

Applying APESB pronouncements in COVID-19 circumstances (October 2020)



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Introduction and Purpose

This publication was developed by the Technical Staff of the Accounting Professional & Ethical Standards Board (APESB) to assist members in public practice and members in business in effectively applying APESB pronouncements when facing circumstances created by the COVID-19 pandemic. The publication provides guidance on the application of [APES 110 Code of Ethics for Professional Accountants \(including Independence Standards\)](#) (the Code) in various scenarios as well as the following APESB pronouncements:

- [APES 220 Taxation Services](#);
- [APES 225 Valuation Services](#), [APES GN 20 Scope and Extent of Work for Valuation Services](#) and [APES GN 21 Valuation Services for Financial Reporting](#);
- [APES 330 Insolvency Services](#); and
- [APES 215 Forensic Accounting Services](#);

Members in public practice are also referred to the requirements and application material in [APES 305 Terms of Engagement](#) and [APES 320 Quality Control for Firms](#).

While the eight scenarios in this publication focus on taxation, valuation, insolvency and forensic accounting services or activities, members are encouraged to consider how the conceptual framework of the Code is applied in the examples and how these concepts could be applied to other scenarios or other services or activities the member may be performing. There are scenarios for both members in public practice and members in business.

The four scenarios on taxation and valuation services in this publication are based on scenarios developed as part of a Working Group formed by the International Ethics Standards Board for Accountants (IESBA) and included in the International Federation of Accountants (IFAC) publication *COVID-19 & Ethics Staff Publication - Applying the Code's Conceptual Framework in COVID-19 Circumstances: Scenarios in Taxation and Valuation Services* (July 2020). The working group involved technical staff from IESBA, APESB and other ethics National Standard Setters from Canada, China, South Africa, the UK, and the US. These four scenarios have been expanded in this publication for the Australian environment and application of APESB pronouncements.

The scenarios are hypothetical and are solely intended to illustrate the application of the conceptual framework of the Code and other APESB pronouncements to enable members to identify, evaluate and address threats to compliance with the fundamental principles in the Code created by COVID-19 circumstances.

This publication does not amend or override the Code or applicable APESB pronouncements, whose text alone is authoritative. Reading this publication is not a substitute for reading the Code or applicable APESB pronouncements. The implementation guidance is not meant to be exhaustive, and reference to the Code and applicable APESB pronouncements must always be made. This publication does not constitute an authoritative or official pronouncement of APESB.

SCENARIO 1

Taxation Services – Member in Public Practice

A professional accounting firm (the Firm) provides business, audit and tax compliance services to its clients who are predominantly small to medium-sized entities. The COVID-19 pandemic has negatively impacted a significant proportion of the Firm's clients from a cashflow perspective.

The government has legislated support measures to help stimulate the economy and assist businesses to survive and recover from the effects of the pandemic. One such measure, which is administered by the Australian Taxation Office (ATO), is a temporary wage subsidy where eligible businesses can apply to receive fortnightly payments for each eligible employee, which is then to be passed on to the employees. Part of the eligibility requirements is satisfying decline in turnover tests due to the pandemic.

A major client of the Firm has stated that it is eligible and requested one of the Firm's tax partners to apply on its behalf to the ATO to obtain the wage subsidy. The Firm provides business and tax compliance services, but not audit services, to this client and the annual fees earned from this client make up to 20% of the tax partner's fee base. Although the client has suffered from the impact of the pandemic, its turnover may or may not have been reduced by the required percentage and, therefore, the client's eligibility for the wage subsidy needs to be assessed. The tax partner will be reliant on turnover information and documentation provided by the client in making the relevant application to the ATO.



Identifying Threats

Self-interest

There is a self-interest threat arising from the tax partner's fear of losing the major client and the associated fees if the client does not receive the wage subsidy, which could inappropriately influence the tax partner's judgement or behaviour (para 120.6 A3(a) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour.

Familiarity

There might be a familiarity threat that due to long or close relationships with the major client, the tax partner will be too sympathetic to the client's interests or too accepting of the information provided by the client to apply for the wage subsidy (para 120.6 A3(d) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour.

Intimidation

There is an intimidation threat that the tax partner will be deterred from acting objectively due to actual or perceived pressures from the major client to ensure they receive the wage subsidy due to the financial pressures they are facing (para 120.6 A3(e) of the Code).



Evaluating Threats

Are Identified Threats at an Acceptable Level?

The tax partner must exercise professional judgement and apply the reasonable and informed third party test to determine whether the threats are at an acceptable level.

The tax partner must also consider their obligations under APES 220 *Taxation Services* (APES 220), which sets out requirements and application material specific to providing taxation services. This includes that the tax partner must be objective, maintain an impartial attitude and recommend options that are consistent with the requirements of the law (para 3.4 of APES 220).

Consideration of qualitative and quantitative factors is relevant in the evaluation of threats, as is the combined effect of multiple threats, if applicable (para 120.8 A1 of the Code). Factors that may be relevant in evaluating the level of the threats include:

- Conditions, policies and procedures relating to the client and its operating environment and the Firm and its operating environment (paras 300.7 A1 to 300.7 A5 of the Code list several factors that may be relevant).
- Understandability and clarity of the legislative measures to be eligible for the wage subsidy (qualitative factor).
- The client is a major client of the tax partner (qualitative and quantitative factor).
- The length and closeness of the relationships between the tax partner and the major client (qualitative factor).
- As the ATO is administering the wage subsidy and assessing applications, this may reduce the threats (para 120.8 A2 of the Code and a qualitative factor).
- Whether the Firm and/or the tax partner has also been significantly impacted by the pandemic, which may increase the incentive to retain the major client and maintain the fee base (quantitative factor).

Based on an assessment of these factors, a reasonable and informed third party might conclude that the threats to one or more of the fundamental principles are not at an acceptable level, and the threats would need to be addressed.



Addressing Threats

Eliminate Circumstances

The tax partner may not be able to eliminate the circumstances, including interests or relationships, that are creating the threats (para R120.10(a) of the Code).

Apply Safeguards

While the tax partner must prepare tax documents in accordance with the information provided by the client, their instructions, and the relevant tax law (para 4.1 of APES 220), the tax partner should obtain sufficient information to allow the tax partner to form a view as to the application of the law to that information (para 4.2 of APES 220). Open, frank, and effective communication must be maintained with the client about matters including rights, obligations, and options under the wage subsidy and any penalties or other legal consequences of improper applications (para 3.17 of APES 220).

If the tax partner forms a view that the taxation service would be based on false or misleading information or the omission of material information, the tax partner must discuss this with the client and advise them of the consequences if no action is taken (para 7.3 of APES 220).

The tax partner must not knowingly be associated with reports, returns, communications or other information where the tax partner believes that the information contains a materially false or misleading statement (para R111.2 of the Code). Therefore, if the tax partner determines that the major client does not meet the eligibility requirements of the wage subsidy, the tax partner must not make the application on behalf of the client. There are no safeguards available or capable of being applied to reduce the threats to an acceptable level.

In relation to the assessment of the eligibility criteria to meet the requirements to obtain the wage subsidy, in particular, if the turnover is at or just above the turnover reduction threshold, an example of a safeguard that might address the threats is having an appropriate reviewer who was not involved in providing the service review the service performed (para 300.8 A2). For example, this could be another tax partner within the Firm.

Decline or End Engagement

If the tax partner cannot eliminate the circumstances creating the threats and no safeguards are available or capable of being applied to reduce the threats to an acceptable level, the tax partner may need to decline this service to the major client (para R120.10(c)). If the client is not prepared to appropriately amend the information, the tax partner must not provide the taxation service (Section 7 of APES 220). If this is the case the tax partner should also refer to the:

- Terms of engagement with the client, including the client's responsibilities for completeness and accuracy of information (para 4.6 of APES 305 *Terms of Engagement*).
- Firm's policies and procedures on continuing engagements and client relationships, whether the information obtained during this wage subsidy application process would have caused the Firm to decline the engagement had that information been available earlier, and the possibility of withdrawing from the engagement and the client relationship (para 44 of APES 320 *Quality Control for Firms*).

SCENARIO 2

Taxation Services – Member in Business

A medium-sized business with 100 employees has been forced to temporarily cease operations for six months due to government restrictions implemented because of the COVID-19 pandemic. The employees consist of full time, part-time and casual employees.

The business is suffering financially as a result of the closure and having difficulty meeting its financial obligations, including wages and loan and lease repayments.

The government has legislated support measures to help stimulate the economy and assist business survival and recovery. One such measure, which is administered by the Australian Taxation Office (ATO), is a temporary wage subsidy where eligible businesses can apply to receive fortnightly payments for each eligible employee, which is then to be passed on to the employees.

The CFO is preparing the application for the wage subsidy and has determined that a significant number of the employees are not eligible due to their short-term casual status. The CEO is aware that employee nominee notices do not need to be sent to the ATO and strongly suggests that the CFO:

- change the status of the casual employees that have been employed for less than 12 months to part-time employees; and
- consider including the names of employees who have previously resigned from the business in the application.

The CEO sees that expanding the number of eligible employees would provide additional cash inflow to assist the business to survive and meet its other financial obligations.¹ However, the CFO is aware that the declarations on eligible employees will need to be lodged each month, and that the ATO receives current payroll reporting through Single Touch Payroll (STP) and is concerned that the suggestions would impact the ability of the business to access the wage subsidy and expose the business to fines or penalties.



Identifying Threats

Self-interest

There is a threat that due to the CFO's fear of losing his or her job due to the business being in distress, such a threat will inappropriately influence the CFO's judgement and behaviour (para 120.6 A3(a) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care and professional behaviour.

¹ Under this scenario, an actual breach of laws and regulations has not yet occurred. If the scenario did involve actual or suspected non-compliance with laws and regulations (NOCLAR), the provisions in Section 260, *Responding to Non-compliance with Laws and Regulations* of the Code would also apply.

Intimidation

There is a threat that the CFO will be deterred from acting with integrity and objectivity due to actual or perceived pressures from the CEO to ensure the business receives the wage subsidy in excess of what it is entitled to (para 120.6 A3(e) of the Code). If this occurs, it will also be a breach of the applicable laws and regulations.



Evaluating Threats

Are Identified Threats at an Acceptable Level?

The CFO must exercise professional judgement and apply the reasonable and informed third party test to determine whether the threats are at an acceptable level.

APES 220 *Taxation Services* (APES 220) sets out requirements and application material specific to providing taxation services. This includes that the CFO must be objective, maintain an impartial attitude and recommend options that meet the business's interests consistent with the requirements of the law (para 3.4 of APES 220).

At this stage, it is a strong suggestion from the CEO and the act of including the ineligible employees has not occurred. Consideration of qualitative and quantitative factors is relevant in the evaluation of threats, as is the combined effect of multiple threats, if applicable (para 120.8 A1 of the Code). Factors that may be relevant in evaluating the level of the threats include:

- Conditions, policies, and procedures relating to the work environment of the business (paras 200.7 A1 to 200.7 A4 of the Code), for example:
 - Leadership that stresses the importance of ethical behaviour and the expectation that employees will act ethically (also refer to para 270.3 A3 of the Code). The evaluation of threats would be heightened in this situation as the CEO is suggesting that the CFO should consider unethical behaviour.
 - Policies and procedures to empower and encourage employees to communicate ethics issues that concern them to senior levels of management without fear of retribution (also refer to para 270.3 A3 of the Code and human resources policies that address pressure). Even if such policies and procedures were in place in this scenario, they do not appear to have been adhered to by the CEO. The CFO could also consider accessing the professional ethics counselling service of the applicable professional body.
- The nature of the relationship between the CFO and the CEO, and the CFO and the ineligible casual employees (qualitative factors).
- As the ATO is administering the wage subsidy and assessing applications, this may reduce the threats (para 120.8 A2 of the Code and a qualitative factor).
- Whether the business has cash or liquid resources or access to credit facilities to meet ongoing obligations such as loan and lease repayments and to also make the initial wage payments required in relation to the wage subsidy (quantitative factor).

Based on an assessment of the factors, a reasonable and informed third party would likely conclude that the threats to one or more of the fundamental principles are not at an acceptable level and the threats would need to be addressed.



Addressing Threats

Eliminate Circumstances

The CFO may not be able to eliminate the circumstances, including interests or relationships, that are creating the threats (para R120.10(a) of the Code).

Apply Safeguards

The CFO must prepare and lodge tax documents in accordance with information, instructions and the relevant tax law (para 4.1 of APES 220) and should obtain sufficient information to allow the CFO to form a view as to the application of the law to that information (para 4.2 of APES 220). The CFO must maintain open, frank and effective communication with the CEO about matters including rights, obligations, and options under the wage subsidy and any penalties or other legal consequences of improper applications (para 3.17 of APES 220).

If the CFO forms a view that the wage subsidy application would be based on false or misleading information or the omission of material information, the CFO must discuss this with the CEO and advise the CEO of the consequences (para 7.3 of APES 220).

The CFO must not knowingly be associated with reports, returns, communications or other information where the CFO believes that the information contains a materially false or misleading statement (para R111.2 of the Code). Therefore, if the CFO is aware that any of the employees are not eligible for the wage subsidy (including former employees of the business), the CFO must not include these employees in the application to the ATO. There are no safeguards available or capable of being applied to reduce the threats to an acceptable level.

The CFO must not allow pressure from the CEO to result in a breach of compliance with the fundamental principles (para R270.3(a) of the Code). Further, if the CEO is subject to the Code, the CEO must not place pressure on to the CFO that the CEO knows, or have reason to believe, would result in the CFO breaching the fundamental principles (para R270.3(b) of the Code). However, if the CEO does exert pressure on the CFO, the CFO could take the following actions to ensure the CFO does not breach the Code:

- Address the issue with the CEO and explain that including ineligible employees in the application would breach the Code and applicable law.
- If the CEO is unwilling to listen and continues to exert pressure on the CFO, the CFO could escalate the matter to those charged with governance and/or the chair of the audit committee.
- Document the processes they have followed to address the threats.

Even if the CFO does not allow pressure from the CEO to result in unethical behaviour, the level of the threats might still not be at an acceptable level. In this situation, safeguards should be applied in relation to the application for the wage subsidy for the eligible employees. An example of a safeguard that might address the threats would be to have the business's external professional accountant/tax adviser, who was not involved in preparing the application, review the application before it is lodged with the ATO. Another option is to discuss the matter with the Board of Directors of the entity.

Decline or End Professional Activity

If the CFO cannot eliminate the circumstances creating the threats and no safeguards are available or capable of being applied to reduce the threats to an acceptable level, the CFO may need to decline to prepare and lodge the application for the wage subsidy or resign from the CFO's position (para R120.10(c) of the Code). If the CEO is not prepared to appropriately amend the information for the application, the CFO must not provide the taxation service (Section 7 of APES 220). The CFO will also need to consider applicable legislative reporting obligations.

SCENARIO 3

Valuation Services – Member in Public Practice

A partner at a professional accounting firm (the Firm) has been requested by a listed non-audit client of another partner in the Firm to prepare an independent expert's report on the valuation of one of its significant subsidiary's shares, which the client is planning on selling.

The subsidiary for sale has been financially impacted because of the COVID-19 pandemic, including a reduction in revenue of approximately 25%. The partner is aware that the remainder of the group has also been negatively affected by the pandemic and that the client is dependent on achieving as high a sale price as possible to alleviate financial pressures.

The partner is concerned that some of the underlying assumptions provided by the client for the valuation, especially in respect of revenue, may be overly optimistic in the current and post COVID-19 environment.



Identifying Threats

Advocacy

There is a threat that the partner will rely on optimistic assumptions to promote the client's subsidiary to the point that the partner's objectivity is compromised in a favourable valuation (para 120.6 A3(c) of the Code). It could also threaten independence.

Familiarity

There might be a threat that due to a long or close relationship between the Firm and the client, the partner will be too sympathetic to the client's interests or too accepting of the client's assumptions (para 120.6 A3(d) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour. It could also threaten independence.

Intimidation

There is a threat that the partner will be deterred from acting objectively due to actual or perceived pressures from the client to ensure the valuation of the subsidiary's shares is favourable to the client (para 120.6 A3(e) of the Code). There may also be internal pressures from the other partner within the Firm.



Evaluating Threats

Are Identified Threats at an Acceptable Level?

The partner must exercise professional judgement and apply the reasonable and informed third party test to determine whether the threats are at an acceptable level.

APES 225 *Valuation Services* (APES 225) sets out requirements and application material specific to providing valuation services, including fundamental responsibilities of members in relation to the public interest, independence and professional competence and due care.

Consideration of qualitative and quantitative factors is relevant in the evaluation of threats, as is the combined effect of multiple threats, if applicable (para 120.8 A1 of the Code). Factors that may be relevant in evaluating the level of the threats include:

- Conditions, policies, and procedures relating to the client and its operating environment and the Firm and its operating environment (paras 300.7 A1 to 300.7 A5 of the Code list several factors that may be relevant), including for example:
 - The client has competent employees with experience and authority to make managerial decisions. The higher the level of competence of the clients' employees, the lower the level of threats.
 - The ethical environment within the client.
 - Having leadership of the Firm who promotes compliance with the fundamental principles would reduce the level of threats.
- The nature and the length of the relationship between the partner and the client (qualitative factor).
- The nature of the business and the level of complexity in the valuation and the underlying assumptions (qualitative and quantitative factors).
- The extent to which the partner or Firm is involved in promoting the shares to potential buyers (qualitative factor).
- How aggressive the client is in terms of the assumptions underlying the valuation (quantitative factor).
- The degree of urgency to which the client requires the valuation report (qualitative factor).

Where a member in public practice is engaged to perform a valuation service that requires independence or purports to be independent, the member must comply with independence requirements (para 3.4 of APES 225). Consistent with the Code and APES 225, this comprises independence of mind and appearance.²

² The *Corporations Act 2001* includes specific independence obligations and ASIC Regulatory Guide 112: *Independence of experts* includes specific guidance for experts who perform these engagements in relation to assessing independence and disclosures of relationships and interests.

Depending on the length and nature of the relationships with the client and whether the client represents a significant amount of the Firm's fee base, this may create a perception of a lack of independence in appearance. This threat may be reduced as it is a non-audit client and not a client of the partner who is preparing the independent expert's report.

Based on an assessment of the factors identified from the above considerations, a reasonable and informed third party might conclude that the threats to the expert's independence and one or more of the fundamental principles are not at an acceptable level and the threats would need to be addressed.



Addressing Threats

Eliminate Circumstances

The partner may not be able to eliminate the circumstances, including interests or relationships, that are creating the threats (para R120.10(a) of the Code).

Apply Safeguards

The partner must not knowingly be associated with reports, returns, communications or other information where the partner believes that the information contains a materially false or misleading statement (para R111.2 of the Code). Therefore, if the partner is aware that any of the underlying assumptions are false or misleading, they must not rely on them in the independent expert's report. There are no safeguards available or capable of being applied to reduce the threats to an acceptable level.

If the partner is concerned about the integrity of the assumptions and relies on those assumptions, they may not be maintaining professional competence and due care and potentially be in breach of the Code (Section 113) and APES 225 (para 3.6).

The partner must gather sufficient and appropriate evidence by such means as inspection, inquiry, computation, and analysis to provide reasonable grounds that the valuation report and conclusions therein are properly supported. Determining the extent and quality of evidence necessary requires the partner to exercise professional judgement, considering the nature of the valuation, type of valuation service and use the valuation report will be put (para 4.5 of APES 225).

APES GN 20 *Scope and Extent of Work for Valuation Services* (APES GN 20) provides guidance on the scope, the extent of work, and the extent of evidence required for a valuation service. In this scenario, the independent expert's report is a valuation engagement (per APES 225), which increases the extent of work and evidence to be obtained (Section 3 of APES GN 20).

Even if the partner subsequently assesses the assumptions to be robust and appropriate, the level of the threats in undertaking the valuation might not be at an acceptable level. In this situation, safeguards should be applied in relation to the independent expert's report. An example of a safeguard that might address the threats would be to have an appropriate reviewer who was not involved in providing the service review the service performed (para 300.8 A2 of the Code). This may include another appropriately qualified partner from the Firm.

Decline or End Engagement

If the partner cannot eliminate the circumstances creating the threats and no safeguards are available or capable of being applied to reduce the threats to an acceptable level, the partner must decline to prepare the independent expert's report (para R120.10(c) of the Code). If this is the case, the partner should also refer to the:

- Terms of engagement with the client, including the client's responsibilities for completeness and accuracy of information (para 4.6 of APES 305 *Terms of Engagement*).
- Firm's policies and procedures on continuing engagements and client relationships, whether the information obtained during the valuation process would have caused the Firm to decline the engagement had that information been available earlier, and the possibility of withdrawing from the engagement and the client relationship (para 44 of APES 320 *Quality Control for Firms*).

SCENARIO 4

Valuation Services – Member in Business

A private group of companies has been financially impacted because of the COVID-19 pandemic, including reductions in revenue over the previous six months of 40%. Recovery from the pandemic is expected to be slow for the group and may take up to two years before revenue returns to pre-pandemic levels.

As required by Australian Accounting Standards Board (AASB) 136, *Impairment of Assets* (AASB 136)³, the CFO is conducting annual testing of goodwill from the acquisition of a number of the parent company's subsidiaries for impairment. As required, the CFO assesses whether there is any indication of impairment after considering information, including significant changes with an adverse effect during the period or that will take place in the near future in the economic environment.

As there is an indication of impairment, the CFO is assessing the recoverable amount as required by AASB 136 as the higher of its fair value less costs of disposal and its value in use. Due to the current economic environment, the fair value is considerably lower than the value in use. The CFO is, therefore, measuring the value in use under AASB 136, where cash flow projections are to be based on reasonable and supportable assumptions that represent management's best estimate of the range of economic conditions that will exist over the remaining useful life of the asset.

However, the CEO has made it clear that the CFO must minimise any impairment losses as any further write-downs for the group could have detrimental long-term effects on the group's viability.⁴

³ AASB 136 is the Australian equivalent of the international accounting standard IAS 36 *Impairment of Assets* issued by the International Accounting Standards Board.

⁴ Under this scenario, an actual breach of laws and regulations has not yet occurred. If there is actual or suspected non-compliance with laws and regulations (NOCLAR), the provisions in Section 260, *Responding to Non-compliance with Laws and Regulations* of the Code would also apply.



Identifying Threats

Self-interest

There is a threat that the CFO's fear of losing his or her job due to the economic distress caused by the pandemic will inappropriately influence their judgement or behaviour with respect to adopting the appropriate accounting treatment (para 120.6 A3 (a) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour.

Advocacy

There is a threat that the CFO will promote the group's financial viability to shareholders, lenders, creditors and other stakeholders to the point that the CFO's objectivity is compromised (para 120.6 A3(c) of the Code).

Intimidation

There is a threat that the CFO will be deterred from acting objectively due to actual or perceived pressures from the CEO to ensure the group's financial statements demonstrate continued viability (para 120.6 A3(e) of the Code).



Evaluating Threats

Are Identified Threats at an Acceptable Level?

The CFO must exercise professional judgement and apply the reasonable and informed third party test to determine whether the threats are at an acceptable level.

APES 225 *Valuation Services* (APES 225) sets out requirements and application material specific to providing valuation services, including fundamental responsibilities of members in relation to the public interest and professional competence and due care.

Consideration of qualitative and quantitative factors is relevant in the evaluation of threats, as is the combined effect of multiple threats, if applicable (para 120.8 A1 of the Code). Factors that may be relevant in evaluating the level of the threats include:

- Conditions, policies and procedures relating to the work environment of the business (paras 200.7 A1 to 200.7 A4 of the Code), for example:
 - Leadership that stresses the importance of ethical behaviour and the expectation that employees will act in an ethical manner (also refer to para 270.3 A3 of the Code). The level of threats would be heightened in this situation as the CEO is suggesting the CFO minimise impairment losses, which might result in unethical behaviour.
 - Policies and procedures to empower and encourage employees to communicate ethics issues that concern them to senior levels of management without fear of retribution (also refer to para 270.3 A3 of the Code and human resources policies that address pressure). Even if such policies and procedures were in place in this scenario, they do not appear to have been adhered to by the CEO.

- The nature of the relationship between the CFO and the CEO, for example, if the CEO is a forceful and domineering individual, this would increase the level of threats (qualitative factor).
- The extent to which the outcome of the goodwill impairment exercise would affect the CFO's compensation or employment (quantitative factor).
- The existence of an audit committee (qualitative factor).
- The extent to which the CFO would need to justify the impairment assessment to lenders and other stakeholders (qualitative factor).
- Other financial pressures on the business, for example, requirements to meet debt covenants (quantitative factor).

Based on an assessment of the factors identified from the above considerations and the CEO's position that the business cannot sustain further impairment losses, a reasonable and informed third party would likely conclude that the threats to the fundamental principles are not at an acceptable level and the threats would need to be addressed.



Addressing Threats

Eliminate Circumstances

The CFO may not be able to eliminate the circumstances, including interests or relationships, that are creating the threats (para R120.10(a) of the Code).

Apply Safeguards

The CFO must not knowingly be associated with reports, returns, communications or other information where the CFO believes that the information contains a materially false or misleading statement (para R111.2 of the Code). Therefore, the CFO must not be associated with any impairment calculations that the CFO is aware of that will be false or misleading. There are no safeguards available or capable of being applied to reduce the threats to an acceptable level.

APES GN 21 *Valuation Services for Financial Reporting* (APES GN 21) provides guidance on the application of APES 225 in relation to the valuation services for financial reporting and the scope of work to be performed. The CFO has been assigned by their employer to perform a valuation of the goodwill and impairment for the purpose of preparing the group's financial statements, which is a valuation service, will require a valuation report and likely constitutes a valuation engagement. The CFO should consider disclosing in the valuation report the matters set out in APES GN 21 (for example, paragraph 5.7 in respect of impairment of goodwill).

The CFO must gather sufficient and appropriate evidence by such means as inspection, inquiry, computation, and analysis to provide reasonable grounds that the valuation report and conclusions therein are properly supported. Determining the extent and quality of evidence necessary requires the CFO to exercise professional judgement, considering the nature of the valuation, type of valuation service and use the valuation report will be put (para 4.5 of APES 225).

APES GN 20 *Scope and Extent of Work for Valuation Services* (APES GN 20) provides guidance on the scope, extent of work and extent of evidence required for a valuation service. As this is a valuation engagement, it increases the extent of work and evidence to be obtained (Section 3 of APES GN 20).

The CFO must not allow pressure from the CEO to result in a breach of compliance with the fundamental principles (para R270.3(a) of the Code). Further, if the CEO is subject to the Code, the CEO must not place pressure on the CFO that the CEO knows, or have reason to believe, would result in the CFO breaching the fundamental principles (para R270.3(b) of the Code). However, if the CEO does exert pressure on the CFO, the CFO could take the following actions to ensure the CFO does not breach the Code and AASB 136:

- Address the issue with the CEO and explain that incorrectly applying the impairment requirements would breach the Code and AASB 136.
- If the CEO is unwilling to listen and continues to exert pressure on the CFO, the CFO could escalate the matter to those charged with governance and/or the chair of the audit committee.
- Document the processes the CFO has followed to address the threats.

Assuming the CFO does not allow pressure from the CEO to act unethically, the level of the threats might still not be at an acceptable level. In this situation, safeguards should be applied in relation to impairment testing and calculations. An example of a safeguard that might address the threats would be to have the group's external professional accountant (but not the audit firm) who was not involved in undertaking the impairment testing, review the work performed. Another option is to discuss the impairment testing and calculations with the Board of Directors.

Decline or End Professional Activity

If the CFO cannot eliminate the circumstances creating the threats and no safeguards are available or capable of being applied to reduce the threats to an acceptable level, the CFO may need to decline the activity or resign from their position (para R120.10(c) of the Code).

SCENARIO 5

Insolvency Services – Member in Public Practice

An insolvency partner at a professional accounting firm (the Firm) has been approached by the directors of LMN Manufacturing Pty Ltd (LMN) to be appointed as a voluntary administrator. LMN is a medium-sized manufacturing business located in Victoria and has suffered severely from the restrictions on trade and factory closures resulting from the COVID-19 pandemic and is insolvent.⁵

LMN has a secured loan from XYZ Bank (the Bank) which is significant to LMN; however, it is not significant to the Bank and the Bank has determined not to appoint a receiver and manager over LMN.

The Firm undertakes the audit of the Bank. Due to the ongoing effects of the pandemic, demand for some of the Firm's advisory services has reduced while the demand for audit services is comparable with the prior year.

⁵ The *Coronavirus Economic Response Package Omnibus Act 2020* passed on 24 March 2020 included, amongst other matters, six-months temporary relief for directors from potential personal liability for trading whilst insolvent which is described in the Explanatory Memorandum as a 'safe harbour from directors' duty to prevent insolvent trading'. This has since been extended until 31 December 2020. For further information on this measure and ASIC's approach to enforcement refer to www.asic.gov.au.



Identifying Threats

Self-interest

There is a threat arising from the insolvency partner being appointed as voluntary administrator of LMN and the Bank being an audit client of the Firm, which could (or could be perceived to) inappropriately influence the insolvency partner's judgement or behaviour (para 120.6 A3(a) of the Code). If the Bank is a significant audit client of the Firm this could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour. It could also threaten independence.

Familiarity

There might be a threat that due to the Firm's audit relationship with the Bank, the insolvency partner will (or could be perceived to) be too sympathetic to the Bank's interests or too accepting of the information provided by the Bank in relation to the debt owed to it from LMN or the validity of the security held by the Bank (para 120.6 A3(d) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour. It could also threaten independence.



Evaluating Threats

Are Identified Threats at an Acceptable Level?

The insolvency partner needs to consider independence and conflicts of interest under APES 330 *Insolvency Services* (APES 330) and the Code. The insolvency partner and the Firm must also consider independence from an insolvency context, other factors from APES 330 and the Code, exercise professional judgement and apply the "double might" test (refer below) to determine whether the threats to the partner's independence are at an acceptable level.

The Firm also needs to consider whether any threats to the independence of the audit are created. The Firm must also be independent when performing the audit engagement for the Bank and apply the conceptual framework in the Code to identify, evaluate and address any threats to independence (paras R400.11 and R400.12 of the Code). Therefore, the Firm must assess whether a reasonable and informed third party would consider the appointment of the insolvency partner as a voluntary administrator of LMN creates threats to independence in relation to the audit engagement of the Bank, including independence in appearance.

Insolvency Partner's Independence and Conflict of Interest

APES 330 sets out requirements and application material with respect to providing insolvency services. A key aspect of the provision of insolvency services is the requirement to maintain independence (para 4.3 of APES 330). Consistent with the Code and APES 330, this comprises independence of mind and appearance and is also subject to legal precedents established by Australian courts in relation to insolvency services.

In an insolvency context, the independence assessment focuses on whether a fair-minded lay observer might reasonably apprehend that the insolvency partner might not bring an impartial mind to their duties (the “double might test”), which is a stricter test compared to the reasonable and informed third party test in the Code.⁶

Before accepting the appointment as a voluntary administrator, the insolvency partner must identify, evaluate, and address threats to independence. If a threat is identified, the appointment must not be accepted unless (para 4.4 of APES 330):

- a) the threat is trivial and inconsequential;
- b) permitted by APES 330 or law or regulations; or
- c) court approval is obtained.

There is a potential perception of a threat to independence in appearance as the Bank is an audit client of the Firm and insolvency services are being considered to be provided to LMN, who is a customer of the Bank. This could be impacted by factors, including:

- The level of debt owed by LMN to the Bank. In this example, the debt is significant to LMN and is secured.
- The insolvency partner will likely need to consider the validity of the Bank’s claim over the amount it is owed by LMN. The audit partner may also need to perform or may have already performed, audit procedures in relation to the same LMN debt. This could create a potential perception that the insolvency partner may not be willing to appropriately challenge the Bank’s claim to the debt amount owed.
- Whether there are any potential recovery actions against the Bank that could be made by the insolvency partner during the administration.
- Whether the Firm has performed any services for the Bank in relation to LMN, for example, an investigating accountants report.⁷

The insolvency partner needs to determine whether ‘*there is a real and not merely a theoretical possibility of a conflict of duty or interest*’⁸ resulting from the Bank being a major creditor of LMN and the Bank being an audit client of the Firm. This requires professional judgement, based on the particular facts and circumstances of the appointment. It would include a reference to matters including, but not limited to, whether:

‘...the appointee administrators have, prior to their appointment:

(a) performed professional services of a sufficiently material nature on behalf of a principal creditor of the company to suggest that there is a reasonable apprehension that they will not act independently;

...

*(f) a close relationship with a creditor such that there was a clear tendency to prefer the interests of that creditor.*⁹

⁶ Refer Appendix 1 of APES 330.

⁷ Noting that this type of engagement is not a circumstance that is generally considered to create a threat, however a Member in Public Practice must examine the particular circumstance of the appointment (para 4.10 of APES 330).

⁸ *Queensland Mining Corporation Ltd v Butmall Pty Ltd, in the matter of Butmall Pty Ltd (in liq)* [2016] FCA 16 at 9.

⁹ *Re Monarch Gold Mining Co Ltd; ex parte Hughes* [2008] WASC 201 at 19.

Other Considerations for the Firm and the Audit Engagement

The Firm must not allow a conflict of interest to compromise professional or business judgement (para R310.4 of the Code). Before the Firm accepts an engagement to provide insolvency services to a party that has borrowed funds from the Bank (an audit client), the Firm must take reasonable steps to identify circumstances that might create a conflict of interest and, therefore a threat to compliance with the fundamental principles (para R310.5 of the Code) in respect of the audit engagement. This may include whether the interests of LMN's creditors are (or there is a perception they are) in conflict with the Firm's interests in performing the audit engagement of the Bank. An effective process to identify actual or potential conflicts of interest will take into account factors such as (para 310.5 A2 of the Code):

- The nature of the services provided.
- The size of the firm.
- The size and nature of the client base.
- The structure of the firm, for example, the number and geographic location of offices.

In this example, the debt is significant to LMN and is secured. However, the debt is not significant to the Bank. If the debt was considered to be significant to the Bank, it could impact the threats in relation to the audit of the Bank.

Consideration of qualitative and quantitative factors is relevant in the evaluation of threats, as is the combined effect of multiple threats, if applicable (para 120.8 A1 of the Code). Factors that may be relevant in evaluating the level of the threats include:

- Conditions, policies, and procedures relating to the client's operating environment and the Firm and its operating environment (paras 300.7 A1 to 300.7 A5 of the Code list several factors that may be relevant), including for example:
 - XYZ Bank is a public interest entity (PIE), and there are specific rules about when an engagement partner, engagement quality control reviewer or key audit partner must rotate or 'cool-off' from the audit of a PIE to safeguard independence (Section 540 of the Code).
 - The ethical environment within the Bank.
 - Having leadership at the Firm who promotes compliance with the fundamental principles would reduce the level of threats.
 - The Firm's management of the reliance on revenue received from a single client.
- The reporting structure of the Firm in respect of the level of mutual reporting or oversight that exists between the audit and insolvency divisions (qualitative factor).
- The significance of the audit relationship that the Firm has with the Bank (qualitative factor).

Overall Assessment

Based on an assessment of the factors identified from the above considerations, in some circumstances there may be minimal or no threats to independence while in other instances there may be threats to the insolvency partner's independence.



Addressing Threats

Eliminate Circumstances

The insolvency partner or the Firm may not be able to eliminate the circumstances, including interests or relationships, that are creating the threats (para R120.10(a) of the Code).

Apply Safeguards

If the insolvency partner determines that any threats to independence are trivial and inconsequential (or meets other requirements in para 4.4 of APES 330), the insolvency partner may be able to accept the appointment.

However, if the insolvency practitioner determines that a fair-minded lay observer might reasonably apprehend that the insolvency partner might not bring an impartial mind to their duties (i.e., the 'double might' test), the insolvency partner must not accept the appointment. In the circumstances that the 'double might' test is not passed, there are no safeguards available or capable of being applied to reduce the threats to an acceptable level.

Where the insolvency partner determines that the independence requirements can be complied with, to be transparent about his or her independence obligations, the insolvency partner must still disclose his or her assessment and evaluation in the *Declaration of Independence, Relevant Relationships and Indemnities* (DIRRI).¹⁰ The DIRRI is required to be lodged with ASIC and provided to creditors in a voluntary administration. The purpose of the DIRRI is to assist creditors in understanding relationships and indemnities. However, it does not in itself result in threats being reduced to an acceptable level. Disclosure in the DIRRI does not prevent a court, regulator or professional body determining that independence requirements have been breached (para 4.28 of APES 330).

If new information or changes in facts and circumstances impact whether threats have been eliminated or reduced to an acceptable level, the threats must be re-evaluated and addressed accordingly (para R120.9 of the Code). If threats to independence are identified after the commencement of the appointment, the insolvency partner must evaluate the threats and (para 4.8 of APES 330):

- determine whether they can continue the appointment if the threat would not have precluded the appointment if known at the outset, amend the DIRRI, and provide it to creditors; or
- if the threat would have precluded the acceptance of the appointment if known at the outset, notify creditors and ASIC (of the factors in para 4.8(b) of APES 330); and
- either apply to the court to continue the appointment or resign from the appointment. A potential safeguard that could be applied if applying to the court to continue the appointment would be having an independent third party, such as an external insolvency practitioner, adjudicate on the Bank's proof of debt, the validity of the security held by the Bank in respect of LMN and other relevant matters relating to the Bank.

A safeguard to be implemented by the Firm is to ensure that the insolvency services and audit services are conducted by separate teams with appropriate segregation of responsibilities, duties, and activities.

¹⁰ Paragraphs 4.22 to 4.28 of APES 330.

Decline or End Engagement

Where the insolvency partner or the Firm cannot eliminate the circumstances creating the threats to independence and no safeguards are available or capable of being applied to reduce the threats to an acceptable level, the insolvency partner must decline the appointment as a voluntary administrator (para R120.10(c) of the Code).

Change in Circumstances

LMN operates in regional Victoria and the Firm's practice is situated in the same regional city. LMN has a loan from a community credit union (the Credit Union) which is significant to LMN and the Credit Union. The Credit Union is a PIE audit client of the Firm.

This change in circumstances would increase the perception of a lack of independence, including for the following reasons:

- The insolvency partner will likely need to consider the validity of the Credit Union's claim over the amount it is owed by LMN and the debt is significant to the Credit Union. The audit partner will likely need to perform, or has already performed, audit procedures in relation to the same LMN debt, creating a potential perception that the insolvency partner may not be willing to appropriately challenge the Credit Union's claim.
- The size of the Firm and the size and nature of the Firm's client base.
- The reporting structure of the Firm in respect of the level of mutual reporting or oversight that exists between the audit and insolvency divisions may be limited (qualitative factor).
- The Firm's management of the reliance on revenue received from a single client and the significance of the audit relationship that the Firm has with the Credit Union (qualitative factor). This may also raise other independence considerations for the Firm in respect of the audit engagement under Part 4A of the Code.¹¹

As such, the insolvency partner is likely to determine that a fair-minded lay observer might reasonably apprehend that the insolvency partner might not bring an impartial mind to their duties (i.e., the 'double might' test) and therefore must not accept the appointment. Further, from an audit perspective, it is unlikely that safeguards are available or capable of being applied to reduce the threats to an acceptable level in this circumstance.

SCENARIO 6

Insolvency Services – Member in Public Practice

A partner at Insolvency Specialists (the Firm) has been approached by the directors of DEF Restaurants Pty Ltd (DEF) to be appointed as a voluntary administrator. DEF operates three restaurants and has suffered severely from the restrictions on trade and forced closures resulting from the COVID-19 pandemic and is insolvent.¹²

¹¹ Refer to the [Independence Guide – Fifth Edition, May 2020](#).

¹² The *Coronavirus Economic Response Package Omnibus Act 2020* passed on 24 March 2020 included, amongst other matters, six-months temporary relief for directors from potential personal liability for trading whilst insolvent which is described in the Explanatory Memorandum as a 'safe harbour from directors' duty to prevent insolvent trading'. This has since been extended until 31 December 2020. For further information on this measure and ASIC's approach to enforcement refer to www.asic.gov.au.

Insolvency Specialists is a boutique firm which provides insolvency and related services. The same partner of Insolvency Specialists and their spouse formed GHI Credit (the Finance Company) three years ago which provides finance to small to medium sized entities. The partner of Insolvency Specialists was a 50% shareholder of the Finance Company for the first 18 months of its operations, however, the insolvency partner's spouse has been the sole director and shareholder for the last 18 months.

DEF has a loan from the Finance Company and the Finance Company is DEF's largest creditor.



Identifying Threats

Self-interest

There is a threat arising from the partner being appointed as voluntary administrator of DEF and the spouse of the partner is the sole shareholder of the Finance Company, which could (or could be perceived to) inappropriately influence the insolvency partner's judgement or behaviour (para 120.6 A3(a) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour. It could also threaten independence.

Familiarity

There might be a threat that due to the partner's relationship with his or her spouse, the insolvency partner will (or could be perceived to) be too sympathetic to the Finance Company's interests or too accepting of the information provided by the Finance Company in relation to the debt owed to it from DEF (para 120.6 A3(d) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour. It could also threaten independence.

Intimidation

There is a threat that the partner will be deterred from acting objectively due to actual or perceived pressures from their spouse in relation to the debt owed to the Finance Company from DEF (para 120.6 A3(e) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. It could also threaten independence.



Evaluating Threats

Are Identified Threats at an Acceptable Level?

The partner needs to consider independence and conflicts of interest under APES 330 *Insolvency Services* (APES 330) and the Code.

APES 330 sets out requirements and application material with respect to providing insolvency services. A key aspect of the provision of insolvency services is the requirement to maintain independence (para 4.3 of APES 330). Consistent with the Code and APES 330, this comprises independence of mind and appearance and is also subject to legal precedents established by Australian courts in relation to insolvency services. In an insolvency context, it focuses on whether a fair-minded lay observer might

reasonably apprehend that the insolvency partner might not bring an impartial mind to their duties compared to the reasonable and informed third party test in the Code.¹³

APES 330 specifically prohibits a partner from accepting an appointment where the partner, the partner's firm, or other partners or managers of the firm, have had (amongst other relationships):

- an immediate (spouse (or equivalent) or dependent) or close family relationship with an entity or an associate or related entity of that entity that has provided finance to the insolvent entity. As the partner's spouse is the sole shareholder of the Finance Company which has provided finance to DEF the partner must not accept the appointment (para 4.12(a)(iv) of APES 330); or
- a material business relationship, including the holding of a material financial interest, whether directly or indirectly in or jointly in the previous two years with an entity that has provided finance to the insolvent entity. As the partner had a material financial interest 18 months ago in the Finance Company which provided finance to DEF, the partner must not accept the appointment (para 4.12(c)(iv) of APES 330).



Addressing Threats

Eliminate Circumstances

The partner would be unable to eliminate the circumstances, including interests or relationships, that are creating the threats (para R120.10(a) of the Code).

Apply Safeguards

No safeguards are available or capable of being applied to reduce threats to an acceptable level (para R120.10(b) of the Code).

Decline or End Engagement

The partner must decline taking on this insolvency engagement (para R120.10(c) of the Code).

SCENARIO 7

Forensic Accounting Services – Member in Public Practice

A member in public practice who has a Forensic Accounting Firm (the Firm) in Melbourne is engaged to provide an expert witness report in accordance with APES 215 *Forensic Accounting Services* (APES 215) in respect of an alleged fraud that has occurred at GHK Limited's (GHK) Ballarat warehouse which is over 110km from Melbourne. Melbourne is currently experiencing a COVID-19 outbreak, and there are significant restrictions with respect to the movement of individuals within the Melbourne metropolitan area.

The Chief Financial Officer (CFO) of GHK has informed the member that the store person has misappropriated stock items worth over \$250,000. However, due to pandemic, the CFO has requested that the member undertake the engagement remotely from Melbourne. This would mean that the

¹³ Refer Appendix 1 of APES 330.

member would need to conduct interviews, review documents, and perform other engagement tasks without visiting the warehouse location in Ballarat, where the alleged fraud has occurred.

The CFO has also requested that the expert witness report be prepared urgently as the CFO wants to terminate the employment of the store person as soon as possible. The CFO and the store person have had several disagreements in the past about stock discrepancies and management of the warehouse.

Due to the challenges in the COVID-19 environment, there is limited work at the Firm, and this will be a significant engagement for the member.



Identifying Threats

Self-interest

There is a threat that the member's interest in earning a significant fee during the pandemic could inappropriately influence the member's judgement or behaviour (para 120.6 A3(a) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour.

Advocacy

There is a threat that the member will assume that the store person is dishonest due to the history of previous incidents and become an advocate for GHK (para 120.6 A3(c) of the Code). This may lead to the member's objectivity being compromised.

Intimidation

There is a threat that the member will be deterred from acting objectively due to actual or perceived pressures from the CFO to meet unrealistic deadlines (para 120.6 A3(e) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour.



Evaluating Threats

Are Identified Threats at an Acceptable Level?

The member must exercise professional judgement and apply the reasonable and informed third party test to determine whether the threats are at an acceptable level.

APES 215 sets out requirements and application material specific to providing forensic accounting services including fundamental responsibilities of members in relation to the public interest, independence and professional competence and due care. It also creates mandatory disclosures in respect of the report of the expert witness (para 5.6 of APES 215).

Consideration of qualitative and quantitative factors is relevant in the evaluation of threats, as is the combined effect of multiple threats, if applicable (para 120.8 A1 of the Code).

Factors that may be relevant in evaluating the level of the threats include:

- Conditions, policies, and procedures relating to the client and its operating environment and the Firm and its operating environment (paras 300.7 A1 to 300.7 A5 of the Code list several factors that may be relevant), including for example:
 - Whether GHK has competent employees with experience and authority to make managerial decisions. The higher the level of competence of the GHK's employees, the lower the level of threats.
 - The ethical environment within GHK.
 - Having leadership of the Firm who promotes compliance with the fundamental principles would reduce the level of threats.
- The nature and the length of the relationship between the member and GHK (qualitative factor).
- The nature of the business and the level of complexity of the stock loss (qualitative and quantitative factors).
- The scope limitations created by the member's inability to visit Ballarat, where the alleged fraud occurred, and interview the relevant people due to the restrictions caused by the pandemic (qualitative factors).
- The degree of urgency to which GHK requires the expert witness report (qualitative factor).

Where a member in public practice is engaged to perform an expert witness service, the member has a duty to be objective as well as not be an advocate for the engaging party (para 5.4 of APES 215).

The quality of the evidence the member can gather remotely may impact the member's ability to comply with the fundamental principle of professional competence and due care (paras 3.12 and 3.13 of APES 215).

The pressure to complete the engagement to earn the significant fee may also create threats, and the member needs to comply with the requirements in Section 8 *Professional Fees* in APES 215.

Based on an assessment of the factors identified from the above considerations, a reasonable and informed third party might conclude that the threats to one or more of the fundamental principles are not at an acceptable level and the threats would need to be addressed.



Addressing Threats

Eliminate Circumstances

The member may or may not be able to eliminate the circumstances, including interests or relationships, that are creating the threats (para R120.10(a) of the Code).

Apply Safeguards

The member must not knowingly be associated with reports, returns, communications or other information where the member believes that the information contains a materially false or misleading statement (para R111.2 of the Code and paras 6.1 and 6.2 of APES 215). Therefore, if the member is aware that due to scope limitations and/or assumptions that the evidence gathered is not of sufficient

quality, then the member must appropriately disclose these matters in the expert witness report and provide an appropriate opinion (para 5.6 of APES 215).

If the scope limitations and/or assumptions are not appropriately disclosed in the report of the expert witness, then there are no safeguards available or capable of being applied to reduce the threats to an acceptable level.

If the member is concerned about the scope limitations and the reasonableness of the assumptions and its impact on the quality of evidence, then they may not be maintaining professional competence and due care and potentially be in breach of the Code (Section 113) and APES 215 (para 3.12).

The receipt of the professional fee, while significant, may not in itself be in breach of Section 8 of APES 215.

Concerning the assessment of the quality of evidence and the threat created by the significant fee, an example of a safeguard that might address these threats is having an appropriate reviewer who was not involved in providing the expert witness service review the service performed (para 300.8 A2). For example, this could be another forensic accounting partner within the Firm.

Decline or End Engagement

The member needs to disclose the scope limitations, the significant facts, and assumptions that form the basis of the member's opinion with respect to the alleged fraud associated with the stock loss in the expert witness report (para 5.6 of APES 215). If the member is expressing a provisional opinion, then this must be clearly stated in the report.

If the member cannot eliminate the circumstances creating the threats and no safeguards are available or capable of being applied to reduce the threats to an acceptable level, the member must decline to prepare the expert witness report (para R120.10(c) of the Code).

SCENARIO 8

Forensic Accounting Services – Member in Business

A Team Leader of an Australian Tax Office (ATO) investigation team is a member of an Australian professional accounting body and therefore must comply with the APESB pronouncements, including the Code and APES 215 *Forensic Accounting Services* (APES 215).

The investigation team's current focus is on fraud and schemes to exploit the Australian government's COVID-19 stimulus measures including JobKeeper, early release of superannuation and cash flow boosts.

The investigation team has been inundated with additional work since the introduction of the stimulus measures, which has resulted in a couple of team members going on stress leave due to work-related pressures. Several ATO employees from other areas have been seconded into the investigation team to deal with the workload, and the team has grown from 7 to 15 people.

The Team Leader is under immense pressure from the Director of the division to meet unrealistic deadlines, is now responsible for a team that has more than doubled in size and is required to train the seconded employees.

All team members have been working from home due to restrictions imposed because of the pandemic, which has hindered the Team Leader's ability to administer appropriate training to, and monitor the performance of, the seconded team members.



Identifying Threats

Self-interest

There is a threat that the Team Leader's interest in maintaining his or her job during the pandemic could inappropriately influence the Team Leader's judgement or behaviour (para 120.6 A3(a) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour.

Intimidation

There is a threat that the Team Leader will be deterred from acting objectively due to actual or perceived pressures from the Director of the division to meet unrealistic deadlines (para 120.6 A3(e) of the Code). This could threaten the fundamental principles of integrity, objectivity, professional competence and due care, and professional behaviour.



Evaluating Threats

Are Identified Threats at an Acceptable Level?

The Team Leader must exercise professional judgement and apply the reasonable and informed third party test to determine whether the threats are at an acceptable level. Consideration of qualitative and quantitative factors is relevant in the evaluation of threats, as is the combined effect of multiple threats, if applicable (para 120.8 A1 of the Code). Factors that may be relevant in evaluating the level of the threats include:

- Conditions, policies, and procedures relating to the work environment (paras 200.7 A1 to 200.7 A4 of the Code), for example:
 - Leadership that stresses the importance of ethical behaviour and the expectation that employees will act ethically (also refer to para 270.3 A3 of the Code).
 - Policies and procedures to empower and encourage employees to communicate ethics issues that concern them to senior levels of management without fear of retribution (also refer to para 270.3 A3 of the Code and human resources policies that address pressure). The Team Leader could also consider accessing the professional ethics counselling service of the applicable professional body.
- The nature of the relationship between the Team Leader and the Director of the division (qualitative factors).

The Team Leader must not intentionally mislead their employer as to the level of expertise and experience possessed (para R230.3 of the Code and para 3.14 of APES 215). The principle of professional competence and due care requires that the Team Member only undertake significant tasks

for which the Team Leader has, or can obtain, sufficient training or experience (para 230.3 A1 of the Code).

This would extend to the investigation team members as the Team Leader is responsible for their performance as the Team Leader must take reasonable steps to ensure those working in a professional capacity under his or her authority have appropriate training and supervision (para R113.2 of the Code).

Self-interest threats to compliance with professional competence and due care might also be created if the Team Leader has (para 230.3 A2 of the Code):

- Insufficient time for performing or completing the relevant duties. The Team Leader is under immense time pressure to progress the investigations and meet unrealistic deadlines.
- Incomplete, restricted, or otherwise inadequate information for performing the duties. The Team Leader may be restricted in obtaining sufficient evidence due to time and resource constraints.
- Insufficient experience, training and/or education. The team may have insufficient experience and the ability of the Team Leader to train the seconded employees adequately is hindered.
- Inadequate resources for the performance of the duties. Although the team has more than doubled in size, the time pressures indicate there may be insufficient resources to perform the tasks in a timely and appropriate manner.

Based on an assessment of the factors identified from the above considerations, a reasonable and informed third party might conclude that the threats to the fundamental principles are not at an acceptable level and the threats would need to be addressed.

In addition to the above, part of the Team Leader's role may ultimately require them to be an expert witness per APES 215 and provide a report and evidence to the Court. The Team Leader would need to assess whether the limitations and time constraints detailed above would impede their ability to provide an expert witness service in particular in relation to professional competence and due care (paras 3.12 to 3.16 of APES 215) and duties to the Court (paras 5.4 and 5.5 of APES 215). It could also impact the report of the expert witness, for example, limitations of scope and extent of reliance on the work of others (paras 5.6 to 5.9 of APES 215).



Addressing Threats

Eliminate Circumstances

The Team Leader may not be able to eliminate the circumstances, including interests or relationships, that are creating the threats (para R120.10(a) of the Code).

Apply Safeguards

The Team Leader must make their employing organisation aware of the limitations inherent in the professional activities being undertaken (para R113.3 of the Code). Examples of actions that might be safeguards to address the self-interest threat to professional competence and due care include (para 230.3 A4 of the Code):

- Obtaining assistance or training from someone with the necessary experience. This could include additional resources within the team with the necessary experience to provide training to the seconded employees.

- Ensuring that there is adequate time available for performing the relevant duties. This could include reducing the number of investigations that the team is allocated or splitting the team in two and having another team leader.

The Team Leader must not allow pressure from the Director of the division to result in a breach of compliance with the fundamental principles (para R270.3(a) of the Code). Further, the Team Leader must not place pressure on others that the Team Leader knows, or has reason to believe, would result in the other team members breaching the fundamental principles (para R270.3(b) of the Code).

If the Director does exert pressure on the Team Leader, the Team Leader could take the following actions to ensure the Team Leader does not breach the Code:

- Address the issue with the Director and explain that due to time pressures and remote working conditions, they are hindered in meeting the unrealistic deadlines and training the seconded employees to ensure they are undertaking the work with sufficient expertise.
- If the Director is unwilling to listen and continues to exert pressure on the Team Leader, the Team Leader could escalate the matter to the next level of senior management.
- Document the processes the Team Leader has followed to address the threats.

Decline or End Engagement

If the Team Leader cannot eliminate the circumstances creating the threats and no safeguards are available or capable of being applied to reduce the threats to an acceptable level, the Team Leader must decline to perform the duties (para R120.10(c) of the Code). Specifically, in relation to compliance with the principle of professional competence and due care, the Team Leader must determine whether to decline to perform the duties in question and, if so, communicate the reasons (para R230.4 of the Code).

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