by factors such as insufficient time, inadequate information, inadequate resources or insufficient knowledge, safeguards such as those in section 330 *Acting with Sufficient Expertise* of the Code needs to be applied. Examples addressing the need to act with sufficient expertise are shown in Case Study 5 and Case Study 6.

## **10. Financial interests of a Member in Business**

- 10.1 Financial interests of a Member in Business or their immediate or close family members could give rise to threats to compliance with the fundamental principles of the Code. A Member in Business is required to comply with section 340 *Financial Interests* of the Code in such circumstances. The Code requires a Member in Business to evaluate the significance of such a threat, and the appropriate safeguards to be applied. A Member in Business needs to examine the nature of the financial interest which includes considerations such as the nature of the interest and whether it is direct or indirect. Case Study 7 outlines considerations which may be applied by Members in Business where financial interests threaten compliance with the fundamental principles of the Code.

## **11. Inducements offered to a Member in Business**

- 11.1 Inducements refer to both the receiving of offers and making offers. Where such threats to the fundamental principles arise, a Member in Business is required to comply with section 350 *Inducements* of the Code.
- 11.2 A Member in Business or an immediate or close family member may be offered an inducement such as gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty. Alternatively, a Member in Business may experience pressure to

offer inducements to subordinate the judgment of another individual or organisation, influence a decision making process or obtain confidential information.

- 11.3 Where threats to the fundamental principles arise from inducements, the Member in Business is required to follow the principles and guidance in Section 350 *Inducements* of the Code. Case Study 8, Case Study 9 and Case Study 10 outline potential approaches that can be adopted by a Member in Business where inducements threaten compliance with the fundamental principles of the Code.

## **12. Disclosure of information and Whistleblowing** *(section based on ACCA document – Guidance on Ethical Matters)*

- 12.1 Where required by law to disclose confidential information, for example as a result of anti-money laundering or anti-terrorism legislation, or in connection with legal proceedings involving either themselves or their employing organisation, Members should always disclose that information in compliance with relevant legal requirements.
- 12.2 Members should take care when communicating relevant facts to others relating to known or suspected criminal activity. Whistleblowing has legal ramifications which are addressed in *Corporations Act 2001*, *AML/CTF Act 2006*, *Criminal Code Act 1995* and relevant state based whistleblower protection acts. Thus, prior to disclosing confidential information, the Member should consider obtaining legal advice and/or consulting their Professional Body.
- 12.3 Members in Business should initially refer to their organisation's internal Whistleblowing Policy to determine whether there are appropriate internal procedures that the Member can adopt to rectify the situation.
- 12.4 In some circumstances, Members in Business may consider disclosing information outside the employing organisation, when not obligated to do so by law or regulation, because they believe it is in the public interest. When considering such a disclosure, Members should, where appropriate, follow the internal procedures of the employing organization in an attempt to rectify the situation. If the matter cannot be resolved within the employing organisation, Members should consider the following:
- a) Legal constraints and obligations
  - b) Whether members of the public are likely to be adversely affected
  - c) The gravity of the matter, for example the size of the amounts involved and the extent of likely financial damage
  - d) The possibility or likelihood of repetition
  - e) The reliability and quality of the information available
  - f) The reasons for the employing organisation's unwillingness to disclose matters to the relevant authority
  - g) When the Employer gives authorization to disclosure information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed
  - h) Whether or not all the relevant information is known and substantiated, to the extent this is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any
  - i) The type of communication that is expected and to whom it is addressed; in particular, members should be satisfied that the parties to whom the communication is addressed are appropriate recipients
  - j) The legal or regulatory obligations and the possible implications of disclosure for the Member.
- 12.5 Before making such disclosure, the Member should obtain legal advice as to their duties and obligations in the context of their professional and business relationships, and possible protection under the *Corporations Act 2001* and relevant state based

whistleblower protection acts. An example which deals with whistleblowing is included as Case Study 11.

### **13. Case Studies**

[Decision tree or framework to be inserted by technical staff]

#### **CASE STUDY 1 – Unsupported expenses**

##### **[Potential Conflicts]**

##### **Case outline**

A Member in Business is the finance director of an organisation. The Member become concerned that the chief executive is making frequent overseas trips and charging the expenses to the organisation. The relevance of the destinations and the nature of the activities undertaken appear to have only partial relevance to the organisation's activities and thus will also impact on the tax deductibility of the expense.

The Member in Business discusses the issue with the chief executive, who gives assurances that the nature and purpose of these trips are covered by an 'understanding' with the organisation's chairman. This is not evidenced in writing, and no further justification for the expenses is forthcoming.

##### **Fundamental principles of the Code**

##### **Integrity**

Would processing the payments without adequate explanation be seen as being honest and fair by others?

##### **Objectivity**

How will the Member in Business be able to demonstrate the Member's objectivity, actual or perceived, from the chief executive?

##### **Professional competence and due care**

How can allowing the expense payments to be processed without adequate explanation be seen as acting with due skill, care and diligence?

##### **Professional behaviour**

How should the Member in Business proceed so as not to discredit the Member?

##### **Ethical decision-making approach**

##### **Identify relevant facts**

Consider the business's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations. Is it possible to obtain details or documentation of the 'understanding' between the chief executive and the chairman? Has the Member in Business discussed the matter adequately with the chief executive and/or chairman to ensure that the Member has the real facts?

### **Identify affected parties**

Key affected parties are the Member in Business, the chief executive and the board. Other possible affected parties are the expense processing department, human resources, internal audit, Australian Tax Office, audit committee, employees, shareholders and financial backers.

### **Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Does the Member in Business have trusted colleagues with whom the Member can discuss the Member's position? At what point will the Member in Business consider involving the board and the audit committee?

### **Consider possible course of action**

Discuss the issue further with the chief executive and ask for details of the trip or documentary evidence of this 'understanding' between the chief executive and the chairman. During this discussion, explain to the chief executive the reasons why this information is needed, for example to conform with the organisation's policies, procedures and guidelines. If the chief executive will not provide the necessary information, explain to him that the matter will have to be discussed with the chairman, and the Member will set up a meeting involving all three parties. If no satisfactory response is obtained from the chief executive and the chairman, next steps could include discussions with the board, internal audit, audit committee or the external auditors.

The Member in Business can also consider the ethical conflict resolution processes of the Member's Professional Body.

## **CASE STUDY 2 – Unbilled rates**

### **[Potential Conflicts]**

#### **Outline of the case**

After being made redundant in the midst of an economic downturn, a Member in Business is thrilled at having recently secured an appointment as the Finance Director of G Ltd. The Member in Business first task is to prepare the annual statutory accounts for the year ended 30 June 2010.

The Member in Business reviews the figures and note that whilst the company is solvent, it has to run a tight ship in relation to cash management. The Member in Business also notices a very high accruals figure that appears unusual given the Member's limited understanding of the business. On discussion with the Managing Director (MD), the Member in Business finds that the balance relates to 14 years of unpaid rates. It seems that following the regional break-up of councils some years ago, G Ltd was never sent a notice to pay rates.

The company likewise had not alerted the local council to non-payment, electing instead to take up an accrual for the outstanding amounts and adding to that each year. The Managing Director is irritated by the Member in Business questions and makes it very clear to the Member that he expects the Member to put the company's interests first - every time. He then questions why the Member would want to draw the attention of the local council to something which is clearly its own mistake? He then highlights the fact that the company does not have enough surplus cash to pay anything like 14 years of back rates. Payment of such a large amount would create a situation where jobs are lost and the company's future threatened.

### **Fundamental principles of the Code**

#### **Integrity**

How does the Member in Business maintain the Member's integrity when the Member is being asked to undertake a course of action which the Member clearly has doubts about?

**Objectivity**

How would the Member in Business maintain the Member's objectivity given that the Member's Employer is operating in a difficult economic environment and have the added pressure of possibly disagreeing with the Member's boss who the Member hardly knows?

**Confidentiality**

Is there any basis on which the Member in Business could make disclosures given the Member's Employer obviously believes that the company's non-payment of rates is confidential information.

**Professional behaviour**

Does it serve the public interest for this type of corporate behaviour to be ignored?

**Ethical decision-making approach**

**Identify relevant facts**

Is there any other reason why the company has not received a bill for rates? Can the Member in Business continue to do as the Managing Director asks and merely accrue an estimate for the rates bill for the year? If the Member in Business decide that the Member cannot merely do this, does the Member go back to him and advise that the company should contact the local council and inform them of the situation? Is there anyone else within the company that the Member should speak to regarding this matter? Are there other directors aware of this issue? Is there a supportive environment for open discussion of practical dilemmas without a recriminatory or 'blame' culture?

**Identify affected parties**

Key affected parties are the Member in Business, the Managing Director, the other directors, the company's employees, the shareholders (if different from the directors), the local council and the general public.

**Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Does the Member in Business have trusted colleagues with whom the Member can discuss the Member's position? Has the Member in Business discussed the matter with the board?

**Consider possible course of action**

The Member in Business could try to use interpersonal skills in a non-confrontational way to offer to find a solution to the underlying problem. Has anyone explained the potential consequences to the Managing Director if this error is discovered by the local council? Would the local council look to name and shame, which could possibly result in negative public relations for G Ltd? Would any interest or penalties be payable by the company? What will happen if at some future date there are plans to sell the company – any due diligence is likely to discover this non-payment of rates – will it have any impact on a potential sale? The Member in Business could also ask the Managing Director to consider whether G Ltd has a moral obligation to the local community. The Managing Director, of course, might argue that he is doing more than his fair share by employing a number of people in the local area. Another alternative would be to consider asking the local council to agree to a payment plan – particularly given the current economic climate it is unlikely the council would want G Ltd to go out of business potentially resulting in unemployment for a number of members of the community.

## **CASE STUDY 3 – Incorrect reporting of financial information**

### **[Preparation and Reporting of Information]**

#### **Case outline**

A Member in Business is a reporting accountant in a company. The Member in Business's immediate manager is a very forceful, domineering individual and the Member has accepted his views over the last two years on the level of work in progress. He has given the Member in Business specific assurances that work in progress has increased by 200% during the current reporting period, and instructed the Member to report this level in the monthly management accounts. The year-end draft financial accounts show that the organisation has only just met its business plan financial targets.

Evidence then becomes available (which the Member was not aware of when the draft accounts were produced) to indicate that something is clearly wrong and the work in progress had not increased at anywhere near the rate advised by the Member's manager.

#### **Gather the facts and identify the problem**

- The Member in Business's immediate manager is domineering individual and the Member has previously accepted his views
- the manager wants the Member in Business to report that work in progress has increased by 200%
- evidence indicates that work in progress has not increased anywhere near 200%

#### **Fundamental principles of the Code**

##### **Integrity**

Will the Member in Business be able to demonstrate that the accounts are true and fair without re-drafting?

##### **Objectivity**

How would the Member in Business maintain the Member's objectivity given that the Member's immediate manager is a forceful, perhaps intimidating individual?

##### **Professional competence and due care**

Are the draft accounts prepared in accordance with reporting requirements including applicable accounting standards, laws and regulations, and Professional Standards?

##### **Professional behaviour**

How should the Member in Business proceed so as not to discredit the Member or the Company?

#### **Ethical decision-making approach**

##### **Identify relevant facts**

Consider the business's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations. Is the evidence that work in progress is incorrectly stated supported by other documentation, for example analytical review of cost of sales, margins and cash flows?

##### **Identify affected parties**

Key affected parties are the Member in Business and the Member's immediate manager. Other possible affected parties are the next levels of management, recipients of the management accounts and the financial accounts, finance, purchasing, accounts payable, human resources, internal audit, audit committee, board, external auditors, shareholders and financial backers.

### **Consider who should be involved in the resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Has the Member in Business discussed the matter with the Member's immediate line manager in light of all the available evidence and possible consequences? Can the Member in Business discuss the matter with recipients of the management and financial accounts? At what point will the Member in Business consider involving other affected parties?

### **Consider possible course of action**

Check the relevant facts by corroborating with other available documentation, for example, cost of sales calculations, margins, previous stock counts and other financial information. Discuss the matter with Member in Business's immediate line manager as to the appropriate course of action, for example undertaking a stock count. If the Member in Business feel that Member's manager's response is not appropriate, discuss the matter with recipients of the management and draft financial accounts and the next level of management. Next steps could include discussion with the senior management, internal audit, audit committee, the board and external auditors where appropriate.

The Member in Business can also consider the ethical conflict resolution processes of the Member's Professional Body.

## **CASE STUDY 4 – Research and development**

### **[Preparation and Reporting of Information]**

#### **Outline of the case**

A Member in Business is the Finance Director of KR Limited. The company's policy on Research and Development (R&D) allows for the deferral of R&D costs where it is reasonable to expect that an associated revenue stream will result.

Recently, the Member in Business has become aware that an investment of \$1m made in relation to a new R&D program has not been properly assessed. The Member in Business's enquiries are leading the Member to conclude that there are little or no success criteria against the investment and that there will be little to show for this investment. When the Member in Business approaches the director of the relevant team, Ronaldo, he says that the Member should not worry as he will knock up some numbers to keep the auditors happy.

The financial year-end is only two months away and a \$1m write-off at this late stage would cause the Member in Business real difficulties with the chief executive and the board. It would also compromise severely the Member in Business's professional relationship with the fellow director, Ronaldo, who would then be put in a very exposed position with the board.

#### **Fundamental principles of the Code**

##### **Integrity**

How does the Member in Business maintain the Member's integrity - the need to be honest, not just with Member in Business, but with the rest of Member in Business's board and the auditors?

##### **Objectivity**

How does the Member in Business remain objective as to the true nature of the costs and their proper accounting treatment?

##### **Professional behaviour**

How does the Member in Business proceed in order to not discredit the Member ?

#### **Ethical decision-making approach**

**Identify relevant facts**

Can the Member in Business retain the Member's integrity by not bringing this matter to the board's attention? Should Member in Business discuss the matter with Ronaldo prior to taking the matter to the board? What information will the Member in Business disclose to the auditors?

Is there a supportive environment for open discussion of practical dilemmas without a recriminatory, or 'blame' culture? Is this matter evidence of a wider breakdown in company internal controls in relation to the correct treatment of expenditure on R&D? Is this an isolated incident? Has there been any commercial pressure put on Ronaldo to treat revenue expenditure items as deferred expenditure items?

**Identify affected parties**

Key affected parties are the Member in Business, Ronaldo, the other directors, the company's employees and the shareholders (if different from the directors).

**Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Does the Member in Business have trusted colleagues with whom the Member can discuss the Member's position?

**Consider possible course of action**

In this scenario there may well be a conflict. There may be commercial pressures on the Member in Business to defer this expenditure. However, transparent reporting of the economic substance of the transactions would require an immediate write-off.

An initial approach to take may involve further discussion with Ronaldo to understand the project and its current status fully. The Member in Business may also explain potential implications to Ronaldo of inappropriate treatment of this amount in terms of a qualified audit report and the resultant impact the report would have on the company. Another alternative may be to sit down with the Member in Business's other directors to explain the Member's reading of the situation and work through together how this issue can be resolved.

## **CASE STUDY 5 – Acting without sufficient expertise**

### **[Acting With Sufficient Expertise]**

#### **Case outline**

A Member in Business's Employer has put the Member in charge of a project which requires the Member to have detailed actuarial knowledge. The Member in Business is uneasy about doing the work, as the Member does not possess the necessary expertise, and is uncertain about what to say to the Employer.

#### **Fundamental principles of the Code**

##### **Professional competence and due care**

Does the Member in Business have the necessary skills and experience to undertake the work?

##### **Professional behaviour**

How should the Member in Business proceed so as not to discredit the Member or the company?

#### **Ethical decision-making approach**

##### **Identify relevant facts**

Consider the business's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations. Can the Member in Business demonstrate the Member's lack of expertise in this area, the potential impact on the organisation and pension fund, and offer alternatives?

##### **Identify affected parties**

Key affected parties are the Member in Business and the Employer. Other possible affected parties are the auditors, employees, human resources, pensioners, shareholders and financial backers.

##### **Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Does the Member in Business have trusted colleagues with whom the Member in Business can discuss the Member's position? At what point will the Member in Business consider involving the next level of management and human resources?

##### **Consider possible course of action**

Discuss the Member in Business's concern about the Member's lack of actuarial knowledge with the Employer and suggest clearly defining the scope of the project and a course of action for addressing issues such as lack of actuarial knowledge. For example, employing a person with the necessary expertise. During the discussion, focus on the potential consequences to the business, pension fund and the Member in Business personally of undertaking this project. Explain that employing a person with the necessary expertise does not remove the Member in Business's obligation to ensure that the work is conducted in accordance with accounting standards, laws and regulations. If the Employer does not agree to the suggested course of action, it may be appropriate to discuss the matter with the next level of management. If the response from management is not satisfactory, it may be necessary to involve internal audit, the audit committee, pension and/or investment committee or the board. The Member in Business should document the substance of all discussions held, who was involved, what conclusions were reached and why, and the Member's involvement.

The Member in Business can also consider the ethical conflict resolution processes of the Member's Professional Body.

## **CASE STUDY 6 – To be, or not to be a Non Executive Director?**

### **[Acting With Sufficient Expertise]**

#### **Outline of the case**

A Member in Business's entire career has focussed on the manufacturing industry with 12 years experience with a large building company and 20 years as an audit partner in a large firm. Following retirement the Member in Business receives an offer to take up a position of a non-executive director for a company in the financial services sector. The money being offered is significant and the role provides the Member with an opportunity of a new challenge that will eliminate the boredom of retirement that the Member was feeling. The Member in Business is therefore keen to put his name forward for this role but the Member has a nagging doubt at the back of his mind- i.e. the Member has no work experience in the financial services sector.

#### **Fundamental principles of the Code**

##### **Integrity**

Would the Member in Business's integrity be compromised by taking a position where the Member may not have, nor be able to readily attain, the technical skill set and therefore not serve effectively as a member of the board?

##### **Objectivity**

Are the potential financial rewards compromising the Member in Business's objectivity by clouding the Member's judgement in considering the interests of shareholders and other stakeholders?

##### **Professional competence and due care**

Can the Member in Business quickly acquire adequate knowledge of the commercial, strategic, technical and regulatory requirements of the proposed role?

##### **Professional behaviour**

After having considered all available information, does the Member in Business believe that the Member would be a suitable candidate for the position?

#### **Ethical decision-making approach**

##### **Identify relevant facts**

In accordance with the Code there is a continuing duty to maintain professional knowledge and skill. The Member in Business needs to assess the Member's position very carefully. The issues which the Member has to consider are:

- (i) if the Member in Business decide to put himself forward for the role then the Member must be open and transparent in the Member's discussions with the head-hunter. The client may well be looking for someone not familiar with the financial services industry in order to bring a fresh perspective to the working of its audit committee. The Member in Business should also ask the head- hunter for a detailed role specification.
- (ii) The Member in Business has to satisfy himself that the Member has made appropriate disclosures if the Member is ultimately successful in getting the position. In this respect it would be helpful to find out whether the company provides a comprehensive induction program for its new non-executive directors as this might help to alleviate the Member 's concerns.

### **Identify affected parties**

Key affected parties are the Member in Business, the head-hunter, the company and its directors, the shareholders and potentially other stakeholders of the company.

### **Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Consider who else, apart from the Member in Business, may provide the Member in Business with the information required to make a decision.

### **Consider possible course of action**

It would be helpful to obtain details of the various regulatory requirements which will have an impact on the proposed role at the company concerned. If the Member in Business is interested in pursuing the opportunity then he or she will need to meet the head hunter. At this stage the head hunter should inform the Member of the name of the company concerned. At this meeting the Member will be able to enquire as to what form of induction program/ongoing training does the company provide? The Member also need to establish exactly what the company is looking for. The company should have produced a detailed specification of the role and the skill set of the person that they are looking for. Ask the head-hunter why, in his or her opinion, the Member was "recommended" as a suitable candidate.

The Member in Business also needs to ensure that the Member is aware of the responsibilities involved in being a non-executive director of a listed company.

It would also be appropriate for the Member in Business to undertake the Member's own due diligence on the company and on the prospective fellow directors if the Member decides to express an interest in the position. For example, what is its financial position, what is the culture of the organisation? Some information will be publicly available but other information may require referring to business contacts etc. Does the Member in Business believe that even if the Member has, or can acquire the necessary skill sets, that this is a company on whose board the Member would wish to serve and does the Member in Business believe that the board would have the correct composition and balance?

## **CASE STUDY 7 – Personal financial interest in a proposal**

### **[Financial Interests]**

#### **Case outline**

A Member in Business has been appointed finance director to a public sector organisation which has major difficulties attracting and retaining skilled staff. The board has asked the Member in Business to draw up a benefits package to assist them in overcoming this problem. The Member in Business is told that the Member's entitlement to benefits will be in accordance with the new scheme. The Member in Business conducts appropriate research and concludes that a significant increase in the whole range of benefits is required in order to achieve the board's objective.

### **Fundamental principles of the Code**

#### **Integrity**

In view of the Member in Business's personal interest, how will the Member in Business ensure that the Member's honesty remains unquestionable?

#### **Objectivity**

How will the Member in Business remain unbiased, and consider only the relevant facts, despite Member in Business's personal interest in the benefits package?

### **Professional competence and due care**

Does the Member in Business have all the necessary skills to draw up such a package?

### **Professional behaviour**

How should the Member in Business proceed so as not to discredit the Member's behaviour?

### **Ethical decision-making approach**

#### **Identify relevant facts**

Consider the business's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations. Is the information used for assessing the potential new benefits package independent? Who else has been involved in the proposal for the new benefits package?

#### **Identify affected parties**

Key affected parties are the Member in Business and the board. Other possible affected parties are employees, human resources, shareholders and financial backers.

#### **Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Does the Member in Business have trusted colleagues with whom the Member can discuss the Member's position? Has the Member in Business discussed the matter with the board and/or human resources?

#### **Consider possible course of action**

Before explaining the Member in Business's findings to the board, it may be advisable to tell the board how the Member in Business approached the project and who else was involved in the process. For example, human resources. The Member in Business should declare the Member in Business's conflict of interest and not vote on the proposal for the new benefits package. It may be advisable to involve human resources or another independent party to present the findings to the board.

During the presentation, demonstrate how the Member in Business findings were arrived at and who else was involved in the project. The Member in Business should document the substance of all discussions held, who was involved, what conclusions were reached and why, and the Member's involvement.

## **CASE STUDY 8 – Inducements for non-disclosure of information**

### **[Inducement]**

#### **Outline of the case**

A Member in Business has been with the Employer less than a year, but things have not turned out well and the Member is moving on. The Member in Business has some grave concerns about business conduct, and believe there may be issues which should be disclosed (to auditors or the regulator). The Member in Business is negotiating a compromise agreement, and the Member has been led to understand that if the Member reports any concerns then the Member will not receive a settlement, whereas if the Member agrees to a gagging clause then the Member will receive a substantial payoff.

### **Fundamental principles of the Code**

#### **Integrity**

How far does the Member in Business need to go to demonstrate the Member's integrity?

#### **Objectivity**

How will the Member in Business manage the conflict between financial benefit and integrity?

### **Confidentiality**

Is there any basis on which the Member in Business could make disclosures?

### **Ethical decision-making approach**

#### **Identify relevant facts**

Does the Member in Business have the facts to back up the Member's concerns? Does Member in Business have all the facts, or only a selection, and can the Member establish the rest? What steps has the Member already taken to try to resolve the Member's concerns, and are they documented?

#### **Identify affected parties**

Key affected parties are the Member in Business and the Employer. Other possible affected parties are the regulator, auditor and the public, as well as Member in Business's family.

#### **Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Are there trusted colleagues with whom the Member can discuss the Member's position? Can the Member in Business talk with the Member in Business's Employer about the Member's concerns? Has the Member in Business made full disclosures to the Member's solicitor, and received advice? Has the Member in Business discussed the matter with the Member's family?

#### **Consider possible course of action**

Try to keep the issues clear. One is how to deal with the matters of concern; the second is achieving a satisfactory financial settlement. Take advice early and often. It is key to establish whether the facts support the Member in Business's concerns. If so, the Member in Business must judge if there is a basis for disclosure. If there is a basis, the Member needs to determine what the value and consequences of that disclosure might be for the Member in Business, Member in Business's family, the Employer, the industry and the profession. If there is sufficient evidence to support the Member's concerns then resist the gagging clause, and argue for the Member's concerns about the company's behaviour to be documented and considered by the executive body. Ensure that Member in Business's family is at all times aware of Member's concerns and actions, and their implications, but take care not to reveal confidential information.

During the resolution process, it may be helpful to document the substance of all discussions held, who was involved, what conclusions were reached and why, and the Member in Business's involvement.

The Member in Business can also consider the ethical conflict resolution processes of the Member's Professional Body.

## **CASE STUDY 9 – Earnings Management**

### **[Inducement]**

#### **Outline of the case**

A Member in Business is the Finance Director in a family business.. After some financial difficulties, a bank and a venture capitalist have invested and acquired over 33% of the shares, but no board seats. The continuing support of the bank and venture capitalist are dependent on performance figures being achieved.

The Member in Business has been told that if the Member produces the 'right' figures the Member will get a large bonus and 1% share option. The company is secretive, and as little information as possible is being given to the auditors and the investors.

The Member in Business believes that some figures may be being 'massaged'. The Member in Business has tentatively raised the Member's concerns with the father and son Chairman and chief executive. The Member in Business has been told that if the Member pursues the matter or fails to produce the 'right' figures, the Member will lose the bonus and share options.

**Key fundamental principles and duties**

**Integrity**

Can the Member in Business support the business without being involved in reporting potentially misleading information?

**Objectivity**

How can the Member in Business avoid the Member financial interest influencing the Member's professional judgment?

**Professional behaviour**

How will the Member in Business manage relationships with the affected parties?

**Ethical decision-making approach**

**Identify relevant facts**

Consider the business's policies, procedures and guidelines, accounting standards, applicable laws and regulations. Double check the Member in Business's facts, including significant figures in the accounts, and the assumptions underlying them. Consider whether the culture of secrecy means that the Member is not in possession of material facts, and challenge the management if necessary.

**Identify affected parties**

Key parties are the Member in Business, the family business, professional advisers, bankers and venture capitalists. Other possible affected parties are Member in Business's family and the profession.

**Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Are there trusted colleagues or friends with whom the Member can discuss the Member's position? Can the Member's Professional Body provide advice and provide assistance? Has the Member discussed the matter with the Member's family?

**Consider possible course of action**

Discount the short-term financial benefits on offer. Prepare accounts for the business, noting any assumptions made, and impress on the directors the implications of short-term manipulation which may have long term repercussions. Encourage the family to focus on the underlying business issues, and address them to enhance long-term value. Draw up realistic figures for presentation, and explain how the Member in Business's professional standing demands that these be presented. Do not become involved in manipulation, and do not allow Member's name to be associated with figures not prepared by the Member. Consider whether the values of the organisation are compatible with Member's own, and if necessary the Member may have to reassess employment options.

During the resolution process, it may be helpful to consult with the Member in Business's Professional Body. The Member in Business should document the substance of all discussions held, who was involved, what conclusions were reached and why, and the Member's involvement.

## **CASE STUDY 10 – Everyone's a winner**

### **[Inducement]**

#### **Outline of the case**

A Member in Business is a recently qualified CA working in the accounting department of a property investment firm. The company is selling a piece of land and have stipulated that bids have to be submitted via email by midday that day. The Member in Business is the initial point of contact for the bids. A few bids have been received but not as many as were anticipated.

At 11:30am the Member in Business receive a call from an anonymous prospective buyer who informs the Member that he is willing to pay a premium of 15% above the highest bid received by 11:55am, provided he is informed beforehand of the highest bid received. The caller explains that in this way, all parties benefit. A higher fee is received for the land, the buyer does not have to make an unnecessarily high bid and the Member in Business will be rewarded by the buyer for the Member's hard work. He then goes on to explain that this type of activity is commonplace in the industry and insinuates without naming names that other more senior personnel within the Member's firm have taken advantage of these very generous financial terms in the past and would expect the Member to do the same.

#### **Key fundamental principles and duties**

##### **Integrity**

Can the Member in Business retain the Member's integrity if the Member in Business distort the tender process? How does the Member in Business deal with the caller's allegations about more senior personnel within the Member's company?

##### **Objectivity**

The Member in Businesses needs to consider the interest of all of the other parties involved in the tender process.

##### **Confidentiality**

How could one justify divulging confidential information to the callers in the interest of maximising the selling price of the land?

##### **Professional behaviour**

How does the Member in Business ensure that the Member handle the client's allegations sensitively and professionally as the Member has no knowledge as to the accuracy of the allegations made by the caller?

#### **Ethical decision-making approach**

##### **Identify relevant facts**

Consider any further information Member in Business may require to base the Member's decision on.

##### **Identify affected parties**

Key affected parties are the Member in Business, the caller, the partners and staff in the Member's firm, the bank, other creditors and other prospective buyers.

##### **Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. The first issue is does the Member in Business immediately raise this with someone senior before the caller phones back? Secondly, when the caller does phone back does the Member transfer the call to someone more senior, does the Member get someone more senior to listen in to the conversation or does the Member merely deal with the caller ?

##### **Consider possible course of action**

From the given information, the company would appear to be better off commercially if the information is divulged, although this is not certain as a late bid from an unnamed prospective buyer may yet be received prior to the deadline. However the Member in Business needs to ensure that a fair tender process is held which appears to be in conflict with the short-term commercial pressure.

## **CASE STUDY 11 – NON-DISCLOSURE TO AUDITORS**

### **[Whistleblowing]**

#### **Case outline**

A Member in Business is employed as an accounting systems manager. During the Member's work the Member overhears a financial controller in one department saying that she had not been disclosing certain things to the auditor. The Member in Business doesn't know whether to believe this but is uneasy, as the culture appears to be one of 'getting away with as much as possible'. In addition, the Member in Business was told that a bribe was paid to an overseas company to secure work. The Member in Business is uneasy about the situation and worried that a poor relationship with the Member's line manager may prevent the Member from exploring the accuracy of the statements given to the Member.

#### **Key fundamental principles and duties**

##### **Integrity**

Can the Member in Business overlook the financial controller's comments, the culture and the bribe allegedly paid to the overseas company and still demonstrate integrity?

##### **Objectivity**

Knowing that something may be wrong, how can the Member in Business maintain the Member's objectivity?

##### **Confidentiality**

Is there any basis on which the Member in Business could or should make disclosures?

##### **Professional behaviour**

How should the Member in Business proceed so as not to discredit Member or the company?

#### **Ethical decision-making approach**

##### **Identify relevant facts**

Consider the business's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations. Can the Member in Business corroborate the facts further with documentation or discussion with relevant parties? Does the Member in Business have an internal process for whistleblowing? What steps has the Member in Business taken to understand Member's rights and responsibilities under the relevant legal requirements?

##### **Identify affected parties**

Key affected parties are the Member in Business, the financial controller, the employee raising allegations about a bribe, the line manager and auditor. Other possible affected parties are employees, the next level of management, internal audit, the audit committee, the board, shareholders and financial backers.

##### **Consider who should be involved in resolution**

Consider who should be involved in the resolution of this matter. Also for what reason they should be involved and the timing of their involvement. Has the Member in Business thought of contacting the Member's Professional Body for advice and guidance? Does the Member in Business have trusted colleagues with whom the Member can discuss the Member's position? At what point will the Member in Business consider involving the Member's line manager, the next level of management, the board and the audit committee?

**Consider possible course of action**

Check the relevant facts and discuss the matter with the Member in Business's immediate line manager. If the Member in Business feel that the response from the line manager is not satisfactory, the next step may be to discuss the matter further with the next level of management, internal audit, the audit committee or the board.

If the Member in Business has suspicions or evidence of criminal activity, the Member can contact the Member's Professional Body and/or take legal advice. During the resolution process, it may be helpful to document the Member in Business's involvement and the substance of all discussions held, who else was involved, what decisions were made and why.

***Conformity with International Pronouncements***

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES GN 40.