

Extract – Proposed amendments to APES GN 40 (marked-up)

The following proposed amendments for APES GN 40 set out the new requirements relating to Sustainability Reporting (proposed paragraph 8.3), Tax Planning Activities (proposed Section 14) and Using the Work of an External Expert (proposed Section 15):

6. Overview of Part 2 of the Code

[Paragraphs 6.1 to 6.2 of the extant Guidance Note remain unchanged.]

- 6.3 Sections 210 - 290 of Part 2 specify professional obligations of [Members in Business](#) in the following circumstances:
- (a) Section 210 – *Conflicts of Interest*;
 - (b) Section 220 – *Preparation and Presentation of Information*;
 - (c) Section 230 – *Acting with Sufficient Expertise*;
 - (d) Section 240 – *Financial Interests, Compensation and Incentives Linked to Financial or Non-Financial Reporting and Decision Making*;
 - (e) Section 250 – *Inducements, Including Gifts and Hospitality*;
 - (f) Section 260 – *Responding to Non-Compliance with Laws and Regulations*; ~~and~~
 - (g) Section 270 – *Pressure to Breach the Fundamental Principles*;
 - (h) Section 280 – Tax Planning Activities; and
 - (i) Section 290 – Using the Work of an External Expert.

8. Preparation and presentation of information to be used by internal and external parties

- 8.1 [Members in Business](#) are often involved in the preparation and presentation of information that may either be made public or used by others inside or outside the [Employer](#). When preparing and presenting such information, [Members](#) are required to comply with Section 220 *Preparation and Presentation of Information* of the [Code](#).
- 8.2 A [Member in Business](#) is required to prepare or present 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, appropriate actions such as those discussed in Section 220 *Preparation and Presentation of Information* of the [Code](#) should be undertaken. Examples addressing the analysis of threats and appropriate actions are shown in Case Studies 5 - 9 and 20 - 21.
- 8.3 When preparing or presenting Sustainability Information, a Member in Business may experience threats to the Member's ability to exercise professional judgement to represent the facts accurately and completely in all material respects. This might involve placing undue weight on information that corroborates the Employer's achievement of its targets or insufficient weight on other information that contradicts such achievement. An example showing considerations that may be applied by the Member is provided in Case Study 25.

12. Member in Business's responsibility to respond to non-compliance with laws and regulations

12.1 Members in Business may suspect or be aware that their Employer has done something illegal and is not complying with laws and regulations. This could be in relation to laws and regulations specific to financial statements [or Sustainability Information](#), or those that would affect the continued operation of the Employer. Examples of relevant laws and regulations include:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.
- [Protection of human rights](#).
- [Labour conditions and rights of employees](#).
- [Consumer rights](#).

14. Tax Planning Activities

14.1 Where a Member in Business uses their expertise to assist their Employer in achieving their tax planning goals and meeting their tax obligations, it might involve certain tax minimisation arrangements that, although not prohibited by tax laws and regulations, might create threats to fundamental principles of the Code (self-review, self-interest, advocacy or intimidation). In such circumstances, the Member is required to comply with the requirements and guidance in Section 280 *Tax Planning Activities* of the Code. An example addressing the analysis of threats and appropriate actions is included in Case Study 28.

14.2 A Member in Business is also required to comply with relevant tax laws and regulations when performing tax planning activities for the Employer. A tribunal, court or other appropriate adjudicative body ultimately determines whether a tax planning arrangement complies with the relevant tax laws and regulations. The Member should obtain an understanding of those laws and regulations and advise the Employer to comply with them when performing tax planning activities.

15. Using the Work of an External Expert

15.1 Using the work of an External Expert might create threats to compliance with the fundamental principles of the Code, particularly the principles of integrity, objectivity and professional competence and due care. A Member in Business should be aware that threats might still be created even if the Member has satisfactorily concluded that the External Expert has the necessary competence, capabilities and objectivity for the Member's purpose.

15.2 A Member in Business who is considering using the work of an external expert is required to comply with Section 290 *Using the Work of an External Expert* of the Code, and to evaluate the level of any identified threat and undertake appropriate actions to reduce the threat to an Acceptable Level. If the Member determines that there are threats to the External Expert's objectivity that cannot be eliminated or reduced to an Acceptable Level the Member should not use the work of the External Expert.