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SOMMARJU – SUMMARY

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NOTIFIKAZZJONI TAL-GVERN

Nru. 201

ATT DWAR IL-PROFESSJONI TAL-*ACCOUNTANCY* (CAP. 281)

Direttivi Numri 1 - 4 Maħruġa Skont l-Att dwar il-Professjoni tal-*Accountancy* (Kap. 281) u r-Regolamenti tal-2009 dwar il-Professjoni tal-*Accountancy*

SKONT is-setgħat mogħtija bl-Artikolu 8 (2) tal-Att dwar il-Professjoni tal-*Accountancy* (aktar 'il quddiem imsemmi bħala "l-Att"), il-bord tal-*Accountancy* bl-approvazzjoni tal-Ministru tal-Finanzi, l-Ekonomija u Investiment qiegħed b'din joħroġ dawn id-direttivi:

It-13 ta' Marzu, 2009

GOVERNMENT NOTICE

No. 201

ACCOUNTANCY PROFESSION ACT (CAP. 281)

Directive Numbers 1 - 4 Issued in Terms of the Accountancy Profession Act (Cap. 281) and the Accountancy Profession Regulations 2009

IN exercise of the powers conferred by Article 8 (2) of the Accountancy Profession Act (hereinafter referred to as "the Act"), the Accountancy Board with the approval of the Minister of Finance, the Economy and Investment is hereby issuing the following directives:

13th March, 2009

Directive Number 1 issued in terms of the Accountancy Profession Act (Cap. 281) and the Accountancy Profession Regulations 2009

1. This directive may be cited as the Accountancy Profession (Continued Professional Education) Directive.

2. This Directive will come into force on the eighth (8th) day immediately following the day on which it is published (hereinafter the "Effective Date"). As from the Effective Date, this Directive shall replace Directive Number 1 previously issued by the Board.

3. (a) In this Directive:

"public practice" shall mean the following activities carried out by warrant holders:

(i) acting as auditor;

(ii) signing any report or certificate on accounts in circumstances where reliance is likely to be placed on such report or certificate by any person, or doing any other thing which may lead the third party to believe that the particular accounts have been prepared, approved or reviewed by the warrant holder; or

(iii) preparing, in respect of any company, partnership or any other person carrying on a trade, business, profession or vocation, computations and returns for the purposes of the Income Tax Act (Cap. 123 of the Laws of Malta) and/or the Income Tax Management Act (Cap. 372 of the Laws of Malta) and/or the Value Added Tax Act (Cap. 406 of the Laws of Malta), or any enactment replacing all or any of the said laws, so however that any person who either prepares such computations and returns exclusively in respect of his full-time employer or who prepares such computations and returns in respect of any company, partnership or any other person carrying on a trade, business, profession or vocation, the ownership and control of which are held as to at least ninety nine per cent (99%) by that person, shall not in itself render such person to be in public practice; or

(iv) acting as liquidator of companies in terms of the Companies Act (Cap. 386 of the Laws of Malta) or any enactment replacing the said law; or

(v) holding oneself out, or allowing oneself to be held out, as being available to undertake any of these activities;

"continued professional education" (hereinafter referred to as "CPE"), shall mean activities that should contribute to the continued professional development of warrant holders;

"core competencies" shall have the meaning assigned to it in the CPE Scheme;

"professional competencies" shall have the meaning assigned to it in the CPE Scheme;

"structured CPE activities" shall mean those learning activities that require interaction with other individuals, and research work;

"unstructured CPE activities" shall mean those learning activities that may be achieved through private reading and study;

"CPE Scheme" shall mean a set of rules aimed at providing guidance to maintain the required standards of continued professional education for warrant holders;

"CPE accreditation" shall mean the evaluation of learning activities for the purpose of determining the number of hours, if any, to which each activity may be deemed equivalent under the CPE Scheme;

"warrant" shall mean a warrant or practising certificate issued in terms of Article 4 of the Act and the term "warrant holder" shall be construed accordingly;

(b) The provisions of this Directive shall be interpreted in the light of the Act and any regulations issued thereunder.

(c) Terms used in this Directive and not defined shall, unless the context otherwise requires have the meaning assigned to them in the Act.

4. (1) All warrant holders shall maintain the appropriate level of professional competence by engaging in continued professional education in accordance with the rules contained in this Directive, so however that this rule does not apply to warrant holders who are not practicing their profession, either in employment or in public practice, whether on a full time or part time basis, and the term "warrant holders" shall be construed accordingly for the purposes of this rule 4.

(2) All warrant holders must spend at least one hundred and twenty (120) hours over every consecutive period of three (3) calendar years (hereinafter "the cumulative minimum continued professional education requirement"), subject to a minimum of twenty-five (25) hours per calendar year (hereinafter "the minimum annual requirement"), on continued professional education. The cumulative minimum continued professional education requirement must be satisfied on an annual basis, by computing the time spent on continued professional education by the particular warrant holder in the respective calendar year and in the immediately preceding two (2) years, so however that the first evaluation of the satisfaction of this requirement shall not take place prior to the third calendar year in respect of which the particular warrant holder shall have been required to spend time on continued professional education. Warrant holders must complete a minimum of seventy-five (75) hours of the cumulative minimum continued professional education requirement, and twenty (20) hours of the minimum annual requirement, in structured CPE activities:

Provided that for all warrant holders who are in public practice and who hold a warrant on 1 January 2009, the minimum annual requirement and the cumulative minimum continued professional education requirement shall:

(a) for the year ending 31 December 2009 be as follows:

i. the minimum annual requirement shall be twenty two (22) hours, eighteen (18) of which must be in structured CPE activities; and

ii. the cumulative minimum continued professional education requirement shall be one hundred (100) hours, seventy-five (75) of which must be in structured CPE activities.

(b) for the year ending 31 December 2010 be as follows:

i. the minimum annual requirement shall be twenty three (23) hours, eighteen (18) of which must be in structured CPE activities; and

ii. the minimum continued professional education requirement shall be one hundred and ten (110) hours, seventy-five (75) of which must be in structured CPE activities.

Provided further that for all warrant holders who are not in public practice and who hold a warrant on 1 January 2009, the minimum annual requirement and the cumulative minimum continued professional education requirement shall:

(a) for the year ending 31 December 2009 be as follows:

i. the minimum annual requirement shall be twenty two (22) hours, eighteen (18) of which must be in structured CPE activities; and

ii. the cumulative minimum continued professional education requirement shall be one hundred (100) hours, thirty-seven (37) of which must be in structured CPE activities.

(b) for the year ending 31 December 2010 be as follows:

i. the minimum annual requirement shall be twenty three (23) hours, eighteen (18) of which must be in structured CPE activities; and

ii. the minimum continued professional education requirement shall be one hundred and ten (110) hours, fifty-six (56) of which must be in structured CPE activities.

(3) The minimum annual requirement and the cumulative minimum continued professional education requirement contained in sub-rule (2) of this rule 4, shall in no case exempt any warrant holder from fulfilling the cumulative minimum continued professional education requirement at the end of the three-year calendar period ending in December 2011:

Provided that the obligations to carry out the minimum annual requirement and the cumulative minimum continued professional education requirement shall apply in respect of any calendar year in which the individual is a warrant holder for the entire year or part thereof, so however that in the case of any individual not being a warrant holder for an entire calendar year or an entire three (3) calendar year period as the case may be, the minimum number of hours referred to in this sub-rule shall be reduced to the figure resulting from multiplying the minimum number of hours prescribed in this rule by the proportion which the period for which the individual has been a warrant holder during the period prescribed in this rule, bears to such prescribed period. An individual who is a warrant holder for less than thirty (30) days during any calendar year shall be entitled to carry forward to the next following calendar year the minimum period of time that he shall be required to spend on continued professional education during that calendar year. For the purpose of this calculation, every calendar year shall be deemed to comprise three hundred and sixty five (365) days.

For the purposes of complying with the requirements of this rule, warrant holders must subscribe to, and comply with the rules of, a CPE Scheme as approved by the Board and administered by an approved accountancy body or bodies (hereinafter referred to as "the approved accountancy body") as may be delegated by the Board from time to time under such conditions as the Board may deem fit and subject to the ultimate overall supervision and control of the Board.

(4) The approved CPE Scheme shall be available to all warrant holders and shall include, inter alia:

(a) General guidance and detailed description of the nature and scope of education activities required to meet the requirements of this rule in respect of specific core competencies, professional competencies and other relevant areas of professional work;

(b) Rules for determining compliance with the minimum requirements of the Scheme;
(c) Administrative procedures for the purpose of ensuring proper records;
(d) Procedures for the monitoring of compliance with the Scheme.

(5) The approved accountancy body shall be obliged to evaluate any courses for the purpose of CPE accreditation upon the request of a course provider:

Provided that in the event that a course provider feels aggrieved by the conduct of the approved accountancy body in its accreditation procedures or decisions, he may refer the matter to the Board for any action it may deem fit to take:

Provided further that any courses provided by the University of Malta will be accredited by the University without the need for any further review by the approved accountancy body.

(6) Warrant holders shall furnish to the approved accountancy body all the information required in accordance with the rules of the approved CPE Scheme and the approved accountancy body shall monitor the compliance of all warrant holders therewith.

(7) The information provided by warrant holders in respect of their obligations under sub-rule (6) of this rule shall be true, precise and correct and shall cover the subject-matter requested by the approved accountancy body in a complete manner.

(8) The approved accountancy body shall furnish the Board with any information relating to the administration of the CPE Scheme and to warrant holders registered therein as the Board may deem necessary from time to time. In particular, a record of warrant holders registered under the CPE Scheme must be submitted by the 31st May of each year in respect of the twelve months ending on the 31st December of the previous year, giving details of compliance by each such warrant holder.

(9) For the purpose of sub-rules (6) and (8) of this rule, an approved accountancy body shall provide warrant holders with a period of time within which the warrant holders shall be obliged to provide the necessary information in their respect for the said body to satisfy its obligations on time.

(10) The period of time allowed to warrant holders to provide the information referred to in sub-rules (6) and (9) of this rule shall not amount to less than four (4) calendar weeks and shall not exceed ten (10) calendar weeks. Should any warrant holder not satisfy his obligations within the said time frame, the approved accountancy body shall give notice in this sense to such warrant holder requesting him to satisfy his obligations within a further period of not less than two (2) calendar weeks; if any such warrant holder satisfies his obligations within such further period, he shall not be deemed to be in default of his obligations under this sub-rule and under sub-rule (9) of this rule.

(11) With the permission of the Board, the approved accountancy body administering an approved CPE Scheme may impose an administrative fee on a cost-recovery basis.

(12) Any warrant holder who does not comply with the provisions of this regulation shall be liable to the following penalties:

a. In the case of any breach of the obligations of a warrant holder referred to in sub-rules (7), (9) and (10) of this rule determined by a disciplinary committee appointed by the Board in terms of sub-article (16) of article 7 of the Act (hereinafter referred to as the "Disciplinary Committee"), the particular warrant holder shall be liable to a fine of not less than twenty-three Euro and twenty-nine cents (€23.29) and not exceeding two thousand and three hundred and twenty-nine Euro and thirty-seven cents (€2,329.37):

Provided that the Disciplinary Committee may determine to remit the said fine wholly or partly if it is satisfied that such a breach was due to a reasonable excuse, so however that lack of time shall not constitute a reasonable excuse;

b. In the case of any other breach of the provisions of this Directive, the Disciplinary Committee may impose penalties involving any or all of the following:

(i) an admonition and reprimand or a request to take corrective measures, or both such admonition and reprimand and request to take corrective measures;

(ii) suspension and the imposition of conditions on the particular person's warrant or the withdrawal of the person's practicing certificate;

(iii) recommend to the Minister the withdrawal of the warrant (which for the purposes of this paragraph (iii) excludes the practicing certificate);

(iv) a fine of up to two thousand and three hundred and twenty-nine Euro and thirty-seven cents (€2,329.37).

c. In the case of a finding of default on the part of any warrant holder established in any proceedings referred to in this sub-rule, the Disciplinary Committee may also direct that such warrant holder shall suffer, in whole or in part, the burden of the costs of the proceedings taken in his respect.

2009

Code of Ethics for Warrant Holders

Issued by the Accountancy Board

Accountancy Profession Act
Cap. 281

Directive Number 2 issued in terms of the Accountancy Profession Act (Cap. 281) and of the Accountancy Profession Regulations 2009

In exercise of the powers conferred by article 8(2) of the Accountancy Profession Act (hereinafter referred to as "**the Act**"), the Accountancy Board with the approval of the Minister of Finance is hereby issuing the directive set out in this document to warrant holders under the Act

This directive may be cited as the Accountancy Profession (Code of Ethics for Warrant Holders) Directive, and shall, in accordance with article 8 of the Act come into force one week from its publication in the Government Gazette (the "**Effective Date**").

As from the Effective Date, this Directive shall replace Directive Number 2 previously issued by the Board which was effective from 1 July 2005 (the "**Replaced Code**").

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Introduction

This memorandum provides background to, and explanation of, the *Code of Ethics for Accountants* (the Code), being issued by the Accountancy Board as a directive in terms of the Accountancy Profession Act (Cap 281).

The Code establishes the fundamental principles of professional ethics for warrant holders and provides a conceptual framework for applying those principles. Unless a limitation is specifically stated, the fundamental principles are equally valid for all warrant holders. Compliance with the Code is mandatory for all warrant holders with effect from the Effective Date.

Background

This Code was largely based on a model code developed by the International Federation of Accountants, which code has since been adjourned to reflect new developments together with heightened expectations from the accountancy profession. This process has been accompanied by the development of similar guidance, with particular emphasis on auditor independence, which has been issued by various regulatory and other authorities, including the European Commission.

The Accountancy Board has considered the need to update the Code of Ethics applicable to warrant holders in Malta to reflect these developments, and this revised code is being issued today to address this need.

In November 2001, IFAC issued a revision to Section 8 of the IFAC Code of Ethics, addressing independence requirements for assurance engagements. This section represented the start of a process of change for the IFAC Code. It established an international standard, and determined that no IFAC member body or firm is allowed to apply less stringent standards than those stated in that section unless prohibited by law or regulation. This marked a departure for the IFAC Code in two respects – firstly, the adoption of the principles based approach and, secondly, the degree of authority given to the section. Previously, the IFAC Code had been established as a model on which to base national requirements. Although it was made clear that the basic intent of the IFAC Code should always be respected, the IFAC Code in itself was not required to be regarded as a standard.

In May 2002 the European Commission issued as a recommendation, a set of fundamental principles on Statutory Auditors' Independence in the European Union. The EU recommendation is also based on a set of fundamental principles that seek to provide investors and other stakeholders in EU companies with a uniformly high level of assurance that statutory auditors perform their audit work independently throughout the EU. This recommendation provides a framework within which all of the general issues of statutory auditors' independence are considered.

In mid 2002 the IFAC Ethics Committee embarked upon a project to extend the principle based approach to the entire IFAC Code, addressing accountants both in public practice and in business.

The Code also takes into account the provisions of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, which requires Member States to ensures the independence of the auditor, that all warrant holders are subject to principles of professional ethics, and the integrity and objectivity and their professional competence and due care of warrant holders.

The Code issued by the Accountancy Board is based on the IFAC Model amended in certain areas to reflect additional requirements contained in the EU recommendation. It sets standards of conduct and states the fundamental principles that should be observed by warrant holders. It is being issued not as a recommendation to warrant holders but as a mandatory standard.

EXPLANATORY MEMORANDUM

The Accountancy Board believes that the establishment of a conceptual framework that requires warrant holders to identify, evaluate and address threats to compliance with the fundamental principles, rather than merely comply with a set of specific rules, which may be arbitrary, is in the public interest.

Structure of the Code

This Code is divided into three parts:

(a) Part A applies to all warrant holders.

(b) Part B applies to warrant holders in public practice.

(c) Part C applies to warrant holders in business.

The Code also includes a definitions section.

This format means that warrant holders in public practice will need to be familiar with Parts A and B, and warrant holders in business will need to be familiar with Parts A and C. There is a certain amount of repetition of material from Part A in both Parts B and C, intended to aid in the readability and understandability of those two Parts. However, this does not remove the need for all warrant holders to be familiar with all of Part A.

The Framework Approach

The Code establishes the fundamental principles of ethics for warrant holders and provides a conceptual framework to assist warrant holders to identify, evaluate and respond to threats to compliance with those principles. If identified threats are other than clearly insignificant, warrant holders are required, where appropriate, to apply safeguards to eliminate the threats or reduce them to an acceptable level, such that compliance with the fundamental principles is not compromised.

The Accountancy Board believes that such a framework approach is preferable to a rules based approach to ethics which cannot provide for all circumstances and may lead to unquestioning obedience to the letter of a rule while setting definitive lines in legislation that some will try to circumnavigate.

Areas of Guidance

Part A of this Code sets out the fundamental principles and explains the framework approach. It also sets out:

(a) The categories into which many threats to compliance with the fundamental principles may fall;

(b) Examples of safeguards created by the profession, legislation or regulation; and

(c) Examples of safeguards that may increase the likelihood of identifying or deterring unethical behavior.

This Part also includes guidance regarding the resolution of ethical conflicts.

Parts B and C of the Code include examples that are intended to illustrate the application of the principles. They identify various circumstances posing potential threats to compliance with the fundamental principles that may be experienced by warrant holders in public practice and warrant holders in business. Examples of safeguards against such threats are also provided, including potential safeguards created in the work environment or by the client.

These examples are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by warrant holders that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for warrant holders merely to comply with the examples presented; rather, they should apply the principles to the particular circumstances they encounter.

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Definitions

In this Code of Ethics for warrant holders the following expressions have the following meanings assigned to them:

Act	The Accountancy Profession Act XXVIII of 1979 as amended.
Advertising	The communication to the public of information as to the services or skills provided by warrant holders in public practice with a view to procuring professional business.
Audit client	An entity in respect of which a firm conducts an audit engagement. When the audit client is a public interest entity, an audit client will always include its related entities.
Audit engagement	An assurance engagement to provide a high level of assurance that financial statements are free of material misstatement, such as an engagement in accordance with International Standards on Auditing. This includes a Statutory Audit which is an audit required by national legislation or other regulation.
Assurance client	An entity in respect of which a firm conducts an assurance engagement.
Assurance Engagement	An engagement conducted to provide: (a) A high level of assurance that the subject matter conforms in all material respects with identified suitable criteria; or (b) A moderate level of assurance that the subject matter is plausible in the circumstances. This would include an engagement in accordance with the International Standard on Assurance Engagements issued by the International Auditing and Assurance Standards Board or in accordance with specific standards for assurance engagements issued by the International Auditing and Assurance Board such as an audit or review of financial statements in accordance with International Standards on Auditing.
Assurance team	(a) All professionals participating in the assurance engagement; (b) All others within a firm who can directly influence the outcome of the assurance engagement, including: • Those in the chain of command; • Those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement; and • Those who provide quality control for the assurance engagement; and

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	(c) For the purposes of an audit client, all those within a network firm who can directly influence the outcome of the audit engagement.
Board	The Accountancy Board established under Article 6 of the Accountancy Profession Act XXVIII of 1979 as amended.
Chain of command	Comprises all those who have a direct supervisory, management, compensation or other oversight responsibility over either any Audit Principal of the Audit Team or over the conduct of the Statutory Audit at office, country, regional or global levels. This includes all Principals who may prepare, review or directly influence the performance appraisal of any Lead Engagement Principal of the Assurance Team or otherwise determine their compensation as a result of their involvement with the Audit Engagement.
Client account	Any bank account, which is used solely for the banking of clients' monies.
Close family	A parent, non-dependent child or sibling.
Company	Any entity or person(s), whether organized for profit or not, including a parent company and all of its subsidiaries.
Direct financial interest	A financial interest: • Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or • Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control.
Directors and officers	Those charged with the governance of an entity, regardless of their title.
Financial interest	An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.
Firm	(i) an audit firm; (ii) an accountancy firm; (iii) a third-country auditor or a third-country audit entity registered in accordance with article 7 (6) of the Act;

(iv) a warrant holder; and

where applicable shall include an entity that controls such parties and an entity that is controlled by such parties.

Immediate family	A spouse (or equivalent) or dependent.
Independence	Independence is: (a) Independence of mind – the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism; and (b) Independence in appearance – the avoidance of facts and circumstances that are so significant, a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism has been compromised.
Indirect financial interest	A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control.
Key Audit Principal	(a) the statutory auditor designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm; or (b) in the case of a group audit, at least the statutory auditor designated by an audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the statutory auditor designated as being primarily responsible at the level of the material subsidiaries; or (c) the statutory auditor who signs the audit report.
Key management position	Any position at the audit client which involves the responsibility for fundamental management decisions at the audit client, e.g. a Chief Executive Officer or a Chief Financial Officer. This management responsibility should also provide influence on the accounting policies and the preparation of the financial statements of the audit client. A key management position also comprises contractual and factual arrangements which by substance allow an individual to participate in exercising this management function in a different way, e.g. via a consulting contract. A key management position also comprises an appointment to act as a company secretary at the audit client.
Lead engagement Principal	In connection with an audit, the principal responsible for signing the report on the consolidated financial statements of the audit client, and,

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	where relevant, the principal responsible for signing the report in respect of any entity whose financial statements form part of the consolidated financial statements and on which a separate stand-alone report is issued. When no consolidated financial statements are prepared, the lead engagement principal would be the principal responsible for signing the report on the financial statements.
Network firm	An entity under common control, ownership or management with the firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally or internationally.
Objectivity	A combination of impartiality, intellectual honesty and a freedom from conflicts of interest.
Office	A distinct sub-group, whether organized on geographical or practice lines.
Publicity	The communication to the public of facts about a warrant holder, which are not designed for the deliberate promotion of that warrant holder.
Public interest entities	Entities whose transferable securities are admitted to trading on a regulated market within the meaning of point 14 of article 4(1) of Directive 2004/39/EC, a credit institution as defined in point 1 of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, an insurance undertaking within the meaning of Article 2(1) of Directive 91/674/EEC and such other entities as may be prescribed by the Board.
Professional services	Any service requiring accountancy or related skills performed by a warrant holder including accounting, auditing, taxation, financial management services, and management consultancy, in so far as it is so related.
Related entity	An entity that has any of the following relationships with the client: (a) An entity that has direct or indirect control over the client provided the client is material to such entity; (b) An entity with a direct financial interest in the client provided that such entity has significant influence over the client and the interest in the client is material to such entity; (c) An entity over which the client has direct or indirect control; (d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant

influence over such entity and the interest is material to the client and its related entity in (c); and

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

In the context of this clause, 'material' should be interpreted in its wider sense, going beyond financial aspects and looking also at issues such as reputational risk, the public profile of an entity and the nature of its operations.

Solicitation	The approach to a potential client for the purpose of offering professional services.
Warrant	A warrant issued in terms of Article 4 of the Act and where applicable includes a practicing certificate;
Warrant holder	A person, holding a warrant as defined above and unless the context otherwise requires includes a firm.
Warrant holder in business	A warrant holder employed in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies.
Warrant holder in public practice	Each principal, and each employee in a practice providing professional services to a client irrespective of their functional classification (e.g., audit, tax or consulting) and warrant holders in a practice having managerial responsibilities. This term is also used to refer to a firm of warrant holders in public practice.

Terms used in the Code of Ethics and not defined shall, unless the context otherwise require, have the meaning assigned to them in the Act.

APPLICATION OF THE CODE

The Code set out below is divided into three parts:

- Part A applies to all warrant holders.
- Part B applies to warrant holders in public practice.
- Part C applies to warrant holders in business.

PART A

SECTION 1 Introduction

SECTION 2 Integrity

SECTION 3 Objectivity

SECTION 4 Professional competence and due care

SECTION 5 Confidentiality

SECTION 6 Professional behavior

PART A

SECTION 1

Introduction

General

1.1 This Part of the Code applies to all warrant holders.

1.2 The identity of the accountancy profession is characterized worldwide by its endeavour to achieve a number of common objectives and by its observance of certain fundamental principles for that purpose.

1.3 This Code of Ethics is based on the recommendations and guidelines made by the International Federation of Accountants (IFAC) and the European Commission Recommendation on Statutory Auditors' Independence in the EU.

1.4 A profession is distinguished by certain characteristics including:

- Mastery of a particular intellectual skill, acquired by training and education;
- Adherence by its members to a common code of values and conduct established by its administrating body, including maintaining an outlook which is essentially objective; and
- Acceptance of a duty to society as a whole (usually in return for restrictions in use of a title or in the granting of a qualification).

1.5 Warrant holders' duty to their profession and to society may at times seem to conflict with their immediate self interest or their duty of loyalty to their employer.

The Public Interest

1.6 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, a warrant holder's responsibility is not exclusively to satisfy the needs of an individual client or employer.

1.7 The public interest is considered to be the collective well being of the community of people and institutions the warrant holder serves, including clients, lenders, governments, employers, employees, investors, the business and financial community and others who rely on the work of warrant holders

1.8 This Code sets out the warrant holder's ethical responsibilities to act in the public interest.

Framework Approach

1.9 This Code establishes the fundamental principles of professional ethics for warrant holders and provides a conceptual framework for applying those principles. Unless a limitation is specifically stated, the fundamental principles are equally valid for all warrant holders whether they are in public practice, industry, commerce, the public sector or education.

1.10 The circumstances in which warrant holders operate may give rise to specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates threats to compliance with the fundamental principles and specify the appropriate mitigating action. In addition, the nature of engagements and assignments may differ and

consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires warrant holders to identify, evaluate and address threats to compliance with the fundamental principles, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest. This Code provides a framework to assist warrant holders to identify, evaluate and respond to threats to compliance with the fundamental principles. If identified threats are other than clearly insignificant, warrant holders should, where appropriate, apply safeguards to eliminate the threats or reduce them to an acceptable level, such that compliance with the fundamental principles is not compromised.

1.11 Warrant holders should take qualitative as well as quantitative factors into account when considering the significance of any potential threat. If they cannot implement appropriate safeguards, they should either decline or discontinue the specific professional service involved, or consider resigning from the client (in the case of warrant holders in public practice) or the employing organization (in the case of warrant holders in business).

1.12 Warrant holders have an obligation to evaluate any threats to compliance with the fundamental principles when they know, or could reasonably be expected to know, of circumstances or relationships that might compromise compliance with the fundamental principles. There may be occasions when a warrant holder inadvertently violates a provision of this Code. If that happens, depending on the nature and significance of the matter, it may not compromise compliance with the fundamental principles as long as, once the violation is discovered, its effect is evaluated promptly, corrected when appropriate and any necessary safeguards are applied.

1.13 Parts B and C of this Code include examples that are intended to illustrate the application of the principles and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by warrant holders that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for warrant holders merely to comply with the examples presented; rather, they should apply the principles to the particular circumstances they encounter.

Fundamental Principles

1.14 The fundamental principles are:

(a) *Integrity*
A warrant holder should be straightforward and honest in all professional and business relationships.

(b) *Objectivity*
A warrant holder should not allow prejudice or bias, conflict of interest or undue influence of others to override professional or business judgments.

(c) *Professional Competence and Due Care*
A warrant holder has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives the advantage of competent professional service based on current developments in practice, legislation and techniques. A warrant holder should act diligently and in accordance with applicable technical and professional standards in all professional and business relationships.

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(d) *Confidentiality*
A warrant holder should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the warrant holder or third parties.

(e) *Professional Behavior*
A warrant holder should comply with relevant laws and regulations and should avoid any action that discredits the profession.

Threats and Safeguards

1.15 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

(a) Self-interest threats, which may occur as a result of the financial or other interests of warrant holders or of immediate or close family members;

(b) Self-review threats, which may occur when a previous judgment needs to be re-evaluated by the warrant holder responsible for that judgment;

(c) Advocacy threats, which may occur when a warrant holder promotes a position or opinion to the point that subsequent objectivity may be compromised;

(d) Familiarity threats, which may occur when, because of a close relationship, a warrant holder becomes too sympathetic to the interests of others; and

(e) Intimidation threats, which may occur when a warrant holder may be deterred from acting objectively by threats, actual or perceived.

Parts B and C of this Code, respectively, provide examples of circumstances that may create these categories of threat for warrant holders in public practice and warrant holders in business.

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

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

1.17 Safeguards created by the profession, legislation or regulation include, but are not restricted to:

- Educational, training and experience requirements for entry into the profession.
- Continuing professional development requirements.
- Corporate governance regulations.
- Professional standards.
- Professional or regulatory monitoring and disciplinary procedures.

- External review by a legally empowered third party of the reports, returns, communications or information produced by a warrant holder.

1.18 Parts B and C of this Code, respectively, also discuss safeguards in the work environment for warrant holders in public practice and those in business.

1.19 Certain safeguards may increase the likelihood of identifying or deterring unethical behaviour. Such safeguards, which may be created by the accounting profession, legislation, regulation or an employing organization, include, but are not restricted to:

- Effective, well publicized complaints systems operated by the employing organization, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behavior.
- An explicitly stated duty to report breaches of ethical requirements.

1.20 The nature of the safeguards to be applied will vary depending on the circumstances. In exercising their judgment, warrant holders should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be unacceptable.

Ethical Conflict Resolution

1.21 In applying standards of ethical conduct, warrant holders may encounter problems in resolving an ethical conflict. When faced with significant ethical issues, they should follow the established policies of their firm or employing organization to try and resolve the conflict.

1.22 When initiating either a formal or informal conflict resolution process, warrant holders should consider the following, either individually or together with others, as part of the resolution process:

(a) Relevant facts;

(b) Ethical issues involved;

(c) Fundamental principles related to the matter in question;

(d) Established internal procedures; and

(e) Alternative courses of action.

Having considered these issues, warrant holders should determine the best course of action consistent with the fundamental principles identified. They should also weigh the consequences of each possible course of action. If the matter remains unresolved, they should approach other appropriate persons within their firm or their employing organization for help in obtaining resolution.

1.23 Where a matter involves a conflict with, or within, an organization, warrant holders should also consider approaching the audit committee or other body responsible for governance of that organization. It may be in the best interests of the warrant holders to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

1.24 If a significant conflict cannot be resolved, warrant holders may wish to consult the Accountancy Board or the Malta Institute of Accountants, which may be able to provide

guidance on ethical issues without breaching confidentiality. They may also consider seeking legal advice.

1.25 If, after exhausting all relevant possibilities, the matter remains unresolved, warrant holders should, where possible, refuse to remain associated with the matter. They may also consider whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

SECTION 2

Integrity

2.1 The principle of integrity imposes an obligation on all warrant holders to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.

2.2 Warrant holders should not be associated with reports, returns, communications or other information where they believe that the information:

(a) Contains a materially false or misleading statement;

(b) Contains statements or information furnished recklessly; or

(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

SECTION 3

Objectivity

3.1 The principle of objectivity imposes an obligation on all warrant holders that their professional or business judgment should not be compromised by prejudice or bias, conflict of interest or the undue influence of others.

3.2 Warrant holders may be exposed to situations that may impair their objectivity. It is impracticable to define and prescribe all such situations. Relationships that allow prejudice, bias or the undue influences of others to override professional judgment should be avoided.

SECTION 4

Professional Competence and Due Care

4.1 The principle of professional competence and due care imposes the following obligations on warrant holders:

(a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and

(b) To act diligently in accordance with applicable technical and professional standards in all professional and business relationships.

4.2 Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

(a) Attainment of professional competence; and

(b) Maintenance of professional competence

4.3 The attainment of professional competence initially requires a high standard of general education, followed by specific education, training and examination in professionally relevant subjects and, if prescribed, a period of work experience. This should be the normal pattern of development for warrant holders. Warrant holders should also take steps to ensure that those working under their authority in a professional capacity have appropriate training.

4.4 The maintenance of professional competence requires a continuing awareness of relevant technical professional and business developments.

4.5 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

4.6 Where appropriate, warrant holders should make clients or employers aware of limitations inherent in certain services to avoid the misinterpretation of an expression of opinion as an assertion of fact.

SECTION 5

Confidentiality

5.1 The principle of confidentiality imposes an obligation on warrant holders to refrain from:

(a) Disclosing confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and

(b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

5.2 Warrant holders should maintain confidentiality even in a social environment, particularly in circumstances where long association with business associates or close or immediate family relationships might result in their being less alert to the possibility that they may be inadvertently indiscreet.

5.3 Warrant holders should also maintain confidentiality regarding information disclosed by prospective clients or employers.

5.4 Warrant holders should take all reasonable steps to ensure that staff under their control and persons from whom advice and assistance is obtained respect the duty of confidentiality.

5.5 The need to comply with the principle of confidentiality continues even after the end of relationships between warrant holders and their clients or employers. When warrant holders change employment or acquire new clients, they are entitled to use the experience gained in their previous activities. They should not, however, use or disclose any confidential information either acquired or received by them as a result of a professional or business relationship.

5.6 The following are circumstances where warrant holders are required to disclose confidential information or when such disclosure may be appropriate:

(a) Disclosure is permitted by law and is authorized by the client or the employer;

(b) Disclosure is required by law, for example:

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(i) Production of documents or other provision of evidence in the course of legal proceedings;

(ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and

(c) There is a professional duty or right to disclose, when not prohibited by law:

(i) To comply with technical standards and ethics requirements;

(ii) To protect the professional interests of a warrant holder in legal proceedings;

(iii) To comply with any quality assurance procedures initiated by the Accountancy Board; or

(iv) To respond to an inquiry or investigation in terms of the procedures set out in the Accountancy Profession Act of 1979, as amended.

5.7 In deciding whether to disclose confidential information, warrant holders should consider the following points:

(a) When a client or employer gives authorization to disclose information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed;

(b) Whether or not all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any; and

(c) The type of communication that is expected and to whom it is addressed; in particular, warrant holders should be satisfied that the parties to whom the communication is addressed are appropriate recipients.

SECTION 6

Professional Behavior

6.1 The principle of professional behaviour imposes an obligation on warrant holders to comply with relevant laws and regulations and avoid any action that might bring discredit to the profession. This also applies to situations, which could be presumed by a reasonable and informed third party, having knowledge of all relevant information, to impact on the good reputation of the profession.

6.2 In marketing and promoting themselves and their work, warrant holders should not bring the profession into disrepute. Warrant holders should be honest and truthful and should not:

(a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or

(b) Make disparaging references or unsubstantiated comparisons to the work of others.

PART B:

WARRANT HOLDERS IN PUBLIC PRACTICE

SECTION 1 Introduction

SECTION 2 Behavior in public practice

SECTION 3 Conflicts of interest

SECTION 4 Changes in a professional appointment

SECTION 5 Second opinions

SECTION 6 Fees and other types of remuneration

SECTION 7 Custody of client assets

SECTION 8 Independence.

PART B

SECTION 1

Introduction

General

1.1 This Part of the Code applies to all warrant holders in public practice. Warrant holders in public practice should also follow the guidance set out in Part A of this Code, which applies to all warrant holders. Where the term 'warrant holders' is used in this Part, it should be taken to refer to warrant holders in public practice.

1.2 Warrant holders should comply with the fundamental principles, which are:

(a) *Integrity*
A warrant holder should be straightforward and honest in all professional and business relationships.

(b) *Objectivity*
A warrant holder should not allow prejudice or bias, conflict of interest or undue influence of others to override professional or business judgment.

(c) *Professional Competence and Due Care*
A warrant holder has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives the advantage of competent professional service based on current developments in practice, legislation and techniques. A warrant holder should act diligently and in accordance with applicable technical and professional standards in all professional and business relationships.

(d) *Confidentiality*
A warrant holder should respect the confidentiality of information acquired as a result of professional or business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the warrant holder or third parties.

(e) *Professional Behavior*
A warrant holder should comply with relevant laws and regulations and should avoid any action that discredits the profession.

1.3 Warrant holders in public practice should not concurrently engage in any business, occupation or activity that impairs or might impair their integrity, objectivity or the good reputation of the profession and that would be incompatible with the rendering of professional services.

1.4 The circumstances in which warrant holders operate may give rise to specific threats to compliance with the fundamental principles. This Part of the Code of Ethics provides a framework, built on principles, to assist warrant holders in public practice to identify, evaluate and respond to threats to compliance with the fundamental principles. If identified threats are other than clearly insignificant, warrant holders should, where appropriate, apply safeguards to eliminate the threats or reduce them to an acceptable level, such that

compliance with the fundamental principles is not compromised. If they cannot implement appropriate safeguards, warrant holders should either decline or discontinue the specific engagement involved or consider withdrawing from the client relationship.

1.5 The examples in the following sections are intended to illustrate the application of the principles and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by warrant holders in public practice that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for warrant holders merely to comply with the examples presented; rather, they should apply the principles to the particular circumstances they face.

1.6 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

(a) Self-interest;

(b) Self-review;

(c) Advocacy;

(d) Familiarity; and

(e) Intimidation.

These threats are discussed more fully in Part A of this Code.

The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to an audit client, a non-audit assurance client or a non-assurance client.

1.7 Examples of circumstances that may create self-interest threats for warrant holders in public practice include, but are not limited to:

- A financial interest in a client where the performance of professional services may affect the value of that interest.
- A loan to or from an assurance client or any of its directors or officers where the performance of professional services may affect the value of that loan.
- Concern about the possibility of losing a recurring client.
- Potential employment with a client.

1.8 Examples of circumstances that may create self-review threats include, but are not limited to:

- The discovery of a significant error during a re-evaluation.
- Reporting on the operation of financial systems after being involved in their design or implementation.
- A member of the engagement team for an assurance client being, or having recently been, a director or officer of that client.
- A member of the engagement team being, or having recently been, employed by the client in a position to exert direct and significant influence over the subject matter of the engagement.

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- Having prepared the original data used to generate records that are the subject matter of the engagement.

1.9 Examples of circumstances that may create advocacy threats include, but are not limited to:

- Promoting shares in a public interest entity when that entity is an audit client.
- Acting as an advocate on behalf of an assurance client in resolving disputes with third parties.

1.10 Examples of circumstances that may create familiarity threats include, but are not limited to:

- A member of the engagement team having a close or immediate family relationship with a director or officer of the client.
- A member of the engagement team having a close or immediate family relationship with an employee of the client who is in a position to exert direct and significant influence over the subject matter of the engagement.
- A former principal of the firm being a director or officer of the client or an employee in a position to exert direct and significant influence over the subject matter of the engagement.
- Accepting gifts or preferential treatment, unless the value is clearly insignificant.

1.11 Examples of circumstances that may create intimidation threats include, but are not limited to:

- Being threatened with dismissal or replacement in relation to a client engagement.
- Being threatened with litigation.
- Being pressured to reduce inappropriately the extent of work performed in order to reduce fees.

1.12 Warrant holders may also find that specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorized. In either professional or business relationships, warrant holders should always be on the alert for such circumstances and threats.

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

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

In the work environment, the relevant safeguards will vary depending on the circumstances. In exercising their judgment in terms of how to best deal with an identified threat, warrant holders should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would reasonably conclude to be unacceptable. Their consideration will be affected by matters such as the significance of the threat, the nature of the engagement and the structure of the firm.

1.14 Examples of safeguards created by the profession, legislation or regulation are detailed in paragraph 1.17 of Part A of this Code.

1.15 Firm-wide safeguards in the work environment (i.e., the firm) may include:

- Firm leadership that stresses the importance of compliance with the fundamental principles.
- Policies and procedures to implement and monitor quality control of client engagements.
- Documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level.
- Internal policies and procedures requiring compliance with the fundamental principles.
- Policies and procedures that will enable the identification of interests or relationships between the firm or members of engagement teams and clients.
- Policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single client.
- Using different principals and teams with separate reporting lines for the provision of non-assurance services to an assurance client.
- Policies and procedures to prohibit individuals who are not members of an engagement team from inappropriately influencing the outcome of the engagement.
- Timely communication of a firm's policies and procedures, and any changes to them, to all principals and professional staff, including appropriate training and education.
- Designating a member of senior management to be responsible for overseeing the adequate functioning of the safeguarding system.
- A disciplinary mechanism to promote compliance with policies and procedures.
- Published policies and procedures to encourage and empower staff to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.

1.16 Engagement-specific safeguards in the work environment may include:

- Involving an additional professional accountant to review the work done or otherwise advise as necessary (in the context of this Part of the Code, the term 'professional accountant' refers to accountants possessing appropriate skills and qualifications, not limited to warrant holders, who would be suitably placed to assist a warrant holder in the discharge of his responsibilities according to the particular circumstances; it would include, for instance, an auditor from an overseas network firm who may be consulted due to his specialist knowledge in a particular field; or a member of staff of appropriate seniority who may be requested to conduct a second review of the work of a more junior colleague who is taking up employment with an audit client).

- Consulting an independent third party, such as a committee of independent directors, the Accountancy Board, the Malta Institute of Accountants or another professional accountant.
- Rotating senior personnel.
- Discussing ethical issues with those in charge of client governance.
- Disclosing to those charged with client governance the nature of services provided and extent of fees charged.
- Involving another firm to perform or re-perform part of the engagement.

1.17 Depending on the nature of the engagement, warrant holders in public practice may also be able to rely on safeguards that the client has implemented.

1.18 Safeguards within the client's systems and procedures may include:

- When a client appoints a firm in public practice to perform an engagement, persons other than management ratify or approve the appointment.
- The client has competent employees to make managerial decisions.
- The client has implemented internal procedures that ensure objective choices in commissioning non-assurance engagements.
- The client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's services.

1.19 Where warrant holders wish to rely on client-implemented safeguards, they should evaluate the safeguards they wish to rely on to determine whether those safeguards are sufficient and appropriate. This evaluation will vary depending on the circumstances and will be affected by matters such as the significance of the potential threat and the nature of the engagement.

SECTION 2

Behavior in Public Practice

Marketing Professional Services

2.1 When warrant holders in public practice solicit new work through advertising or other forms of marketing, there may be potential threats to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behavior might arise if services, achievements or products are marketed in a way that is inconsistent with that principle.

2.2 Safeguards against such a threat include:

- Providing information fairly and in a manner that is not misleading.
- Avoiding unsubstantiated or disparaging statements.
- Complying with relevant laws, regulations and best practice.
- Consultation with the Accountancy Board or the Malta Institute of Accountants.

Client Acceptance

2.3 Before accepting a new client relationship, warrant holders should consider whether acceptance poses any threats to compliance with the fundamental principles. Potential threats to integrity may arise from, for example, questionable issues associated with the client (its owners, management and activities).

2.4 Client issues that could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.

2.5 The significance of any threats should be evaluated. If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level.

2.6 Appropriate safeguards might include obtaining a knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities, or securing the client's commitment to improve corporate governance practices or internal controls.

2.7 Where it is not possible to reduce the threats to an acceptable level, warrant holders should ordinarily decline to enter into the client relationship.

2.8 Acceptance decisions should be periodically reviewed for recurring client relationships.

Individual Service on an Engagement

2.9 Warrant holders in public practice should consider whether there are threats to compliance with the fundamental principles resulting from having interests in, or relationships with, the client entity or its personnel. For example, a familiarity threat to objectivity may arise from family or close personal or business relationships.

2.10 Warrant holders should evaluate the significance of identified threats and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Such safeguards may include:

- Withdrawing from the engagement team.
- Supervisory procedures.
- Terminating the financial or business relationship giving rise to the threat.
- Discussing the issue with higher levels of management within the firm.
- Discussing the issue with those responsible for the client's governance.

Engagement Acceptance

Professional Competence

2.11 Warrant holders in public practice should agree to provide only those services that they are competent to perform. Before accepting a specific client engagement, warrant holders should consider whether acceptance poses any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care may arise if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

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2.12 Warrant holders should evaluate the significance of identified threats and, if they are other than clearly insignificant, safeguards should be applied as necessary to reduce them to an acceptable level. Such safeguards may include:

- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
- Acquiring knowledge of relevant industries or subject matters.
- Possessing or obtaining experience with relevant regulatory or reporting requirements.
- Assigning sufficient staff with the necessary competencies.
- Using experts where necessary.
- Agreeing on a realistic time frame for the performance of the engagement.
- Complying with quality control policies and procedures designed to provide a reasonable assurance that specific engagements are accepted only when they can be performed competently.

Use of Experts

2.13 Warrant holders should be in a position to competently perform whatever engagements they undertake. Where this is not the case, there is a clear threat to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care may arise when warrant holders accept an engagement without having the necessary specialist knowledge for the competent performance of that engagement.

2.14 Such a threat may be mitigated or reduced to an acceptable level by seeking advice or assistance from experts such as other professional accountants, lawyers, actuaries, engineers and valuers. Warrant holders should evaluate whether it is appropriate for them to rely on the advice or work of such experts, having regard to factors such as reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Gifts and Hospitality

2.15 Warrant holders may find themselves in situations where they, or immediate or close family members, are offered gifts and hospitality. Such offers ordinarily give rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity may arise from the temptation to accept gifts; intimidation threats to objectivity may result from the possibility of such offers being made public.

2.16 The significance of such threats will depend on the nature, value and intent behind the offer. Where offers of gifts or hospitality which a reasonable and informed third party, having knowledge of all relevant information, would consider insignificant are made in an open manner, warrant holders may conclude that the offers are made in the normal course of business without the specific intent to influence decision making or to obtain information. In such cases, they may generally conclude that there is no significant threat to compliance with the fundamental principles.

2.17 If evaluated threats are other than clearly insignificant, warrant holders should not accept such offers.

SECTION 3

Conflicts of Interest

3.1 Warrant holders should take reasonable steps to avoid circumstances that could pose a conflict of interests. Such circumstances may give rise to threats to compliance with the fundamental principles. For example, a self-interest threat to objectivity may arise when warrant holders compete directly with a client or have joint ventures or similar arrangements with major competitors of that client. A self-interest threat to objectivity may also arise when warrant holders perform services for clients whose interests are in conflict with each other in relation to the matter or transaction in question.

3.2 Warrant holders should evaluate the significance of threats. Evaluation includes considering, before accepting or continuing a new client relationship or specific engagement, whether they have any relationships with clients or third parties that could give rise to threats. If threats are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level.

3.3 Safeguards will ordinarily include warrant holders:

- Notifying all relevant parties that they are acting for two or more parties in respect of a matter where their respective interests are in conflict, and obtaining their consent that they may so act.
- Notifying all relevant parties that they have relationships with clients or third parties that could give rise to conflicts of interest.
- Such safeguards may, however, be precluded in some circumstances due to the constraints of confidentiality.

3.4 Additional safeguards include:

- The use of separate engagement teams, with separate internal reporting lines.
- Procedures to prevent access to information (e.g., strict physical separation of such teams, confidential and secure data filing).
- Clear guidelines for engagement personnel on issues of security and confidentiality.
- Regular review of the application of safeguards by a senior individual not involved with either client engagement.
- Policies and procedures for dealing with conflicts of interest.

3.5 Where a threat cannot be eliminated or reduced to an acceptable level through the application of safeguards, warrant holders should conclude that it is not appropriate to accept a specific engagement or that they should resign from one or more conflicting engagements.

3.6 Where warrant holders in public practice have requested consent from a client to act for another party in respect of a matter where the respective interests are in conflict and that consent has been refused by the client, then they must not continue to act for the other party in the matter giving rise to the conflict of interest.

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SECTION 4

Changes in a Professional Appointment

Recurring Work

4.1 A warrant holder who is asked to replace another warrant holder, or who is considering tendering for an engagement currently held by another warrant holder, should determine whether there are any professional or other reasons, such as circumstances that threaten compliance with the fundamental principles, for not accepting the engagement. For example, there may be a threat to professional competence and due care if a warrant holder accepts the engagement before knowing all the pertinent facts.

4.2 The significance of the threats should be evaluated. Depending on the nature of the engagement, this may require direct communication with the existing warrant holder to establish the facts and circumstances behind the proposed change so that the warrant holder can decide whether it would be appropriate to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the existing warrant holder that may influence the decision as to whether to accept the appointment.

4.3 Existing warrant holders are also bound by confidentiality. The extent to which they can and should discuss the affairs of their clients with proposed warrant holders will depend on the nature of the engagement and on:

(a) Whether the client's permission to do so has been obtained; or

(b) The legal or ethical requirements relating to such communications and disclosure.

4.4 In the absence of specific instructions by their clients, warrant holders should not ordinarily volunteer information about the clients' affairs. Nevertheless, in the case of a change in statutory auditor, the outgoing statutory auditor shall provide the incoming statutory auditor with access to all the relevant information concerning the audited entity to assist the incoming auditor in assessing whether to accept the engagement: Provided that it shall be the sole obligation of the incoming statutory auditor, when relying upon such information to check its veracity and accuracy. Other circumstances where it may be appropriate to disclose confidential information are set out in Section 5 of Part A of this Code.

4.5 If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level.

4.6 Such safeguards include:

- Discussing the client's affairs fully and freely with the existing warrant holder;
- Asking existing warrant holders to provide information on any facts or circumstances within their knowledge, that, in their opinion, the proposed warrant holders should be aware of before deciding whether or not to accept the engagement;
- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing warrant holder will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted.

4.7 Warrant holders will ordinarily need to obtain the client's permission, preferably in writing, to initiate discussion with existing warrant holders. Once that permission is obtained, existing warrant holders should comply with relevant legal and other regulations governing such requests. Where existing warrant holders provide information, they should do so honestly and unambiguously. If the proposed warrant holders are unable to communicate with the existing warrant holders, they should try to obtain information about any possible threats by other means.

4.8 Where the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, warrant holders in public practice should, unless there is satisfaction as to necessary facts by other means, consider whether to decline the engagement.

4.9 The safeguard of communicating with the existing warrant holder is mandatory in the case of audit appointments. In such cases, if the proposed auditor does not receive, within a period of fifteen days, a reply from the existing auditor to a request for information in terms of para 4.6 above, the proposed auditor should send a further letter, by registered post, stating that there is an assumption that there is no professional matter that the existing auditor wishes to communicate before the proposed appointment is accepted and that there is an intention to do so. If no reply is forthcoming within fifteen days from the date of the second letter the proposed auditor will be free to accept the nomination. The proposed auditor may also submit a complaint to the Accountancy Board for its attention and necessary action.

Other Work

4.10 Warrant holders may be asked to undertake work that is complementary or additional to the work of an existing warrant holder. Such circumstances may give rise to potential threats to professional competence and due care resulting from, for example, a lack of or incomplete information. Safeguards against such threats include notifying the existing warrant holder of the proposed work, which would give the existing warrant holder the opportunity to provide any relevant information needed for the proper conduct of the work.

SECTION 5

Second Opinions

5.1 Situations where warrant holders in public practice are asked to provide a written opinion on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions by or on behalf of a company or an entity that is not an existing client may give rise to threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant, or is based on inadequate evidence. The significance of the threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgment.

5.2 When asked to provide such an opinion, warrant holders should evaluate the significance of the threats and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Such safeguards will ordinarily include seeking client permission to contact the existing accountant, describing

the limitations surrounding any opinion in communications with the client and providing the existing accountant with a copy of the opinion.

5.3 If the company or entity seeking the opinion will not permit communication with the existing accountant, warrant holders should consider whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

SECTION 6

Fees and Other Types of Remuneration

6.1 When entering into negotiations regarding professional and business relationships, warrant holders may quote whatever fee they deem to be appropriate. The fact that one warrant holder may quote a fee lower than another is not in itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, there may be a self-interest threat to professional competence and due care if the fee quoted is so low that it may be difficult to perform the engagement satisfactorily for that price.

6.2 The significance of such threats will depend on factors such as the level of fee quoted, the services to which it applies and the availability of comparison with other quotes. In view of these potential threats, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Safeguards which may be adopted include:

- Making clients aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee.
- Assigning appropriate time and qualified staff to the task.

Contingent Fees

6.3 Contingent fees may in a number of situations give rise to threats to compliance with the fundamental principles. For example, they may in certain circumstances lead to a serious self-interest threat to objectivity. The significance of such threats will depend on factors including:

- The degree of objectivity required for the engagement; for example, objectivity may be seriously threatened when a contingent fee is agreed on in relation to an assignment where third parties may be expected to place reliance on the work of the warrant holder (eg., in relation to the preparation or review of a feasibility study which may subsequently be relied upon for investment or financing purposes).
- The range of possible fee amounts and the extent of the contingent element which, if excessive in relation to the work performed could heighten any potential threats to objectivity.
- The basis for determining the fee, in particular the relationship between the contingent and non-contingent elements of the agreed arrangements; the threat to objectivity is heightened when a disproportionate part of the agreed remuneration is on a contingent basis.
- Whether the outcome or result of the transaction is to be reviewed by an independent third party.

6.4 The potential significance of such threats is such that, with the limited exceptions noted below, professional services should not be offered or rendered to a client under a contingent fee arrangement (eg., whereby no fee will be charged, or a reduced fee is applied, unless a specified finding or result is obtained or when the fee is otherwise contingent upon the findings or results of such services). Fees should not be regarded as being contingent if fixed by a court or other public authority. Fees charged on a percentage or similar basis should be regarded as contingent fees.

6.5 The provision of services on a contingent fee basis is only permissible when:

- Such services are provided to entities who are not audit clients of the warrant holder providing the service; and
- The services provided, and any other associated work (eg., other services, such as due diligence, required to complete an acquisition transaction), does not result in reports (such as valuations, vendor due diligence reports, applications for finance, investment proposals, feasibility studies, reports confirming eligibility to grants, etc) which may be disclosed to third parties who may wish to place reliance on them.

6.6 Examples of services which may be provided to entities other than audit clients in terms of paragraph 6.5 above would include:

- Assisting a client in identifying suitable acquisitions, where an element of the fee is contingent on the successful conclusion of the acquisition
- Assisting a client in negotiating a contract, where an element of the fee is contingent on the outcome of the negotiations
- Assisting a client in identifying and remedying areas of organisational or other weaknesses prior to the sale of a business, where an element of the fee is contingent on the price secured in the sale
- Assisting a client in identifying potential grants available to it, where an element of the fee is contingent on the amount of grant secured.

6.7 While such services may be provided on a contingent fee basis, there will nevertheless be threats to compliance with the fundamental principles which should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate or reduce them to an acceptable level. Such safeguards might include:

- An advance written agreement with the client as to the basis of remuneration, which should seek to strike a suitable relationship between the contingent and non-contingent elements of the agreed arrangements.
- An advance written agreement with the client confirming his acceptance that the work the warrant holders will perform, and any reports they may produce, will not be disclosed to third parties who may wish to rely on such work or reports.
- Ensuring that the fee arrangements are clearly disclosed in any reports produced in the course of the engagement
- Quality control policies and procedures.
- Review of the work done by an objective third party.

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Commissions for referral of work

6.8 In terms of section 13 (3) of the Accountancy Profession Act, an accountant or auditor shall not pay or allow, or agree to pay or allow, to any person, whether directly or indirectly, any commission or brokerage, or any share or portion of his fees or other professional income in circumstances in which a commission or a brokerage fee is normally paid or allowed.

6.9 Payment and receipt of referral fees between warrant holders in public practice when no services are performed by the referring accountant are regarded as commissions for the purpose of paragraph 6.8.

6.10 A warrant holder in public practice may enter into an arrangement for the purchase of whole or part of an accounting practice requiring payments to individuals formerly engaged in the practice or payments to their heirs or estates. Such payments are not regarded as commissions for the purpose of paragraph 6.8.

6.11 In certain circumstances, warrant holders may receive commissions from third parties in connection with sales of goods or services to a client. Accepting such referral fees or commissions may give rise to self-interest threats to objectivity and due care.

6.12 Warrant holders should not receive such commissions unless they have established safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards would include:

- Disclosing to clients any arrangements to receive commission in connection with the sale by third parties of goods or services to those clients; or
- Obtaining agreement in advance from clients to commission arrangements in connection with the sale by third parties of goods or services to those clients.

SECTION 7

Custody of Client Assets

7.1 Warrant holders should assume custody of client monies or other assets only where permitted to do so by law and having regard to any additional legal duties imposed on warrant holders in public practice holding such assets.

7.2 The holding of client assets gives rise to threats to compliance with the fundamental principles for example there may be a self-interest threat to integrity or professional behaviour arising from holding client assets. To safeguard against such threats, warrant holders entrusted with money (or other assets) belonging to others should:

(a) Keep such assets separately from personal or firm assets;

(b) Use such assets only for the purpose for which they are intended;

(c) At all times, be ready to account for those assets to any persons entitled to such accounting; and

(d) Comply with all relevant law and regulations relevant to the holding of and accounting for such assets.

7.3 In addition, warrant holders should be aware of threats to compliance with the fundamental principles through association with such assets, for example, if the assets were found to derive from illegal activities, such as money laundering. As part of client and engagement acceptance procedures for such services, warrant holders should make appropriate enquiries about the source of such assets and should consider their legal and regulatory obligations. They may also consider seeking legal advice.

SECTION 8

Independence

8.1 It is the responsibility of the warrant holder in public practice to ensure that the requirement for professional accountants' independence is complied with. The independence requirement applies to the warrant holder himself and to all members of the assurance team, including all those who are in a position to influence the outcome of the assurance engagement.

8.2 Assurance engagements are intended to enhance the credibility of information about a subject matter by evaluating whether the subject matter conforms in all material respects with suitable criteria. The International Standard on Assurance Engagements issued by the International Auditing Practices Committee describes the objectives and elements of assurance engagements to provide either a high or a moderate level of assurance. The International Auditing Practice Committee has also issued specific standards for certain assurance engagements. For example, International Standards on Auditing provide specific standards for audit (high level assurance) and review (moderate level assurance) of financial statements.

8.3 Paragraphs 8.4 through 8.7 are taken from the International Standard on Assurance Engagements and describe the nature of an assurance engagement. These paragraphs are presented here only to describe the nature of an assurance engagement. To obtain a full understanding of the objectives and elements of an assurance engagement it is necessary to refer to the full text contained in the International Standards on Assurance Engagements.

8.4 Whether a particular engagement is an assurance engagement will depend upon whether it exhibits all the following elements:

(a) A three party relationship involving:

(i) A warrant holder in public practice;

(ii) A responsible party; and

(iii) An intended user

(b) A subject matter;

(c) Suitable criteria;

(d) An engagement process; and

(e) A conclusion.

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The responsible party and the intended user will often be from separate organizations but need not be. A responsible party and an intended user may both be within the same organization. For example, a governing body may seek assurance about information provided by a component of that organization. The relationship between the responsible party and the intended user needs to be viewed within the context of a specific engagement.

8.5 There is a broad range of engagements to provide a high or moderate level of assurance. Such engagements may include:

- Engagements to report on a broad range of subject matters covering financial and non-financial information;
- Attest and direct reporting engagements;
- Engagements to report internally and externally; and
- Engagements in the private and public sector.

8.6 The subject matter of an assurance engagement may take many forms, such as the following:

- Data (for example, historical or prospective financial information, statistical information, performance indicators);
- Systems and processes (for example, internal controls); or
- Behavior (for example, corporate governance, compliance with regulation, human resource practices).

8.7 Not all engagements performed by warrant holders are assurance engagements. Other engagements frequently performed by warrant holders that are not assurance engagements include:

- Agreed-upon procedures;
- Compilation of financial or other information;
- Preparation of tax returns when no conclusion is expressed, and tax consulting;
- Management consulting; and
- Other advisory services.

8.8 This section of the Code of Ethics (this section) provides a framework, built on principles, for identifying, evaluating and responding to threats to independence. The framework establishes principles that members of assurance teams, firms and network firms should use to identify threats to independence, evaluate the significance of those threats, and, if the threats are other than clearly insignificant, identify and apply safeguards to eliminate the threats or reduce them to an acceptable level. Judgment is needed to determine which safeguards are to be applied. Some safeguards may eliminate the threat while others may reduce the threat to an acceptable level. This section requires members of assurance teams, firms and network firms to apply the principles to the particular circumstances under consideration. The examples presented are intended to illustrate the application of the principles in this section and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances that may create threats to independence. Consequently, it is not sufficient for a member of an assurance team, a firm or a network firm merely to

comply with the examples presented, rather they should apply the principles in this section to the particular circumstances they face.

A Conceptual Approach to Independence

8.9 Independence requires:

(a) Independence of mind:

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

(b) Independence in appearance:

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised.

8.10 The use of the word "independence" on its own may create misunderstandings. Standing alone, the word may lead observers to suppose that a person exercising professional judgment ought to be free from all economic, financial and other relationships. This is impossible, as every member of society has relationships with others. Therefore, the significance of economic, financial and other relationships should also be evaluated in the light of what a reasonable and informed third party having knowledge of all relevant information would reasonably conclude to be unacceptable.

8.11 Many different circumstances, or combination of circumstances, may be relevant and accordingly it is impossible to define every situation that creates threats to independence and specify the appropriate mitigating action that should be taken. In addition, the nature of assurance engagements may differ and consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires firms and members of assurance teams to identify, evaluate and address threats to independence, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest.

8.12 This section is based on such a conceptual approach, one that takes into account threats to independence, accepted safeguards and the public interest. Under this approach, firms and members of assurance teams have an obligation to identify and evaluate circumstances and relationships that create threats to independence and to take appropriate action to eliminate these threats or to reduce them to an acceptable level by the application of safeguards. In addition to identifying and evaluating relationships between the firm, network firms, members of the assurance team and the assurance client, consideration should be given to whether relationships between individuals outside of the assurance team and the assurance client create threats to independence.

8.13 This section provides a framework of principles that members of assurance teams, firms and network firms should use to identify threats to independence, evaluate the significance of those threats, and, if the threats are other than clearly insignificant, identify and apply

safeguards to eliminate the threats or reduce them to an acceptable level, such that independence of mind and independence in appearance are not compromised.

8.14 The principles in this section apply to all assurance engagements. The nature of the threats to independence and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level differ depending on the characteristics of the individual engagement: whether the assurance engagement is an audit engagement or another type of engagement; and in the case of an assurance engagement that is not an audit engagement, the purpose, subject matter and intended users of the report. A firm should, therefore, evaluate the relevant circumstances, the nature of the assurance engagement and the threats to independence in deciding whether it is appropriate to accept or continue an engagement, as well as the nature of the safeguards required and whether a particular individual should be a member of the assurance team.

8.15 Audit engagements provide assurance to a wide range of potential users; consequently, in addition to independence of mind, independence in appearance is of particular significance. Accordingly, for audit clients, the members of the assurance team, the firm and network firms are required to be independent of the audit client. Similar considerations in the case of assurance engagements provided to non-audit assurance clients require the members of the assurance team and the firm to be independent of the non-audit assurance client. In the case of these engagements, consideration should be given to any threats that the firm has reason to believe may be created by network firm interests and relationships.

8.16 In the case of an assurance report to a non-audit assurance client expressly restricted for use by identified users, the users of the report are considered to be knowledgeable as to the purpose, subject matter and limitations of the report through their participation in establishing the nature and scope of the firm's instructions to deliver the services, including the criteria by which the subject matter are to be evaluated. This knowledge and enhanced ability of the firm to communicate about safeguards with all users of the report increase the effectiveness of safeguards to independence in appearance. These circumstances may be taken into account by the firm in evaluating the threats to independence and considering the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level. At a minimum, it will be necessary to apply the provisions of this section in evaluating the independence of members of the assurance team and their immediate and close family. Further, if the firm had a material financial interest, whether direct or indirect, in the assurance client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Limited consideration of any threats created by network firm interests and relationships may be sufficient.

8.17 Accordingly:

- For assurance engagements provided to an audit client, the members of the assurance team, the firm and network firms are required to be independent of the client;
- For assurance engagements provided to clients that are not audit clients, when the report is not expressly restricted for use by identified users, the members of the assurance team and the firm are required to be independent of the client; and
- For assurance engagements provided to clients that are not audit clients, when the assurance report is expressly restricted for use by identified users, the members of the

assurance team are required to be independent of the client. In addition, the firm should not have a material direct or indirect financial interest in the client.

These independence requirements for assurance engagements are illustrated as follows:

Client	Type of Assurance Engagement		
	Audit	Non-audit – not restricted use	Non-audit restricted use
Audit client	Assurance team, firm and network firms		
Non-audit assurance client		Assurance team and firm	Assurance team and firm has no material financial interest

8.18 The threats and safeguards identified in this section are generally discussed in the context of interests or relationships between the firm, network firms, a member of the assurance team and the assurance client. In the case of a public interest audit client, the firm and any network firms are required to consider the interests and relationships that involve that client's related entities. Ideally those entities and the interests and relationships should be identified in advance. For all other assurance clients, when the assurance team has reason to believe that a related entity of such an assurance client is relevant to the evaluation of the firm's independence of the client, the assurance team should consider that related entity when evaluating independence and applying appropriate safeguards.

8.19 The evaluation of threats to independence and subsequent action should be supported by evidence obtained before accepting the engagement and while it is being performed. The obligation to make such an evaluation and take action arises when a firm, a network firm or a member of the assurance team knows, or could reasonably be expected to know, of circumstances or relationships that might compromise independence. There may be occasions when the firm, a network firm or an individual inadvertently violates this section. If such an inadvertent violation occurs, it would generally not compromise independence with respect to an assurance client provided the firm has appropriate quality control policies and procedures in place to promote independence and, once discovered, the violation is corrected promptly and any necessary safeguards are applied.

8.20 Throughout this section, reference is made to significant and clearly insignificant threats in the evaluation of independence. In considering the significance of any particular matter, qualitative as well as quantitative factors should be taken into account. A matter should be considered clearly insignificant only if it is deemed to be both trivial and inconsequential.

Objective and Structure of this Section

8.21 The objective of this section is to assist firms and members of assurance teams in:

(a) Identifying threats to independence;

(b) Evaluating whether these threats are clearly insignificant; and

(c) In cases when the threats are not clearly insignificant, identifying and applying appropriate safeguards to eliminate or reduce the threats to an acceptable level.

In situations when no safeguards are available to reduce the threat to an acceptable level, the only possible actions are to eliminate the activities or interest creating the threat, or to refuse to accept or continue the assurance engagement.

8.22 This section outlines the threats to independence (paragraphs 8.25 through 8.30). It then analyzes safeguards capable of eliminating these threats or reducing them to an acceptable level (paragraphs 8.31 through 8.43). It concludes with some examples of how this conceptual approach to independence is to be applied to specific circumstances and relationships. The examples discuss threats to independence that may be created by specific circumstances and relationships (paragraphs 8.100 onwards). Professional judgment is used to determine the appropriate safeguards to eliminate threats to independence or to reduce them to an acceptable level. In certain examples, the threats to independence are so significant the only possible actions are to eliminate the activities or interest creating the threat, or to refuse to accept or continue the assurance engagement. In other examples, the threat can be eliminated or reduced to an acceptable level by the application of safeguards. The examples are not intended to be all-inclusive.

8.23 When threats to independence that are not clearly insignificant are identified, and the firm decides to accept or continue the assurance engagement, the decision should be documented. The documentation should include a description of the threats identified and the safeguards applied to eliminate or reduce the threats to an acceptable level.

8.24 The evaluation of the significance of any threats to independence and the safeguards necessary to reduce any threats to an acceptable level, takes into account the public interest. Certain entities are of significant public interest, currently defined in this Code as entities whose shares, stock or debt are quoted or listed on the Malta Stock Exchange (including entities who may be guaranteeing such shares, stock or debt), credit institutions, and insurance companies, (see also comments on page 6 and the definition of public interest entities on page 10). Because of the strong public interest in the financial statements of such entities, certain paragraphs in this section deal with additional matters that are relevant to the audit of these entities.

Threats to Independence

8.25 Independence is potentially affected by self-interest, self-review, advocacy, familiarity and intimidation threats.

8.26 "Self-Interest Threat" occurs when a firm or a member of the assurance team could benefit from a financial interest in, or other self-interest conflict with, an assurance client. Examples of circumstances that may create this threat include, but are not limited to:

(a) A direct financial interest or material indirect financial interest in an assurance client;

(b) A loan or guarantee to or from an assurance client or any of its directors or officers;

(c) Undue dependence on total fees from an assurance client;

(d) Concern about the possibility of losing the engagement;

(e) Having a close business relationship with an assurance client;

(f) Potential employment with an assurance client; and

8.27 "Self-Review Threat" occurs when (1) any product or judgment of a previous assurance engagement or non-assurance engagement needs to be re-evaluated in reaching conclusions on the assurance engagement or (2) when a member of the assurance team was previously a director or officer of the assurance client, or was an employee in a position to exert direct and significant influence over the subject matter of the assurance engagement.

Examples of circumstances that may create this threat include, but are not limited to:

(a) A member of the assurance team being, or having recently been, a director or officer of the assurance client;

(b) A member of the assurance team being, or having recently been, an employee of the assurance client in a position to exert direct and significant influence over the subject matter of the assurance engagement;

(c) Performing services for an assurance client that directly affect the subject matter of the assurance engagement; and

(d) Preparation of original data used to generate financial statements or preparation of other records that are the subject matter of the assurance engagement.

8.28 "Advocacy Threat" occurs when a firm, or a member of the assurance team, promotes, or may be perceived to promote, an assurance client's position or opinion to the point that objectivity may, or may be perceived to be, compromised. Such may be the case if a firm or a member of the assurance team were to subordinate their judgment to that of the client.

Examples of circumstances that may create this threat include, but are not limited to:

(a) Dealing in, or being a promoter of, shares or other securities in an assurance client; and

(b) Acting as an advocate on behalf of an assurance client in litigation or in resolving disputes with third parties.

8.29 "Familiarity Threat" occurs when, by virtue of a close relationship with an assurance client, its directors, officers or employees, a firm or a member of the assurance team becomes too sympathetic to the client's interests.

Examples of circumstances that may create this threat include, but are not limited to:

(a) A member of the assurance team having an immediate family member or close family member who is a director or officer of the assurance client;

(b) A member of the assurance team having an immediate family member or close family member who, as an employee of the assurance client, is in a position to exert direct and significant influence over the subject matter of the assurance engagement;

(c) A former principal of the firm being a director, officer of the assurance client or an employee in a position to exert direct and significant influence over the subject matter of the assurance engagement;

(d) Long association of a senior member of the assurance team with the assurance client; and

(e) Acceptance of gifts or hospitality, unless the value is clearly insignificant, from the assurance client, its directors, officers or employees.

8.30 "Intimidation Threat" occurs when a member of the assurance team may be deterred from acting objectively and exercising professional skepticism by threats, actual or perceived, from the directors, officers or employees of an assurance client.

Examples of circumstances that may create this threat include, but are not limited to:

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(a) Threat of replacement over a disagreement with the application of an accounting principle; and

(b) Pressure to reduce inappropriately the extent of work performed in order to reduce fees.

Safeguards

8.31 When threats are identified, other than those that are clearly insignificant, appropriate safeguards should be identified and applied to eliminate the threats or reduce them to an acceptable level. This decision should be documented. The nature of the safeguards to be applied will vary depending upon the circumstances. Consideration should always be given to what a reasonable and informed third party having knowledge of all relevant information, including safeguards applied, would reasonably conclude to be unacceptable. The consideration will be affected by matters such as the significance of the threat, the nature of the assurance engagement, the intended users of the assurance report and the structure of the firm.

8.32 Safeguards fall into three broad categories:

(a) Safeguards created by the profession, legislation or regulation;

(b) Safeguards within the assurance client; and

(c) Safeguards within the firm's own systems and procedures.

The firm and the members of the assurance team should select appropriate safeguards to eliminate or reduce threats to independence, other than those that are clearly insignificant, to an acceptable level.

8.33 Safeguards created by the profession, legislation or regulation, include the following:

(a) Educational, training and experience requirements for entry into the profession;

(b) Continuing education requirements;

(c) Professional standards and monitoring and disciplinary processes;

(d) External review of a firm's quality control system; and

(e) Legislation governing the independence requirements of the firm.

8.34 Safeguards within the assurance client, include the following:

(a) When the assurance client's management appoints the firm, persons other than management ratify or approve the appointment;

(b) The assurance client has competent employees to make managerial decisions;

(c) Policies and procedures that emphasize the assurance client's commitment to fair financial reporting;

(d) Internal procedures that ensure objective choices in commissioning non-assurance engagements; and

(e) A corporate governance structure, such as an audit committee, that provides appropriate oversight and communications regarding a firm's services.

8.35 Audit committees can have an important corporate governance role when they are independent of client management and can assist the Board of Directors in satisfying themselves that a firm is independent in carrying out its audit role. There should be regular communications between the firm and the audit committee (or other governance body if

there is no audit committee) of public interest entities regarding relationships and other matters that might, in the firm's opinion, reasonably be thought to bear on independence.

8.36 Firms should establish policies and procedures relating to independence communications with audit committees, or others charged with governance. In the case of the audit of public interest entities, the firm shall with respect to statutory audit engagements covering the financial statements commencing on or after 1st January 2009:

(a) confirm annually in writing to the Audit Committee its independence from the audited public-interest entity;

(b) disclose annually to the audit committee any additional services provided to the audited entity; and

(c) discuss with the Audit Committee the threats to their independence and the safeguards applied to migrate those threats as documented by them pursuant to Section 1.15.

8.37 Safeguards within the firm's own systems and procedures may include firm-wide safeguards such as the following:

(a) Firm leadership that stresses the importance of independence and the expectation that members of assurance teams will act in the public interest;

(b) Policies and procedures to implement and monitor quality control of assurance engagements;

(c) Documented independence policies regarding the identification of threats to independence, the evaluation of the significance of these threats and the identification and application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level;

(d) Internal policies and procedures to monitor compliance with firm policies and procedures as they relate to independence;

(e) Policies and procedures that will enable the identification of interests or relationships between the firm or members of the assurance team and assurance clients;

(f) Policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single assurance client;

(g) Using different principals and teams with separate reporting lines for the provision of non-assurance services to an assurance client;

(h) Policies and procedures to prohibit individuals who are not members of the assurance team from influencing the outcome of the assurance engagement;

(i) Timely communication of a firm's policies and procedures, and any changes thereto, to all principals and professional staff, including appropriate training and education thereon;

(j) Designating a member of senior management as responsible for overseeing the adequate functioning of the safeguarding system;

(k) Means of advising principals and professional staff of those assurance clients and related entities from which they must be independent;

(l) A disciplinary mechanism to promote compliance with policies and procedures; and

(m) Policies and procedures to empower staff to communicate to senior levels within the firm any issue of independence and objectivity that concerns them; this includes informing staff of the procedures open to them.

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8.38 Safeguards within the firm's own systems and procedures may include engagement specific safeguards such as the following:

(a) Involving an additional professional accountant to review the work done or otherwise advise as necessary. This individual could be someone from outside the firm or network firm, or someone within the firm or network firm who was not otherwise associated with the assurance team;

(b) Consulting a third party, such as a committee of independent directors, the Accountancy Board, the Malta Institute of Accountants or another professional accountant;

(c) Rotation of senior personnel;

(d) Discussing independence issues with the audit committee or others charged with governance;

(e) For public interest entities, the individual in public practice should confirm in writing that, according to his professional judgment, he is independent within the meaning of regulatory and professional requirements and the objectivity of the warrant holder in public practice is not compromised, or otherwise declare that he has concerns that his independence and objectivity may be compromised.

(f) Disclosing to the audit committee, or others charged with governance, the nature of services provided and extent of fees charged. The total amount of fees charged should be broken down into four broad categories of services: Statutory audit services; further assurance services; tax advisory services; and other non-audit services.

(g) Policies and procedures to ensure members of the assurance team do not make, or assume responsibility for, management decisions for the assurance client;

(h) Involving another firm to perform or re-perform part of the assurance engagement;

(i) Involving another firm to re-perform the non-assurance service to the extent necessary to enable it to take responsibility for that service; and

(j) Removing the individual from the assurance team, when that individual's financial interests or relationships create a threat to independence.

8.39 When the safeguards available, such as those described above, are insufficient to eliminate the threats to independence or to reduce them to an acceptable level, or when a firm chooses not to eliminate the activities or interests creating the threat, the only course of action available will be the refusal to perform, or withdrawal from, the assurance engagement.

Engagement Period

8.40 The members of the assurance team and the firm should be independent of the assurance client during the period of the assurance engagement. The period of the engagement starts when the assurance team begins to perform assurance services and ends when the assurance report is issued, except when the assurance engagement is of a recurring nature. If the assurance engagement is expected to recur, the period of the assurance engagement ends with the notification by either party that the professional relationship has terminated or the issuance of the final assurance report, whichever is later.

8.41 In the case of an audit engagement, the engagement period includes the period covered by the financial statements reported on by the firm. When an entity becomes an audit client during or after the period covered by the financial statements that the firm will report on, the firm should consider whether any threats to independence may be created by:

- Financial or business relationships with the audit client during or after the period covered by the financial statements, but prior to the acceptance of the audit engagement; or
- Previous services provided to the audit client.

Similarly, in the case of an assurance engagement that is not an audit engagement, the firm should consider whether any financial or business relationships or previous services may create threats to independence.

8.42 If non-assurance services were provided to the audit client during or after the period covered by the financial statements but before the commencement of professional services in connection with the audit and those services would be prohibited during the period of the audit engagement, consideration should be given to the threats to independence, if any, arising from those services. If the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Discussing independence issues related to the provision of the non-assurance services with those charged with governance of the client, such as the audit committee;
- Obtaining the audit client's acknowledgement of responsibility for the results of the non-assurance services;
- Precluding personnel who provided the non-assurance services from participating in the audit engagement; and
- Engaging another firm to review the results of the non-assurance services or having another firm re-perform the non-assurance services to the extent necessary to enable it to take responsibility for those services.

8.43 Non-assurance services provided to a non-public interest audit client will not impair the firm's independence when the client becomes a public interest entity provided:

- The previous non-assurance services were permissible under this section for non-public interest audit clients;
- The services will be terminated within a reasonable period of time of the client becoming a public interest entity, if they are impermissible under this section for public interest audit clients; and
- The firm has implemented appropriate safeguards to eliminate any threats to independence arising from the previous services or reduce them to an acceptable level.

Effective Date and transitional arrangements

8.44 This Code is applicable to assurance engagements when the assurance report is dated on or after the Effective Date.

8.45 The Replaced Code shall continue to be applicable to assurance engagement when the assurance report is dated before the Effective Date.

PART B

Application of Principles to Specific Situations

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Introduction

8.100 The following examples describe specific circumstances and relationships that may create threats to independence. The examples describe the potential threats created and the safeguards that may be appropriate to eliminate the threats or reduce them to an acceptable level in each circumstance. The examples are not all-inclusive. In practice, the firm, network firms and the members of the assurance team will be required to assess the implications of similar, but different, circumstances and relationships and to determine whether safeguards, including the safeguards in paragraphs 8.34 through 8.39 can be applied to satisfactorily address the threats to independence. Paragraphs 8.1 through 8.43 of this section provide conceptual guidance to assist in this process.

8.101 Some of the examples deal with audit clients while others deal with assurance clients that are not audit clients. The examples illustrate how safeguards should be applied to fulfill the requirement for the members of the assurance team, the firm and network firms to be independent of an audit client, and for the members of the assurance team and the firm to be independent of an assurance client that is not an audit client. The examples do not include assurance reports to a non-audit assurance client expressly restricted for use by identified users. As stated in paragraph 8.15 for such engagements, members of the assurance team and their immediate and close family are required to be independent of the assurance client. Further, the firm should not have a material financial interest, direct or indirect, in the assurance client.

Financial Interests

8.102 A financial interest in an assurance client may create a self-interest threat. In evaluating the significance of the threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, it is necessary to examine the nature of the financial interest. This includes an evaluation of the role of the person holding the financial interest, the materiality of the financial interest and the type of financial interest (direct or indirect).

8.103 When evaluating the type of financial interest, consideration should be given to the fact that financial interests range from those where the individual has no control over the investment vehicle or the financial interest held (*e.g.*, a mutual fund, unit trust or similar intermediary vehicle) to those where the individual has control over the financial interest (*e.g.*, as a trustee) or is able to influence investment decisions. In evaluating the significance of any threat to independence, it is important to consider the degree of control or influence that can be exercised over the intermediary, the financial interest held, or its investment strategy. When control exists, the financial interest should be considered direct. Conversely, when the holder of the financial interest has no ability to exercise such control the financial interest should be considered indirect.

PART B

Provisions Applicable to all Assurance Clients

8.104 If a member of the assurance team, or their immediate family member, has a direct financial interest, or a material indirect financial interest, in the assurance client, the self-interest threat created would be so significant the only safeguards available to eliminate the threat or reduce it to an acceptable level would be to:

- Dispose of the direct financial interest prior to the individual becoming a member of the assurance team;
- Dispose of the indirect financial interest in total or dispose of a sufficient amount of it so that the remaining interest is no longer material prior to the individual becoming a member of the assurance team; or
- Remove the member of the assurance team from the assurance engagement.

8.105 If a member of the assurance team, or their immediate family member receives, by way of, for example, an inheritance, gift or, as a result of a merger, a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat would be created. The following safeguards should be applied to eliminate the threat or reduce it to an acceptable level:

- Disposing of the financial interest at the earliest practical date; or
- Removing the member of the assurance team from the assurance engagement.

During the period prior to disposal of the financial interest or the removal of the professional accountant from the assurance team, consideration should be given to whether additional safeguards are necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Discussing the matter with those charged with governance, such as the audit committee; or
- Involving an additional professional accountant to review the work done, or otherwise advise as necessary.

8.106 When a member of the assurance team knows that his or her close family member has a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat may be created. In evaluating the significance of any threat, consideration should be given to the nature of the relationship between the member of the assurance team and the close family member and the materiality of the financial interest. Once the significance of the threat has been evaluated, safeguards should be considered and applied as necessary. Such safeguards might include:

- The close family member disposing of all or a sufficient portion of the financial interest at the earliest practical date;
- Discussing the matter with those charged with governance, such as the audit committee;

- Involving an additional individual who did not take part in the assurance engagement to review the work done by the member of the assurance team with the close family relationship or otherwise advise as necessary; or
- Removing the individual from the assurance engagement.

8.107 When a firm or a member of the assurance team holds a direct financial interest or a material indirect financial interest in the assurance client as a trustee, a self-interest threat may be created by the possible influence of the trust over the assurance client. Accordingly, such an interest should only be held when:

- The member of the assurance team, an immediate family member of the member of the assurance team, and the firm are not beneficiaries of the trust;
- The interest held by the trust in the assurance client is not material to the trust;
- The trust is not able to exercise significant influence over the assurance client; and
- The member of the assurance team or the firm does not have significant influence over any investment decision involving a financial interest in the assurance client.

8.108 Consideration should be given to whether a self-interest threat may be created by the financial interests of individuals outside of the assurance team and their immediate and close family members. Such individuals would include:

- Principals, and their immediate family members, who are not members of the assurance team;
- Principals and managerial employees who provide non-assurance services to the assurance client; and
- Individuals who have a close personal relationship with a member of the assurance team.

Whether the interests held by such individuals may create a self-interest threat will depend upon factors such as:

- The firm's organizational, operating and reporting structure; and
- The nature of the relationship between the individual and the member of the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Where appropriate, policies to restrict people from holding such interests;
- Discussing the matter with those charged with governance, such as the audit committee; or
- Involving an additional professional accountant who did not take part in the assurance engagement to review the work done or otherwise advise as necessary.

PART B

8.109 An inadvertent violation of this section as it relates to a financial interest in an assurance client would not impair the independence of the firm, the network firm or a member of the assurance team when:

(a) The firm, and the network firm, has established policies and procedures that require all relevant principals and staff to report promptly to the firm any breaches resulting from the purchase, inheritance or other acquisition of a financial interest in the assurance client;

(b) The firm, and the network firm, promptly notifies the individual(s) concerned that the financial interest should be disposed of; and

(c) The disposal occurs at the earliest practical date after identification of the issue, or the individual concerned is removed from the assurance team.

8.110 When an inadvertent violation of this section relating to a financial interest in an assurance client has occurred, the firm should consider whether any safeguards should be applied. Such safeguards might include:

- Involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team; or
- Excluding the individual from any substantive decision-making concerning the assurance engagement.

Provisions Applicable to Audit Clients

8.111 If a firm, or a network firm, has a direct financial interest in an audit client of the firm the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Consequently, disposal of the financial interest would be the only action appropriate to permit the firm to perform the engagement.

8.112 If a firm, or a network firm, has a material indirect financial interest in an audit client of the firm a self-interest threat is also created. The only actions appropriate to permit the firm to perform the engagement would be for the firm, or the network firm, either to dispose of the indirect interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

8.113 If a firm, or a network firm, has a material financial interest in an entity that has a controlling interest in an audit client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. The only actions appropriate to permit the firm to perform the engagement would be for the firm, or the network firm, either to dispose of the financial interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

8.114 If the retirement benefit plan of a firm, or network firm, has a financial interest in an audit client a self-interest threat may be created. Accordingly, the significance of any such threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.

8.115 If other principals, including principals who do not perform assurance engagements, or their immediate family, in the office in which the lead engagement principal practices in connection with the audit hold a direct financial interest or a material indirect financial interest in that audit client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Accordingly, such principals or their immediate family should not hold any such financial interests in such an audit client.

8.116 The office in which the lead engagement principal practices in connection with the audit is not necessarily the office to which that principal is assigned. Accordingly, when the lead engagement principal is located in a different office from that of the other members of the assurance team, judgment should be used to determine in which office the principal practices in connection with that audit.

8.117 If other principal and managerial employees who provide non-assurance services to the audit client, except those whose involvement is clearly insignificant, or their immediate family, hold a direct financial interest or a material indirect financial interest in the audit client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Accordingly, such personnel or their immediate family should not hold any such financial interests in such an audit client.

8.118 A financial interest in an audit client that is held by an immediate family member of (a) a principal located in the office in which the lead engagement principal practices in connection with the audit, or (b) a principal or managerial employee who provides non-assurance services to the audit client is not considered to create an unacceptable threat provided it is received as a result of their employment rights (*e.g.*, pension rights or share options) and, where necessary, appropriate safeguards are applied to reduce any threat to independence to an acceptable level.

8.119 A self-interest threat may be created if the firm, or the network firm, or a member of the assurance team has an interest in an entity and an audit client, or a director, officer or controlling owner thereof also has an investment in that entity. Independence is not compromised with respect to the audit client if the respective interests of the firm, the network firm, or member of the assurance team, and the audit client, or director, officer or controlling owner thereof are both immaterial and the audit client cannot exercise significant influence over the entity. If an interest is material, to either the firm, the network firm or the audit client, and the audit client can exercise significant influence over the entity, no safeguards are available to reduce the threat to an acceptable level and the firm, the network firm, should either dispose of the interest or decline the audit engagement. Any member of the assurance team with such a material interest should either:

- Dispose of the interest;
- Dispose of a sufficient amount of the interest so that the remaining interest is no longer material; or
- Withdraw from the audit.

Provisions Applicable to Non-Audit Assurance Clients

8.120 If a firm has a direct financial interest in an assurance client that is not an audit client the self-interest threat created would be so significant no safeguard could reduce the threat to

an acceptable level. Consequently, disposal of the financial interest would be the only action appropriate to permit the firm to perform the engagement.

8.121 If a firm has a material indirect financial interest in an assurance client that is not an audit client a self-interest threat is also created. The only action appropriate to permit the firm to perform the engagement would be for the firm to either dispose of the indirect interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

8.122 If a firm has a material financial interest in an entity that has a controlling interest in an assurance client that is not an audit client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. The only action appropriate to permit the firm to perform the engagement would be for the firm either to dispose of the financial interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

8.123 When a restricted use report for an assurance engagement that is not an audit engagement is issued, exceptions to the provisions in paragraphs 8.104 through 8.108 and 8.120 through 8.122 are set out in 8.15.

Loans and Guarantees

8.124 A loan from, or a guarantee thereof by, an assurance client that is a bank or a similar institution, to the firm would not create a threat to independence provided the loan is made under normal lending procedures, terms and requirements and the loan is immaterial to both the firm and the assurance client. If the loan is material to the assurance client or the firm it may be possible, through the application of safeguards, to reduce the self-interest threat created to an acceptable level. Such safeguards might include involving an additional professional accountant from outside the firm, or network firm, to review the work performed.

8.125 A loan from, or a guarantee thereof by, an assurance client that is a bank or a similar institution, to a member of the assurance team or their immediate family would not create a threat to independence provided the loan is made under normal lending procedures, terms and requirements. Examples of such loans include home mortgages, bank overdrafts, car loans and credit card balances.

8.126 Similarly, deposits made by, or brokerage accounts of, a firm or a member of the assurance team with an assurance client that is a bank, broker or similar institution would not create a threat to independence provided the deposit or account is held under normal commercial terms.

8.127 If the firm, or a member of the assurance team, makes a loan to an assurance client, that is not a bank or similar institution, or guarantees such an assurance client's borrowing, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both the firm or the member of the assurance team and the assurance client.

8.128 Similarly, if the firm or a member of the assurance team accepts a loan from, or has borrowing guaranteed by, an assurance client that is not a bank or similar institution, the self-interest threat created would be so significant no safeguard could reduce the threat to

an acceptable level, unless the loan or guarantee is immaterial to both the firm or the member of the assurance team and the assurance client.

8.129 The examples in paragraphs 8.124 through 8.128 relate to loans and guarantees between the firm and an assurance client. In the case of an audit engagement, the provisions should be applied to the firm, all network firms and the audit client.

Close Business Relationships with Assurance Clients

8.130 A close business relationship between a firm or a member of the assurance team and the assurance client or its management, or between the firm, a network firm and an audit client, will involve a commercial or common financial interest and may create self-interest and intimidation threats. The following are examples of such relationships:

(a) Having a material financial interest in a joint venture with the assurance client or a controlling owner, director, officer or other individual who performs senior managerial functions for that client;

(b) Arrangements to combine one or more services or products of the firm with one or more services or products of the assurance client and to market the package with reference to both parties; and

(c) Distribution or marketing arrangements under which the firm acts as a distributor or marketer of the assurance client's products or services, or the assurance client acts as the distributor or marketer of the products or services of the firm.

In the case of an audit client, unless the financial interest is immaterial and the relationship is clearly insignificant to the firm, the network firm and the audit client, no safeguards could reduce the threat to an acceptable level. In the case of an assurance client that is not an audit client, unless the financial interest is immaterial and the relationship is clearly insignificant to the firm and the assurance client, no safeguards could reduce the threat to an acceptable level. Consequently, in both these circumstances the only possible courses of action are to:

- Terminate the business relationship;
- Reduce the magnitude of the relationship so that the financial interest is immaterial and the relationship is clearly insignificant; or
- Refuse to perform the assurance engagement.

Unless any such financial interest is immaterial and the relationship is clearly insignificant to the member of the assurance team, the only appropriate safeguard would be to remove the individual from the assurance team.

8.131 In the case of an audit client, business relationships involving an interest held by the firm, a network firm or a member of the assurance team or their immediate family in a closely held entity when the audit client or a director or officer of the audit client, or any group thereof, also has an interest in that entity, do not create threats to independence provided:

- The relationship is clearly insignificant to the firm, the network firm and the audit client;
- The interest held is immaterial to the investor, or group of investors; and
- The interest does not give the investor, or group of investors, the ability to control the closely held entity.

8.132 The purchase of goods and services from an assurance client by the firm (or from an audit client by a network firm) or a member of the assurance team would not generally create a threat to independence providing the transaction is in the normal course of business and on an arm's length basis. However, such transactions may be of a nature or magnitude so as to create a self-interest threat. If the threat created is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Eliminating or reducing the magnitude of the transaction;
- Removing the individual from the assurance team; or
- Discussing the issue with those charged with governance, such as the audit committee.

Family and Personal Relationships

8.133 Family and personal relationships between a member of the assurance team and a director, an officer or certain employees, depending on their role, of the assurance client, may create self-interest, familiarity or intimidation threats. It is impracticable to attempt to describe in detail the significance of the threats that such relationships may create. The significance will depend upon a number of factors including the individual's responsibilities on the assurance engagement, the closeness of the relationship and the role of the family member or other professional accountant within the assurance client. Consequently, there is a wide spectrum of circumstances that will need to be evaluated and safeguards to be applied to reduce the threat to an acceptable level.

8.134 When an immediate family member of a member of the assurance team is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter of the assurance engagement, or was in such a position during any period covered by the engagement, the threats to independence can only be reduced to an acceptable level by removing the individual concerned from the assurance team. The closeness of the relationship is such that no other safeguard could reduce the threat to independence to an acceptable level. If application of this safeguard is not used, the only course of action is to withdraw from the assurance engagement. For example, in the case of an audit of financial statements, if the spouse of a member of the assurance team is an employee in a position to exert direct and significant influence on the preparation of the audit client's accounting records or financial statements, the threat to independence could only be reduced to an acceptable level by removing the individual concerned from the assurance team.

8.135 When a close family member of a member of the assurance team is a director, an officer, or an employee of the assurance client in a position to exert direct and significant

influence over the subject matter of the assurance engagement, threats to independence may be created. The significance of the threats will depend on factors such as:

- The position the close family member holds with the client; and
- The role of that individual on the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Removing the individual concerned from the assurance team;
- Where possible, structuring the responsibilities of the assurance team so that the individual concerned does not deal with matters that are within the responsibility of the close family member; or
- Policies and procedures to empower staff to communicate to senior levels within the firm any issue of independence and objectivity that concerns them.

8.136 In addition, self-interest, familiarity or intimidation threats may be created when a person who is other than an immediate or close family member of a member of the assurance team has a close relationship with the member of the assurance team and is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter of the assurance engagement. Therefore, members of the assurance team are responsible for identifying any such persons and for consulting in accordance with firm procedures. The evaluation of the significance of any threat created and the safeguards appropriate to eliminate the threat or reduce it to an acceptable level will include considering matters such as the closeness of the relationship and the role of the individual within the assurance client.

8.137 Consideration should be given to whether self-interest, familiarity or intimidation threats may be created by a personal or family relationship between a principal or employee of the firm who is not a member of the assurance team and a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter of the assurance engagement. Therefore principals and employees of the firm are responsible for identifying any such relationships and for consulting in accordance with firm procedures. The evaluation of the significance of any threat created and the safeguards appropriate to eliminate the threat or reduce it to an acceptable level will include considering matters such as the closeness of the relationship, the interaction of the firm professional with the assurance team, the position held within the firm, and the role of the individual within the assurance client.

8.138 An inadvertent violation of this section as it relates to family and personal relationships would not impair the independence of a firm or a member of the assurance team when:

(a) The firm has established policies and procedures that require all principals and staff to report promptly to the firm any breaches resulting from changes in the employment status of their immediate or close family members or other personal relationships that create threats to independence;

(b) Either the responsibilities of the assurance team are re-structured so that the individual concerned does not deal with matters that are within the responsibility of the person with whom he or she is related or has a personal relationship, or, if this is not possible, the firm promptly removes that individual from the assurance engagement; and

(c) Additional care is given to reviewing the work of the individual concerned.

8.139 When an inadvertent violation of this section relating to family and personal relationships has occurred, the firm should consider whether any safeguards should be applied. Such safeguards might include:

- Involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team; or
- Excluding the individual from any substantive decision-making concerning the assurance engagement.

Employment with Assurance Clients

8.140 A firm or a member of the assurance team's independence may be threatened if a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter of the assurance engagement has been a member of the assurance team or principal of the firm. Such circumstances may create self-interest, familiarity and intimidation threats particularly when significant connections remain between the individual and his or her former firm. Similarly, a member of the assurance team's independence may be threatened when an individual participates in the assurance engagement knowing, or having reason to believe, that he or she is to, or may, join the assurance client some time in the future.

8.141 If a member of the assurance team, principal or former principal of the firm has joined the assurance client, the significance of the self-interest, familiarity or intimidation threats created will depend upon the following factors:

- The position the individual has taken at the assurance client;
- The amount of any involvement the individual will have with the assurance team;
- The length of time that has passed since the individual was a member of the assurance team or firm; and
- The former position of the individual within the assurance team or firm.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Considering the appropriateness or necessity of modifying the assurance plan for the assurance engagement;
- Assigning an assurance team to the subsequent assurance engagement that is of sufficient experience in relation to the individual who has joined the assurance client;

- Involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary; or
- Quality control review of the assurance engagement.

In all cases, all of the following safeguards are necessary to reduce the threat to an acceptable level:

- The individual concerned is not entitled to any benefits or payments from the firm unless these are made in accordance with fixed pre-determined arrangements. In addition, any amount owed to the individual should not be of such significance to threaten the firm's independence; and
- The individual does not continue to participate or appear to participate in the firm's business or professional activities.

8.142 A self-interest threat is created when a member of the assurance team participates in the assurance engagement while knowing, or having reason to believe, that he or she is to, or may, join the assurance client some time in the future. This threat can be reduced to an acceptable level by the application of all of the following safeguards:

- Policies and procedures to require the individual to notify the firm when entering serious employment negotiations with the assurance client; and
- Removal of the individual from the assurance engagement.
- An immediate review of the audit work performed by the resigning or former assurance team member in the current and/or (where appropriate) the most recent assurance engagement. This review should be performed by a more senior professional accountant. If the individual joining the client is an audit principal or the key audit principal, the review should be performed by an audit principal who was not involved in the audit engagement. (Where, due to its size, the audit firm does not have a principal who was not involved in the audit engagement, it may seek either a review by another statutory auditor or advice from the Accountancy Board or the Malta Institute of Accountants.)

Recent Service with Assurance Clients

8.143 To have a former officer, director or employee of the assurance client serve as a member of the assurance team may create self-interest, self-review and familiarity threats. This would be particularly true when a member of the assurance team has to report on, for example, subject matter he or she had prepared or elements of the financial statements he or she had valued while with the assurance client.

8.144 Where a director or officer of the assurance client has joined the audit firm, this person should not become a member of the assurance team at any time in the two year period after leaving the assurance client. If the person is a member of the chain of command, he should not take part in any substantive decisions concerning an assurance engagement with this client or with one of its related entities at any time in the two year period after leaving the assurance client. This requirement also applies to a former employee of the

assurance client unless the responsibilities he held and the tasks he performed at the assurance client were insignificant in relation to the statutory audit function.

Serving in a Key Management Position with an Assurance Client

8.145 A key audit principal leaving the audit firm to join the assurance client for a key management position would be perceived to cause an unacceptably high level of independence risk. Therefore, a period of at least two years should have elapsed before a key audit principal can take up a key management position.

8.146 An individual who is in a position to influence the outcome of the statutory audit (a person within the scope of 8.2) should not be a member of any management body (e.g. board of directors) or supervisory body (e.g. audit committee or supervisory board) of an assurance client. Also, he should not be a member of such a body in an entity which holds directly or indirectly more than 20 % of the voting rights in the client, or in which the client holds directly or indirectly more than 20 % of the voting rights.

Long Association of Senior Personnel with Assurance Clients

General Provisions

8.147 Using the same senior personnel on an assurance engagement over a long period of time may create a familiarity threat. The significance of the threat will depend upon factors such as:

- The length of time that the personnel have or has been a member of the assurance team;
- The role of the personnel on the assurance team;
- The structure of the firm; and
- The nature of the assurance engagement.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied to reduce the threat to an acceptable level. Such safeguards might include:

- Rotating the senior personnel off the assurance team;
- Involving an additional professional accountant who was not a member of the assurance team to review the work done by the senior personnel or otherwise advise as necessary; or
- Independent internal quality reviews.

Audit Clients that are public interest entities

8.148 Using the same key audit principal on an audit over a prolonged period may create a familiarity threat. This threat is particularly relevant in the context of the audit of public interest entities and safeguards should be applied in such situations to reduce such threat to an acceptable level. Accordingly for the audit of public interest entities:

(a) The key audit principal should be rotated after a pre-defined period, to be no more than seven years; and

(b) A principal rotating after a pre-defined period should not resume the key audit principal role until a further period of two years has elapsed. Such principal should during this further two year period not participate in any manner in the audit and should influence the conduct of the audit in any capacity.

(c) The audit firm is required to consider the independence risk which may arise in relation to the prolonged involvement of other Engagement Team members, and to adopt appropriate safeguards to reduce it to an acceptable level.

8.149 When an audit client becomes a public interest entity the length of time the key audit principal has served the audit client in that capacity should be considered in determining when the principal should be rotated. However, the principal may continue to serve as the key audit principal for two additional years before rotating off the engagement.

8.150 While the key audit principal should be rotated after such a pre-defined period, some degree of flexibility over timing of rotation may be necessary in certain circumstances. Examples of such circumstances include:

- Situations when the key audit principals continuity is especially important to the audit client, for example, when there will be major changes to the audit client's structure that would otherwise coincide with the rotation of the key audit principal; and
- Situations when, due to the size of the firm, rotation is not possible or does not constitute an appropriate safeguard.

In all such circumstances when the key audit principal is not rotated after such a pre-defined period equivalent safeguards should be applied to reduce any threats to an acceptable level.

8.151 When a firm has only a few audit principal with the necessary knowledge and experience to serve as key audit principal on an audit client that is a public interest entity, rotation of the lead principal may not be an appropriate safeguard. In these circumstances the firm should apply other safeguards to reduce the threat to an acceptable level. Such safeguards would include involving an additional professional accountant who was not otherwise associated with the assurance team to review the work done or otherwise advise as necessary. This professional accountant could be someone from outside the firm or someone within the firm who was not otherwise associated with the assurance team.

Provision of Non-Assurance Services to Assurance Clients

8.152 Firms have traditionally provided to their audit clients a range of non-assurance services that are consistent with their skills and expertise. Assurance clients value the benefits that derive from having these firms, who have a good understanding of the business, bring their knowledge and skill to bear in other areas. Furthermore, the provision of such non-assurance services will often result in the assurance team obtaining information regarding the assurance client's business and operations that is helpful in relation to the assurance engagement. The greater the knowledge of the assurance client's business, the better the assurance team will understand the assurance client's procedures and controls, and the business and financial risks that it faces. The provision of non- assurance services may,

however, create threats to the independence of the firm, a network firm or the members of the assurance team, particularly with respect to perceived threats to independence. Consequently, it is necessary to evaluate the significance of any threat created by the provision of such services. In some cases it may be possible to eliminate or reduce the threat created by application of safeguards. In other cases no safeguards are available to reduce the threat to an acceptable level.

8.153 The following activities would generally create self-interest or self-review threats that are so significant that only avoidance of the activity or refusal to perform the audit engagement would reduce the threats to an acceptable level:

- Authorizing, executing or consummating a transaction, or otherwise exercising authority on behalf of the audit client, or having the authority to do so;
- Determining which recommendation of the firm should be implemented; and
- Reporting, in a management role, to those charged with governance.

8.154 The examples set out in paragraphs 8.161 through 8.201 are addressed in the context of the provision of non-assurance services to an assurance client. The potential threats to independence will most frequently arise when a non-assurance service is provided to an audit client. The financial statements of an entity provide financial information about a broad range of transactions and events that have affected the entity. The subject matter of other assurance services, however, may be limited in nature. Threats to independence, however, may also arise when a firm provides a non-assurance service related to the subject matter of a non-audit assurance engagement. In such cases, consideration should be given to the significance of the firm's involvement with the subject matter of the non-audit assurance engagement, whether any self-review threats are created and whether any threats to independence could be reduced to an acceptable level by application of safeguards, or whether the non-assurance engagement should be declined. When the non-assurance service is not related to the subject matter of the non-audit assurance engagement, the threats to independence will generally be clearly insignificant.

8.155 The following activities may also create self-review or self-interest threats:

- Having custody of an assurance client's assets;
- Supervising assurance client employees in the performance of their normal recurring activities; and
- Preparing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders).

The significance of any threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

- Making arrangements so that personnel providing such services do not participate in the assurance engagement;
- Involving an additional professional accountant to advise on the potential impact of the activities on the independence of the firm and the audit team; or

- Other relevant safeguards set out in national regulations.

8.156 New developments in business, the evolution of financial markets, rapid changes in information technology, and the consequences for management and control, make it impossible to draw up an all-inclusive list of all situations when providing non-audit services to an audit client might create threats to independence and of the different safeguards that might eliminate these threats or reduce them to an acceptable level. In general, however, a firm may provide services beyond the audit engagement provided any threats to independence have been reduced to an acceptable level.

8.157 The following safeguards may be particularly relevant in reducing to an acceptable level threats created by the provision of non-assurance services to assurance clients:

- Policies and procedures to prohibit professional staff from making management decisions for the assurance client, or assuming responsibility for such decisions;
- Discussing independence issues related to the provision of non-assurance services with those charged with governance, such as the audit committee;
- Policies within the audit client regarding the oversight responsibility for provision of non-assurance services by the firm;
- Involving an additional professional accountant to advise on the potential impact of the non-assurance engagement on the independence of the member of the assurance team and the firm;
- Involving an additional professional accountant outside of the firm to provide assurance on a discrete aspect of the assurance engagement;
- Obtaining the assurance client's acknowledgement of responsibility for the results of the work performed by the firm;
- Disclosing to those charged with governance, such as the audit committee, the nature and extent of fees charged; or
- Making arrangements so that personnel providing non-assurance services do not participate in the assurance engagement.

8.158 Even if not involved in the decision-making of the assurance client or any of its related entities, the statutory auditor should consider, amongst others, which of the following safeguards in particular may mitigate a remaining independence threat:

- Policies and procedures to prohibit professional staff from making management decisions for the assurance client, or assuming responsibility for such decisions;
- Arrangements to reduce the risk of self-review by compartmentalising responsibilities and knowledge in specific non-assurance engagements;
- Routine notification of any assurance and non-assurance engagement to those in the audit firm or network firms who are responsible for safeguarding independence, including oversight of ongoing activities;
- Secondary reviews of the statutory audit by an audit principal who is not involved in the provision of any services to the assurance client or to one of its related entities; or

- External review by another professional accountant or advice by the Accountancy Board.

8.159 Before the firm accepts an engagement to provide a non-assurance service to an assurance client, consideration should be given to whether the provision of such a service would create a threat to independence. In situations when a threat created is other than clearly insignificant, the non-assurance engagement should be declined unless appropriate safeguards can be applied to eliminate the threat or reduce it to an acceptable level.

8.160 The provision of certain non-assurance services to audit clients may create threats to independence so significant that no safeguard could eliminate the threat or reduce it to an acceptable level. However, the provision of such services to a related entity, division or discrete financial statement item of such clients may be permissible when any threats to the firm's independence have been reduced to an acceptable level by arrangements for that related entity, division or discrete financial statement item to be audited by another firm or when another firm re-performs the non-assurance service to the extent necessary to enable it to take responsibility for that service.

Preparing Accounting Records and Financial Statements

8.161 A self-review threat exists whenever a warrant holder, an audit firm, a network firm or a principal, manager or employee thereof participates in the preparation of the assurance client's accounting records or financial statements. The significance of the threat depends upon the spectrum of these persons' involvement in the preparation process and upon the level of public interest.

8.162 It is the responsibility of client management to ensure that accounting records are kept and financial statements are prepared, although they may request the firm to provide assistance. If firm, or network firm, personnel providing such assistance make management decisions, the self-review threat created could not be reduced to an acceptable level by any safeguards. Consequently, personnel should not make such decisions. Examples of such managerial decisions include the following:

- Determining or changing journal entries, or the classifications for accounts or transaction or other accounting records without obtaining the approval of the audit client;
- Authorizing or approving transactions; and
- Preparing source documents or originating data (including decisions on valuation assumptions), or making changes to such documents or data.

8.163 The audit process involves extensive dialogue between the firm and management of the audit client. During this process, management requests and receives significant input regarding such matters as accounting principles and financial statement disclosure, the appropriateness of controls and the methods used in determining the stated amounts of assets and liabilities. Technical assistance of this nature and advice on accounting principles for audit clients are an appropriate means to promote the fair presentation of the financial statements. The provision of such advice does not generally threaten the firm's independence. Similarly, the audit process may involve assisting an audit client in resolving account reconciliation problems, analyzing and accumulating information for regulatory reporting, assisting in the preparation of consolidated financial statements

(including the translation of local statutory accounts to comply with group accounting policies), drafting disclosure items, proposing adjusting journal entries and providing assistance and advice in the preparation of local statutory accounts of subsidiary entities. These services are considered to be a normal part of the audit process and do not, under normal circumstances, threaten independence.

GENERAL PROVISIONS

8.164 The examples in paragraphs 8.166 through 8.169 indicate that self-review threats may be created if the firm is involved in the preparation of accounting records or financial statements and those financial statements are subsequently the subject matter of an audit engagement of the firm. This notion may be equally applicable in situations when the subject matter of the assurance engagement is not financial statements. For example, a self-review threat would be created if the firm developed and prepared prospective financial information and subsequently provided assurance on this prospective financial information. Consequently, the firm should evaluate the significance of any self-review threat created by the provision of such services. If the self-review threat is other than clearly insignificant safeguards should be considered and applied as necessary to reduce the threat to an acceptable level.

AUDIT CLIENTS THAT ARE NOT PUBLIC INTEREST ENTITIES

8.165 The firm, or a network firm, may provide an audit client that is not a public interest with accounting and bookkeeping services, including payroll services, of a routine or mechanical nature, provided any self-review threat created is reduced to an acceptable level. Examples of such services include:

- Recording transactions for which the audit client has determined or approved the appropriate account classification;
- Posting coded transactions to the audit client's general ledger;
- Preparing financial statements based on information in the trial balance; and
- Posting audit client approved entries to the trial balance.

The significance of any threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Making arrangements so such services are not performed by a member of the assurance team;
- Implementing policies and procedures to prohibit the individual providing such services from making any managerial decisions on behalf of the audit client;
- Requiring the source data for the accounting entries to be originated by the audit client;
- Requiring the underlying assumptions to be originated and approved by the audit client; or
- Obtaining audit client approval for any proposed journal entries or other changes affecting the financial statements.

PART B

AUDIT CLIENTS THAT ARE PUBLIC INTEREST ENTITIES

8.166 The provision of accounting and bookkeeping services, including payroll services and the preparation of financial statements or financial information which forms the basis of the financial statements on which the audit report is provided, on behalf of an audit client that is a public interest entity, may impair the independence of the firm or network firm, or at least give the appearance of impairing independence. Accordingly, no safeguard other than the prohibition of such services, except in emergency situations and when the services fall within the statutory audit mandate, could reduce the threat created to an acceptable level. Therefore, a firm or a network firm should not, with the limited exceptions below, provide such services to public interest entities which are audit clients.

8.167 The provision of accounting and bookkeeping services of a routine or mechanical nature to divisions or subsidiaries of public interest audit clients would not be seen as impairing independence with respect to the audit client provided that the following conditions are met:

- The services do not involve the exercise of judgment;
- The divisions or subsidiaries for which the service is provided are collectively immaterial to the audit client, or the services provided are collectively immaterial to the division or subsidiary; and
- The fees to the firm, or network firm, from such services are collectively clearly insignificant.

If such services are provided, all of the following safeguards should be applied:

- The firm, or network firm, should not assume any managerial role nor make any managerial decisions;
- The public interest audit client should accept responsibility for the results of the work; and
- Personnel providing the services should not participate in the audit.

EMERGENCY SITUATIONS

8.168 The provision of accounting and bookkeeping services to audit clients in emergency or other unusual situations, when it is impractical for the audit client to make other arrangements, would not be considered to pose an unacceptable threat to independence provided:

- The firm, or network firm, does not assume any managerial role or make any managerial decisions;
- The audit client accepts responsibility for the results of the work; and
- Personnel providing the services are not members of the assurance team.

Valuation Services

8.169 A valuation comprises the making of assumptions with regard to future developments, the application of certain methodologies and techniques, and the combination of both in order

to compute a certain value, or range of values, for an asset, a liability or for a business as a whole.

8.170 A self-review threat may be created when a firm or network firms performs a valuation for an audit client that is to be incorporated into the client's financial statements.

8.171 If the valuation service involves the valuation of matters material to the financial statements and the valuation involves a significant degree of subjectivity, the self-review threat created could not be reduced to an acceptable level by the application of any safeguard. Accordingly, such valuation services should not be provided or, alternatively, the only course of action would be to withdraw from the audit engagement.

8.172 Performing valuation services that are neither separately, nor in the aggregate, material to the financial statements, or that do not involve a significant degree of subjectivity, may create a self-review threat that could be reduced to an acceptable level by the application of safeguards. Such safeguards might include:

- Involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary;
- Confirming with the audit client their understanding of the underlying assumptions of the valuation and the methodology to be used and obtaining approval for their use;
- Obtaining the audit client's acknowledgement of responsibility for the results of the work performed by the firm; and
- Making arrangements so that personnel providing such services do not participate in the audit engagement.

In determining whether the above safeguards would be effective, consideration should be given to the following matters:

- The extent of the audit client's knowledge, experience and ability to evaluate the issues concerned, and the extent of their involvement in determining and approving significant matters of judgment;
- The degree to which established methodologies and professional guidelines are applied when performing a particular valuation service;
- For valuations involving standard or established methodologies, the degree of subjectivity inherent in the item concerned;
- The reliability and extent of the underlying data;
- The degree of dependence on future events of a nature which could create significant volatility inherent in the amounts involved; and
- The extent and clarity of the disclosures in the financial statements.

8.173 When a firm, or a network firm, performs a valuation service for an audit client for the purposes of making a filing or return to a tax authority, computing an amount of tax due by the assurance client, or for the purpose of tax planning, this would not create a significant threat to independence.

PART B

8.174 When the firm performs a valuation that forms part of the subject matter of an assurance engagement that is not an audit engagement, the firm should consider any self-review threats. If the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.

Provision of Taxation Services to Audit Clients

8.175 The firm may be asked to provide taxation services to an audit client. Taxation services comprise a broad range of services, including compliance, planning, provision of formal taxation opinions and assistance in the resolution of tax disputes. They could also comprise the representation of an audit client before the Courts of Justice or the relevant tax administration in the case of tax litigation. Such assignments are generally not seen to create threats to independence.

Provision of Internal Audit Services to Audit Clients

8.176 A self-review threat may be created when a firm, or network firm, provides internal audit services to an audit client. Internal audit services may comprise an extension of the firm's audit service beyond requirements of generally accepted auditing standards, assistance in the performance of a client's internal audit activities or outsourcing of the activities. In evaluating any threats to independence, the nature of the service will need to be considered. For this purpose, internal audit services do not include operational internal audit services unrelated to the internal accounting controls, financial systems or financial statements.

8.177 Services involving an extension of the procedures required to conduct an audit in accordance with International Standards on Auditing would not be considered to impair independence with respect to an audit client provided that the firm's or network firm's personnel do not act or appear to act in a capacity equivalent to a member of audit client management.

8.178 When the firm, or a network firm, provides assistance in the performance of a client's internal audit activities or undertakes the outsourcing of some of the activities, any self-review threat created may be reduced to an acceptable level by ensuring that there is a clear separation between the management and control of the internal audit by audit client management and the internal audit activities themselves.

8.179 Performing a significant portion of the audit client's internal audit activities may create a self-review threat and a firm, or network firm, should consider the threats and proceed with caution before taking on such activities. Appropriate safeguards should be put in place and the firm, or network firm, should, in particular, ensure that the audit client acknowledges its responsibilities for establishing, maintaining and monitoring the system of internal controls.

8.180 Safeguards that should be applied in all circumstances to reduce any threats created to an acceptable level include ensuring that:

(a) The audit client is responsible for internal audit activities and acknowledges its responsibility for establishing, maintaining and monitoring the system of internal controls;

(b) The audit client designates a competent employee, preferably within senior management, to be responsible for internal audit activities;

(c) The audit client, the audit committee or supervisory body approves the scope, risk and frequency of internal audit work;

(d) The audit client is responsible for evaluating and determining which recommendations of the firm should be implemented;

(e) The audit client evaluates the adequacy of the internal audit procedures performed and the findings resulting from the performance of those procedures by, among other things, obtaining and acting on reports from the firm; and

(f) The findings and recommendations resulting from the internal audit activities are reported appropriately to the audit committee or supervisory body.

8.181 Consideration should also be given to whether such non-assurance services should be provided only by personnel not involved in the audit engagement and with different reporting lines within the firm.

Provision of IT Systems Services to Audit Clients

8.182 The provision of services by a firm or network firm to an audit client that involve the design, implementation and evaluation of financial information technology systems that are used to generate information forming part of a client's financial statements may create a self-review threat.

8.183 The self-review threat is likely to be too significant to allow the provision of such services to an audit client unless appropriate safeguards are put in place ensuring that:

(a) The audit client acknowledges its responsibility for establishing and monitoring a system of internal controls;

(b) The audit client designates a competent employee, preferably within senior management, with the responsibility to make all management decisions with respect to the design, implementation and evaluation of the hardware or software system;

(c) The audit client makes all management decisions with respect to the design, implementation and evaluation process;

(d) The audit client evaluates the adequacy and results of the design, implementation and evaluation of the system; and

(e) The audit client is responsible for the operation of the system (hardware or software) and the data used or generated by the system.

8.184 Consideration should also be given to whether such non-audit services should be provided only by personnel not involved in the audit engagement and with different reporting lines within the firm.

8.185 The provision of services by a firm or network firm to an audit client which involve either the design or the implementation or the evaluation of financial information technology systems that are used to generate information forming part of a client's financial statements may also create a self-review threat. The significance of the threat, if any, should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.

PART B

8.186 The provision of services in connection with the assessment, design and implementation of internal accounting controls and risk management controls are not considered to create a threat to independence provided that firm or network firm personnel do not perform management functions.

Temporary Staff Assignments to Audit Clients

8.187 The lending of staff by a firm, or network firm, to an audit client may create a self-review threat when the individual is in a position to influence the preparation of a client's accounts or financial statements. In practice, such assistance may be given (particularly in emergency situations) but only on the understanding that the firm's or network firm's personnel will not be involved in:

(a) Making management decisions;

(b) Approving or signing agreements or other similar documents; or

(c) Exercising discretionary authority to commit the client.

Each situation should be carefully analyzed to identify whether any threats are created and whether appropriate safeguards should be implemented. Safeguards that should be applied in all circumstances to reduce any threats to an acceptable level include:

- The staff providing the assistance should not be given audit responsibility for any function or activity that they performed or supervised during their temporary staff assignment; and
- The audit client should acknowledge its responsibility for directing and supervising the activities of firm, or network firm, personnel.

Provision of Litigation Support Services to Audit Clients

8.188 Litigation support services may include such activities as acting as an expert witness, calculating estimated damages or other amounts that might become receivable or payable as the result of litigation or other legal dispute, and assistance with document management and retrieval in relation to a dispute or litigation.

8.189 A self-review threat may be created when the litigation support services provided to an audit client include the estimation of the possible outcome and thereby affects the amounts or disclosures to be reflected in the financial statements. The significance of any threat created will depend upon factors such as:

- The materiality of the amounts involved;
- The degree of subjectivity inherent in the matter concerned; and
- The nature of the engagement.

The firm, or network firm, should evaluate the significance of any threat created and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

- Policies and procedures to prohibit individuals assisting the audit client from making managerial decisions on behalf of the client;

- Using professionals who are not members of the assurance team to perform the service; or
- The involvement of others, such as independent experts.

8.190 If the role undertaken by the firm or network firm involved making managerial decisions on behalf of the audit client, the threats created could not be reduced to an acceptable level by the application of any safeguard. Therefore, the firm or network firm should not perform this type of service for an audit client.

Provision of Legal Services to Audit Clients

8.191 Legal services are defined as any services for which the person providing the services must either be admitted to practice before the Courts of Justice in which such services are to be provided, or have the required legal training to practice law. Legal services encompass a wide and diversified range of areas including both corporate and commercial services to clients, such as contract support, litigation, mergers and acquisition advice and support and the provision of assistance to clients' internal legal departments. The provision of legal services by a firm, or network firm, to an entity that is an audit client may create both self-review and advocacy threats.

8.192 Threats to independence need to be considered depending on the nature of the service to be provided, whether the service provider is separate from the assurance team and the materiality of any matter in relation to the entities' financial statements. The safeguards set out in paragraph 8.157 and 8.158 may be appropriate in reducing any threats to independence to an acceptable level. In circumstances when the threat to independence cannot be reduced to an acceptable level the only available action is to decline to provide such services or withdraw from the audit engagement.

8.193 The provision of legal services to an audit client which involve matters that would not be expected to have a material effect on the financial statements are not considered to create an unacceptable threat to independence.

8.194 There is a distinction between advocacy and advice. Legal services to support an audit client in the execution of a transaction (*e.g.*, contract support, legal advice, legal due diligence and restructuring) may create self-review threats; however, safeguards may be available to reduce these threats to an acceptable level. Such a service would not generally impair independence, provided that:

- Members of the assurance team are not involved in providing the service; and
- In relation to the advice provided, the audit client makes the ultimate decision or, in relation to the transactions, the service involves the execution of what has been decided by the audit client.

8.195 Acting for an audit client in the resolution of a dispute or litigation in such circumstances when the amounts involved are material in relation to the financial statements of the audit client would create advocacy and self-review threats so significant no safeguard could reduce the threat to an acceptable level. Therefore, the firm should not perform this type of service for an audit client.

8.196 When a firm is asked to act in an advocacy role for an audit client in the resolution of a dispute or litigation in circumstances when the amounts involved are not material to the

financial statements of the audit client, the firm should evaluate the significance of any advocacy and self-review threats created and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

- Policies and procedures to prohibit individuals assisting the audit client from making managerial decisions on behalf of the client; or
- Using professionals who are not members of the assurance team to perform the service.

8.197 The appointment of a principal or an employee of the firm or network firm as General Counsel for legal affairs to an audit client would create self-review and advocacy threats that are so significant no safeguards could reduce the threats to an acceptable level. The position of General Counsel is generally a senior management position with broad responsibility for the legal affairs of a company and consequently, no member of the firm or network firm should accept such an appointment for an audit client.

Recruiting Senior Management

8.198 The recruitment of senior management for an assurance client, such as those in a position to affect the subject of the assurance engagement, may create current or future self-interest, familiarity and intimidation threats. The significance of the threat will depend upon factors such as:

- The role of the person to be recruited; and
- The nature of the assistance sought.

The firm could generally provide such services as reviewing the professional qualifications of a number of applicants and provide advice on their suitability for the post. In addition, the firm could generally produce a short-list of candidates for interview, provided it has been drawn up using criteria specified by the assurance client.

The significance of the threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. In all cases, the firm should not make management decisions and the decision as to whom to hire should be left to the client.

Corporate Finance and Similar Activities

8.199 The provision of corporate finance services, advice or assistance to an assurance client may create advocacy and self-review threats. In the case of certain corporate finance services, the independence threats created would be so significant no safeguards could be applied to reduce the threats to an acceptable level. For example, promoting, dealing in, or underwriting of an assurance client's shares is not compatible with providing assurance services. Moreover, committing the assurance client to the terms of a transaction or consummating a transaction on behalf of the client would create a threat to independence so significant no safeguard could reduce the threat to an acceptable level. In the case of an audit client the provision of those corporate finance services referred to above by a firm or a network firm would create a threat to independence so significant no safeguard could reduce the threat to an acceptable level.

8.200 Other corporate finance services may create advocacy or self-review threats; however, safeguards may be available to reduce these threats to an acceptable level. Examples of such services0 include assisting a client in developing corporate strategies, assisting in identifying or introducing a client to possible sources of capital that meet the client specifications or criteria, and providing structuring advice and assisting a client in analyzing the accounting effects of proposed transactions. Safeguards that should be considered include:

- Policies and procedures to prohibit individuals assisting the assurance client from making managerial decisions on behalf of the client;
- Using professionals who are not members of the assurance team to provide the services; and
- Ensuring the firm does not commit the assurance client to the terms of any transaction or consummate a transaction on behalf of the client.

Fees and Pricing

Fees – Relative Size

8.201 When the total fees generated by an assurance client (in respect of audit and non-audit services) represent a large proportion of a firm's total fees, the dependence on that client or client group and concern about the possibility of losing the client may create a self-interest threat. The significance of the threat will depend upon factors such as:

- The structure of the firm; and
- Whether the firm is well established or newly created.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Discussing the extent and nature of fees charged with the audit committee, or others charged with governance;
- Taking steps to reduce dependency on the client;
- External quality control reviews; and
- Consulting a third party or institution, such as the Accountancy Board or the Malta Institute of Accountants, or another professional accountant.

8.202 A financial dependency is considered to exist when the total (audit and non-audit) fees that an audit firm receives or will receive from one assurance client and its related entities make up 15% in the case of assurance clients that are public interest entities, and 20% in the case of clients that are non-public interest entities, of the total revenues of the firm in each year over a five-year period.

8.203 A self-interest threat may also be created when the fees generated by the assurance client represent a large proportion of the revenue of a person who is in a position to influence the outcome of the statutory audit (any person within the scope of 8.1). The significance

of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- Policies and procedures to monitor and implement quality control of assurance engagements; and
- Involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary.

8.204 In any case, the statutory auditor, the audit firm or the network firm should be able to demonstrate that no financial dependency exists in relation to a particular assurance client or its related entities.

Fees – Overdue

8.205 A self-interest threat may be created if fees due from an assurance client for professional services remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report for the following year. Generally the payment of such fees should be required before the report is issued. The following safeguards may be applicable:

- Discussing the level of outstanding fees with the audit committee, or others charged with governance; and
- Involving an additional professional accountant who did not take part in the assurance engagement to provide advice or review the work performed.

The firm should also consider whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed.

Pricing

8.206 Audit fees must not be influenced or determined by reference to the provision of additional services to the audited entity or based on any forms of contingency. Auditors must ensure that the pricing for the audit services is not linked in any way with the provision of non audit services. When a firm obtains an assurance engagement at a significantly lower fee level than that charged by the predecessor firm, or quoted by other firms, the self-interest threat created will not be reduced to an acceptable level unless:

- The firm is able to demonstrate that appropriate time and qualified staff are assigned to the task; and
- All applicable assurance standards, guidelines and quality control procedures are being complied with.

Contingent Fees

8.207 Contingent fees are fees calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. For the purposes of this section, fees are not regarded as being contingent if a court or other public authority has established them.

8.208 Fee arrangements for assurance engagements in which the amount of the remuneration is contingent upon the results of the service provided raise self-interest and advocacy threats

which are considered to bear an unacceptable level of independence risk. It is therefore required that:

(a) as stated earlier in this Code, assurance engagements should never be accepted on a contingent fee basis; and

(b) in order to avoid any appearance of contingency, the basis for the calculation of the audit fees must be agreed each year in advance. This should include scope for variation so as to take account of unexpected factors in the work.

8.209 A contingent fee charged by a firm in respect of a non-assurance service provided to an assurance client may also create material self-interest and advocacy threats. Accordingly, no services should be provided on a contingent fee basis to assurance clients.

Gifts and Hospitality

8.210 Accepting gifts or hospitality from an assurance client may create self-interest and familiarity threats. When a firm or a member of the assurance team accepts gifts or hospitality, unless the value is clearly insignificant, the threats to independence cannot be reduced to an acceptable level by the application of any safeguard. Consequently, a firm or a member of the assurance team should not accept such gifts or hospitality.

Actual or Threatened Litigation – To be discussed in more detail

8.211 When litigation takes place, or appears likely, between the firm or a member of the assurance team and the assurance client, a self-interest or intimidation threat may be created. The relationship between client management and the members of the assurance team must be characterized by complete candor and full disclosure regarding all aspects of a client's business operations. The firm and the client's management may be placed in adversarial positions by litigation, affecting management's willingness to make complete disclosures and the firm may face a self-interest threat. The significance of the threat created will depend upon such factors as:

- The materiality of the litigation;
- The nature of the assurance engagement; and
- Whether the litigation relates to a prior assurance engagement.

Once the significance of the threat has been evaluated the following safeguards should be applied, if necessary, to reduce the threats to an acceptable level:

- Disclosing to the audit committee, or others charged with governance, the extent and nature of the litigation;
- If the litigation involves a member of the assurance team, removing that individual from the assurance team; or
- Involving an additional professional accountant in the firm who was not a member of the assurance team to review the work done or otherwise advise as necessary.

If such safeguards do not reduce the threat to an appropriate level, the only appropriate action is to withdraw from, or refuse to accept, the assurance engagement.

PART C: WARRANT HOLDERS IN BUSINESS

SECTION 1 Introduction

SECTION 2 Potential conflicts

SECTION 3 Preparation and reporting of information

SECTION 4 Acting with sufficient expertise

SECTION 5 Financial interests

SECTION 6 Inducements

SECTION 7 Disclosing information

SECTION 1

Introduction

1.1 This Part of the Code applies to all warrant holders in business. Professional accountants in business should also follow the guidance set out in Part A of this Code, which applies to all warrant holders. Where the term 'warrant holders' is used in this Part, it should be taken to refer to warrant holders in business.

1.2 Warrant holders in business should comply with the fundamental principles, which are:

(a) *Integrity*
A warrant holder should be straightforward and honest in all professional and business relationships.

(b) *Objectivity*
A warrant holder should not allow prejudice or bias, conflict of interest or undue influence of others to override professional or business judgment.

(c) *Professional Competence and Due Care*
A warrant holder has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives the advantage of competent professional service based on current developments in practice, legislation and techniques. A warrant holder should act diligently and in accordance with applicable technical and professional standards in all professional and business relationships.

(d) *Confidentiality*
A warrant holder should respect the confidentiality of information acquired as a result of professional or business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the warrant holder or third parties.

(e) *Professional Behavior*
A warrant holder should comply with relevant laws and regulations and should avoid any action that discredits the profession.

1.3 Investors, creditors, employers and other sectors of the business community, as well as governments and the public at large, all may rely on the work of warrant holder s in business. warrant holders may be solely or jointly responsible for the preparation and reporting of financial and other information, which both their employing organizations and third parties may rely on. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters.

1.4 Warrant holders may be salaried employees, principals, directors (whether executive or non-executive), owner managers, volunteers or others working for one or more employing organization. The legal form of the relationship with the employing organization has no bearing on the ethical responsibilities incumbent on warrant holders in business.

1.5 Warrant holders have a responsibility to further the legitimate aims of their employing organization. This Part of the Code does not seek to hinder warrant holders from properly fulfilling that responsibility, but considers circumstances in which conflicts may arise with their absolute duty to comply with the fundamental principles.

1.6 Warrant holders in business often occupy senior positions within employing organizations. The more senior they become, the greater will be their ability and opportunity to influence events, practices and attitudes. Warrant holders are encouraged, therefore, to establish an ethics-based culture in their employing organizations.

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1.7 The environment in which warrant holders operate may give rise to specific threats to compliance with the fundamental principles. This Part of the Code of Ethics provides a framework, built on principles, to assist warrant holders in business to identify, evaluate and respond to threats to compliance with the fundamental principles. If identified threats are other than clearly insignificant, warrant holders should, where appropriate, apply safeguards to eliminate the threats or reduce them to an acceptable level so that compliance with the fundamental principles is not compromised. If appropriate safeguards cannot be implemented, warrant holders should either refrain from performing the specific professional service involved or consider resigning from the employing organization.

1.8 The examples presented in the following sections are intended to illustrate the application of the principles and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by warrant holders in business that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for warrant holders merely to comply with the examples; rather, they should apply the principles to the particular circumstances they face.

1.9 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

(a) Self-interest;

(b) Self-review;

(c) Advocacy;

(d) Familiarity; and

(e) Intimidation.

These threats are discussed more fully in Part A of this Code.

1.10 Examples of circumstances that may create self-interest threats for warrant holders in business include, but are not limited to:

- Financial interests, loans or guarantees.
- Incentive arrangements.
- Concern over employment security.
- Commercial pressure from outside the employing organization.

1.11 Circumstances that may create self-review threats include, but are not limited to, business decisions or data being subject to review and justification by the same person responsible for making those decisions or preparing that data.

1.12 Examples of circumstances that may create advocacy threats include, but are not limited to:

- Commenting publicly on future events in particular circumstances where outcomes may be doubtful or where information is incomplete.
- Acting publicly as an advocate for a particular position where bias may arise or where the validity of that position may later be called into question.

1.13 Examples of circumstances that may create familiarity threats include, but are not limited to:

- A person in a position to influence financial or non-financial reporting or business decisions having an immediate or close family member who is in a position to benefit from that influence.
- Long association with business contacts influencing business decisions.
- Acceptance of gifts or preferential treatment, unless the value is clearly insignificant.

1.14 Examples of circumstances that may create intimidation threats include, but are not limited to:

- Threat of dismissal or replacement of the warrant holder in business or a close or immediate family member over a disagreement about the application of an accounting principle or the way in which financial information is to be reported.
- A dominant personality attempting to influence the decision making process, for example with regard to the awarding of contracts.

1.15 Warrant holders may also find that specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorized. In all professional and business relationships, warrant holders should always be on the alert for such circumstances and threats.

1.16 Safeguards that may eliminate or reduce to acceptable levels the threats faced by warrant holders fall into two broad categories:

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

1.17 Examples of safeguards created by the profession, legislation or regulation are detailed in paragraph 1.17 of Part A of this Code.

1.18 Safeguards in the work environment include, but are not restricted to:

- The employing organization's systems of corporate oversight or other oversight structures.
- The employing organization's ethics and conduct programs.
- Recruitment procedures in the employing organization emphasizing the importance of employing high calibre competent staff.
- Strong internal controls.
- Appropriate disciplinary processes.
- Leadership that stresses the importance of ethical behaviour and the expectation that employees will act in an ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance.
- Timely communication of the employing organization's policies and procedures, and any changes to them, to all employees.
- The provision of appropriate training and education to employees.
- Policies and procedures to empower employees to communicate to senior levels any ethical issues that concern them. This includes informing employees of the procedures open to them.

SECTION 2

Potential Conflicts

2.1 Warrant holders have a professional obligation to comply with the fundamental principles. There may be times, however, when their responsibilities to an employing organization and their professional obligations to comply with the fundamental principles are in conflict. Ordinarily, warrant holders should support the legitimate and ethical objectives established by their employers and the rules and procedures drawn up in support of those objectives. Nevertheless, where compliance with the fundamental principles is threatened, warrant holders must consider their response to the circumstances.

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2.2 As a consequence of their responsibilities to their employing organization, warrant holders may find themselves under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles. Such pressure may be explicit or implicit; it may come from supervisors, managers, directors or other individuals within the employing organization. Warrant holders may find themselves under pressure to:

- Act contrary to law or regulation.
- Act contrary to technical or professional standards.
- Facilitate unethical or illegal earnings management strategies.
- Lie to, or otherwise intentionally mislead (including misleading by keeping silent) others, in particular:
  - Those acting as auditors to the employing organization; or
  - Regulators.
- Issue, or otherwise be associated with, a financial or non-financial report that materially misrepresents the facts, including statements in connection with, for example:
  - The financial statements;
  - Tax compliance;
  - Legal compliance; or
  - Reports required by securities regulators.

2.3. The significance of threats arising from such pressures, such as intimidation threats, should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Safeguards that might mitigate such pressures include:

- Obtaining advice where appropriate from within the employing organization, an independent professional advisor, the Accountancy Board or the Malta Institute of Accountants.
- The existence of a formal dispute resolution process within the employing organization.
- Seeking legal advice.

2.4 Where it is not possible to reduce the threat to an acceptable level, warrant holders may conclude that it is appropriate to consider resigning from the employing organization. In circumstances where warrant holders believe that unethical behaviours or actions by others will continue to occur within the employing organization, they may wish to consider seeking legal advice.

SECTION 3

Preparation and Reporting of Information

3.1 Warrant holders are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organization. Such information may include financial or management information, for example, financial statements, management discussion and analysis, and the management letter of representation provided to the auditors as part of an audit of financial statements. Warrant holders should prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.

Warrant holders should maintain information for which they are responsible in a manner that:

(a) Describes clearly the true nature of business transactions, assets or liabilities;

(b) Classifies and records information in a timely and proper manner; and

(c) Does not materially misrepresent the facts.

3.2 Threats to compliance with the fundamental principles, for example self-interest or intimidation threats to objectivity or professional competence and due care, may arise where warrant holders may be pressured (either externally or by the possibility of personal gain) to allow themselves to be associated with misleading information or to become associated with misleading information through the actions of others.

3.3 The significance of such threats will depend on factors such as the source of the pressure and the degree to which the information is, or may be, misleading. The significance of the threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Such safeguards might include consultation with superiors within the employing organization, for example, the audit committee or other body responsible for governance, or with the Accountancy Board or the Malta Institute of Accountants.

3.4 Where it is not possible to reduce the threat to an acceptable level, warrant holders should refuse to remain associated with information they consider is or may be misleading. Should they be aware that the issuance of misleading information is either significant or persistent, they should consider informing appropriate authorities in line with the guidance in Section 7. They may also wish to take legal advice or consider resignation.

SECTION 4

Acting with Sufficient Expertise

4.1 The fundamental principle of professional competence and due care requires that warrant holders should only undertake significant tasks for which they have, or can obtain, sufficient specific training or experience. They 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.

4.2 Circumstances that may threaten the ability of warrant holders to perform their duties with the appropriate degree of professional competence and due care include:

- Insufficient time for properly performing or completing the relevant duties.
- Incomplete, restricted or otherwise inadequate information for performing the duties properly.
- Insufficient experience, training and/or education.
- Inadequate resources for the proper performance of the duties.

4.3 The significance of such threats will depend on factors such as the extent to which the warrant holders are working with others, their relative seniority in the business and the level of supervision and review applied to their work. The significance of the threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Safeguards that may be considered include:

- Obtaining additional advice or training.
- Ensuring that there is adequate time available for performing the relevant duties.
- Obtaining assistance from someone with the necessary expertise.

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- Consulting, where appropriate, with:
  - Superiors within the employing organization;
  - Independent experts; or
  - the Accountancy Board or the Malta Institute of Accountants.

4.4 Where threats cannot be eliminated or reduced to an acceptable level, warrant holders should refuse to perform the duties in question, making clear their reasons for doing so.

SECTION 5

Financial Interests

5.1 Warrant holders in business may have financial interests that could, in certain circumstances, give rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or confidentiality may arise through the existence of the motive and opportunity to manipulate price sensitive information in order to gain financially. Examples include situations where the warrant holder or an immediate or close family member:

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

5.2 In evaluating the significance of such a threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, warrant holders must examine the nature of the financial interest. This includes an evaluation of the significance of the financial interest and whether it is direct or indirect. Clearly, what constitutes a significant or valuable stake in an organization will vary from individual to individual, depending on personal circumstances.

5.3 If threats are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Such safeguards might include:

- Alertness to the threats inherent in holding or trading capital instruments in the employing organization.
- Disclosure of all relevant interests, and of any plans to trade in relevant shares to those charged with the governance of the employing organization, in accordance with any internal policies.
- Consultation, where appropriate, with superiors within the employing organization.
- Consultation, where appropriate, with those charged with the governance of the employing organization or relevant professional bodies.
- Internal and external audit procedures.
- Up-to-date education on ethical issues and the legal restrictions and other regulations around potential insider trading.

5.4 Warrant holders should neither manipulate information nor use privileged information for personal gain.

5.5

SECTION 6

Inducements

Receiving Offers of Inducements

6.1 Warrant holders in business may find themselves in situations where they or immediate or close family members are offered inducements. Inducements may take various forms, including gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty.

6.2 Offers of inducements may create threats to compliance with the fundamental principles. When they or their immediate or close family members are offered inducements, warrant holders should consider the situation carefully. Self-interest threats to objectivity or confidentiality may arise where offers are made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behaviour or obtain confidential information. Intimidation threats to objectivity or confidentiality may arise if an offer of an inducement, whether accepted or declined, is followed by threats to make that offer public and damage the reputation of either the warrant holder or an immediate or close family member.

6.3 The significance of such threats will depend on the nature, value and intent behind the offer. When offers of inducements which a reasonable and informed third party, having knowledge of all relevant information, would consider insignificant and not intended to encourage unethical behaviour are made in an open manner, then warrant holders may conclude that the offers are made in the normal course of public relations without the specific intent to influence decision making or to obtain information. In such cases, they may generally conclude that there is no significant threat to compliance with the fundamental principles.

6.4 If evaluated threats are other than clearly insignificant, warrant holders should not accept inducements. As the real or apparent threats to compliance with the fundamental principles do not merely arise from acceptance of inducements but, sometimes, merely from the fact of the offer having been made, additional safeguards should be adopted. warrant holders should assess the risk associated with all such offers and should:

(a) Where such offers have been made, immediately inform higher levels of management or those charged with governance of the employing organization;

(b) Consider whether it is appropriate to inform third parties of the offer – for example, the Accountancy Board or the Malta Institute of Accountants or the employer of the individual who made the offer; warrant holders should, however, consider seeking legal advice before taking such a step;

(c) Advise immediate or close family members of relevant threats and safeguards where they are potentially in positions that might result in offers of inducements, for example as a result of their employment situation; and

(d) Consider whether it is appropriate to inform higher levels of management or those charged with governance of the employing organization where immediate or close family members are employed by competitors or potential suppliers of that organization.

PART C

Offering Inducements

6.5 Warrant holders may find themselves in situations where they are expected to, or are under other pressure to, offer inducements to subordinate the judgment of another individual or organization, influence a decision-making process or obtain confidential information.

6.6 Such pressure may come from within the employing organization, for example, from a colleague or superior. It may also come from an external individual or organization suggesting actions or business decisions that would be advantageous to the employing organization and, by extension, the warrant holder, can be influenced improperly.

6.7 Threats to compliance with the fundamental principles may arise in the following circumstances:

- A warrant holder experiences pressure from within the employing organization to offer an inducement to subordinate the judgment of another individual or organization, influence a decision-making process or obtain information; or
- A third party outside the employing organization asks a warrant holder for an inducement that might influence favourable business decisions or actions.

6.8 Warrant holders should not offer inducements that a reasonable and informed third party, having knowledge of all relevant information, would consider to have an improper influence on the professional judgment of those with whom the accountants have a professional or business relationship.

6.9 Where the pressure to offer an unethical inducement comes from within the employing organization, warrant holders should follow the principles and guidance regarding ethical conflict resolution set out in Part A of this Code.

SECTION 7

Disclosing Information

7.1 Warrant holders should maintain the fundamental principle of confidentiality. They should not disclose confidential information acquired in the course of their work unless permitted to do so or as required by law or regulation.

7.2 The possession of confidential information may give rise to specific threats to confidentiality in certain circumstances. For example, the possession and non-disclosure of confidential information may threaten compliance with the fundamental principles when warrant holders:

- Are required by law to disclose information, for example, in connection with anti-money laundering or anti-terrorist legislation; or
- Are permitted by law to disclose information or believe that confidential information should be disclosed in the public interest, for example, where the employing organization has committed, or proposes to commit, a crime or fraudulent act.

7.3 Where required by law to disclose confidential information, for example as a result of anti-money laundering or anti-terrorist legislation, or in connection with legal proceedings involving either themselves or the employing organization, warrant holders in business should always disclose that information in compliance with relevant legal requirements. They should also consider obtaining legal advice and/or consulting the Accountancy Board or the Malta Institute of Accountants before making any disclosure.

7.4 Some circumstances, warrant holders may consider disclosing information outside the employing organization, when not obligated to do so by law or regulation because they believe it would be in the public interest. When considering such disclosure, warrant holders 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 organization, warrant holders in business should consider matters including the following:

- Legal constraints and obligations.
- Whether members of the public are likely to be adversely affected.
- The gravity of the matter, for example the size of the amounts involved and the extent of likely financial damage.
- The possibility or likelihood of repetition.
- The reliability and quality of the information available.
- The reasons for the employing organization's unwillingness to disclose matters to the relevant authority.

7.5 In deciding whether to disclose confidential information, they should also consider the following points:

- When the employer gives authorization to disclose information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed;
- Whether or not all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any;
- The type of communication that is expected and to whom it is addressed; in particular, warrant holders should be satisfied that the parties to whom the communication is addressed are appropriate recipients; and
- The legal or regulatory obligations and the possible implications of disclosure for the warrant holder.

7.6 Before making such disclosure, warrant holders should obtain legal advice as to their duties and obligations in the context of their professional and business relationships.

Directive Number 3 issued in terms of the Accountancy Profession Act (Cap. 281) and the Accountancy Profession Regulations 2009

In exercise of the powers conferred by Article 8 (2) of the Accountancy Profession Act (hereinafter referred to as "the Act"), the Accountancy Board with the approval of the Minister of Finance, the Economy and Investment is hereby issuing the following directive:

Name and commencement date

1. This Directive may be cited as the Accountancy Profession (Annual Return and Registration Fees) Directive and may also be referred to as the Annual Return and Registration Fees Directive.

2. This directive shall come into force on the eighth (8th) day immediately following the day on which it is published and shall replace Directive number 3 issued under the Act and which came into force on the 10 January 2005.

Definitions

3. (a) In this Directive:

"Act" shall mean the Accountancy Profession Act (Cap. 281 of the Laws of Malta);

"Firm" shall mean:

(i) An audit firm engaged in public practice;
(ii) An accountancy firm engaged in public practice;
(iii) a third-country auditor or a third-country audit entity registered in accordance with article 7(6) of the Act;
(iv) A sole practice through which a warrant holder engages in public practice;

and where applicable shall include an entity that controls such parties and an entity that is controlled by such parties;

"Public interest entities" shall mean those entities whose transferable securities are admitted to trading on a regulated market within the meaning of point 14 of article 4(1) of Directive 2004/39/EC, a credit institution as defined in point 1 of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, an insurance undertaking within the meaning of Article 2(1) of Directive 91/674/EEC and such other entities as may be prescribed by the Board;

"Recognised Accountancy Body" shall mean an accountancy body in terms of article 9 of the Act;

"Warrant" shall mean a warrant or practising certificate issued in terms of Article 4 of the Act;

"Warrant holder" means a holder of a warrant.

(b) The provisions of this directive shall be interpreted with reference to the Act and the regulations and directives issued in terms thereof.

(c) Terms used in this Directive and not defined shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

Purpose and scope

4. The objective of the Annual Return and Fees Directive is to:

Annual Return

- Enable the Board to maintain a complete and updated register as set out in article 7(4) of the Act including key data and information;
- To obtain confirmation that warrant holders and firms are abiding by relevant rules and regulations (e.g. the insurance requirements);
- To enable the Board to obtain information relating to the those firms together with a profile of their activities;
- To assist the Board or its representatives in the planning of quality assurance reviews.

Registration Fees

- To provide for the payment of registration fees by warrant holders and firms to allow the Board to carry out its statutory duties.

5. Unless the context otherwise dictates, the provisions of the Directive are applicable to all warrant holders and firms.

Responsibility

6. It is the responsibility of each warrant holder to ensure that they comply with this Directive.

7. It is the responsibility of the compliance principals of firms to ensure that their firm complies with this Directive. This does not diminish the responsibility of individual warrant holders to ensure that they or their firms comply with this Directive.

Annual Return for all Warrant Holders

8. The Annual Return to be submitted to the Board by all warrant holders and firms shall be in such form as may determined by the Board from time to time and made available to warrant holders on the official website of the Board.

9. Warrant holders and firms are to submit a complete Annual Return for each year by the 31st January of each year to the address set out in Appendix 1 of this Directive.

Fees

10. Warrant holder and firms shall be required to pay, by the 31st March of each year, an annual registration fee of such amount as may be stipulated by the Board. The registration fee, which will be charged in 2009, will be of €23.29 (twenty-three euro and twenty-nine cents) per annum.

11. Recognised Accountancy Bodies shall be required to collect the annual registration fee from their members on behalf of the Board.

12. Recognised Accountancy Bodies shall forward a demand for payment in writing to their members who are warrant holders and firms on 31st December of the preceding year, by not later than 31st January of each year. Recognised Accountancy Bodies shall pay over to the Board any such registration fees collected on behalf of the Board by not later than ten (10) business days following the end of the month in which such fees are collected. Furthermore, Recognised Accountancy Bodies are required to submit with any payment effected, a list of warrant holders whose fees are being settled, detailing the name of the warrant holder and the warrant holders reference number (to be supplied by the Board). The Board shall ensure that Recognised Accountancy Bodies are provided with an updated list of warrant holders at 31st December of each year.

13. Recognised Accountancy Bodies shall, by 30th April of each year, provide the Board with a list of any of their members who are warrant holders and whose payment was not received by the due date. The provision of such a list will result in the Recognised Accountancy Body being discharged from its obligation under paragraph 11 above with respect to any unpaid registration fees.

14. Warrant holders that are not members of a Recognised Accountancy Body will effect payment of the annual registration fee to the Board or a representative authorised by the Board.

15. Until further notice the Board has authorised the Malta Institute of Accountants (hereinafter referred to as the "Institute") as its representative to collect payments on its behalf from warrant holders referred to in Rule 14 hereof. The annual registration fee should be made payable directly to the Institute and posted to its address set out in Appendix 2 of this Directive.

16. Persons applying for a warrant (or practicing certificate) will be charged a onetime application fee of €23.29 (twenty-three euro and twenty-nine cents) payable to the Board, together with the submission of their application.

Regulatory penalties, suspension and withdrawal

17. Without prejudice to the right of the Board under paragraph 18 of this Directive, the Board may impose an administrative fine amounting to not more than €232.94 (two hundred and thirty-two euro and ninety-four cents) per warrant holder or €232.94 (two hundred and thirty-two euro and ninety-four cents) per principal in the case of a firm, in any of the following circumstances:

- The late submission of the annual return;
- The submission of an incomplete or material inaccurate Annual Return;

And/or

- The failure to pay the registration fee by the due date.

18. The Board may refer any warrant holder or firm that has failed to submit a completed Annual Return or has submitted an incomplete or materially inaccurate Annual Return and/or has failed to pay the annual registration fee within three months of the applicable due date, to a disciplinary committee appointed by the Board in terms of sub-article (16) of article 7 of the Act (hereinafter referred to as the "Disciplinary Committee"). Should the Disciplinary Committee find that any such failure on the part of the warrant holder or firm was not for a just cause, the Board may withdraw the practicing certificate or suspend the warrant and/or practicing certificate or recommend to the Minister the withdrawal of the warrant of a warrant holder or firm or take any other disciplinary provisions which are within its powers as it deems fit.

19. A warrant holder or firm shall have the right to appeal against the Board's decision in the circumstances referred to in paragraph 18 above. An appeals committee shall be appointed specifically by the Board to hear such appeals (hereinafter referred to as the "Appeals Committee"). For an appeal to be considered valid, it must be submitted in writing by not later than thirty (30) calendar days following the notification of the Board's decision in writing. The Appeals Committee, which may be appointed by the Board on ad-hoc basis to consider a specific appeal, shall consist of at least three (3) persons one of whom shall be appointed as Chairman. The Appeals Committee will consider any representations made by the warrant holder or firm with regards to the case as well as representatives of the Board and/or representatives of the Disciplinary Committee and may after hearing both sides, at its absolute discretion:

- Reduce the amount of the penalty imposed on a warrant holder or firm;
- Recommend the revocation suspension or withdrawal of the warrant or the imposition of conditions on the warrant of a warrant holder or firm;
- Confirm the decision of the Disciplinary Committee and, if it considers necessary, recommend further disciplinary measures that would be appropriate in the circumstances.

Disclosure of information contained in the Annual Return

20. In exercising its powers and carrying out its duties under this directive, the Board will treat all information received as confidential but may only disclose any information if the Board believes it is appropriate in the following circumstances:

a) to individuals appointed by the Board to investigate complaints against warrant holders;
b) to individuals who may be appointed by the Board or any other Body delegated by the Board to perform quality assurance reviews for warrant holders engaged in public practice;
c) to the Appeals Committee in the case of any appeal pursuant to paragraph 19 above;
d) as may be required by the Act and any other relevant legislation enacted in Malta.

Dispensation

21. If it is impossible or impractical for a warrant holder or firm to comply with the requirements of this directive, the warrant holder or firms should notify the Board in writing within twenty (20) business days of the circumstances of non-compliance and the proposed action to be undertaken by the warrant holder or firm.

22. Should the Board determine that the warrant holder or firm has taken all practical steps to address the circumstances arising in paragraph 21 of this Directive, the Board may grant a dispensation form the requirements of this Directive until the Board, at its absolute discretion determines that the warrant holder or firm can comply.

Appendix 1

The Quality Assurance Unit,
Small Enterprise Centre,
Marsa Industrial Estate,
Marsa LQA06.
Malta

Appendix 2

The Malta Institute of Accountants,
Level 1, Tower Business Centre,
Tower Street,
Swatar BKR 3013
Malta

Directive Number 4 issued in terms of the Accountancy Profession Act (Cap. 281) and the Accountancy Profession Regulations 2009

In exercise of the powers conferred by Article 8 (2) of the Accountancy Profession Act (hereinafter referred to as "the Act"), the Accountancy Board with the approval of the Minister of Finance, the Economy and Investment is hereby issuing the following directive to warrant holders and holders of practising certificates under the Act:

Name and commencement date

1 This directive may be cited as the Accountancy Profession (Quality Assurance) Directive and may also be referred to as the "Quality Assurance Directive".

2 This directive shall come into force on the eighth (8th) day immediately following the day on which it is published (the "Effective Date") and shall, as from the Effective Date replace Directive 4 previously issued by the Board.

Definitions

3. (a) In this Directive:

"Body of persons" includes a limited liability company, and any fellowship, society, or other association of persons, whether corporate or unincorporate, and whether vested with legal personality or not;

"Continued professional education" hereinafter referred to as "CPE" shall mean activities that should contribute to the continued professional development of warrant holders;

"Firm" shall mean:

(i) an audit firm engaged in public practice;
(ii) an accountancy firm engaged in public practice;
(iii) a third-country auditor or a third-country audit entity registered in accordance with article 7(6) of the Act;
(iv) a sole practice through which a warrant holder engages in public practice;

and where applicable shall includes an entity that controls such parties and an entity that is controlled by such parties.

"Part Time Sole Practitioners" shall mean sole practitioners whose normal hours of work, calculated on a weekly basis or on an average over a period of up to one year, are less than twenty-five hours in any one week;

"Public interest entities" shall mean those entities whose transferable securities are admitted to trading on a regulated market within the meaning of point 14 of article 4(1) of Directive 2004/39/EC, a credit institution as defined in point 1 of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, an insurance undertaking and such other entities as may be prescribed by the Board;

"Public practice" shall mean the following activities carried out by warrant holders:

(i) acting as auditor, excluding, for the avoidance of doubt, a warrant holder who is in the employ of another warrant holder;

(ii) signing any report or certificate on financial statements in circumstances where reliance is likely to be placed on such report or certificate by any other person, or when a warrant holder (other than a warrant holder in the employ of another warrant holder) does any other thing which may lead the third party to believe that accounts have been prepared, approved or reviewed by such warrant holder; or

(iii) holding oneself out, or allowing oneself to be held out, as being available to undertake any of these activities.

"Quality Assurance Oversight Committee" and "QAOC" shall mean the Committee set up under the provisions of rule 14 this Directive;

"Warrant" shall mean a warrant or a practising certificate issued in terms of Article 4 of the Act; and

"Warrant holder" shall mean an individual, holding a warrant (including a practising certificate) issued under the Act, or a firm registered in terms of article 10 of the Act.

(b) The provisions of this Directive shall be interpreted in the light of the Act and of the regulations issued in terms thereof and shall be read in conjunction with any other relevant directives and guidelines which may be issued from time to time.

(c) Unless the context indicates otherwise terms used in this Directive and not defined shall have the meaning assigned to them in the Act.

Purpose and scope

4. The objective of this Directive is to ensure that all firms maintain the highest possible professional standards.

5. The provisions of this Directive shall apply to all firms.

Responsibility

6. It is the responsibility of each warrant holder in public practice to ensure that he and his firm comply with the provisions of this Directive.

7. In determining whether a firm is subject to the provisions of this Directive, the decision of the Board taken after consultation with the QAOC shall be final and binding on all parties.

8. The fact that compliance with the provisions of this Directive may be undertaken by the compliance principal or by any other principal, warrant holder in public practice on behalf of any firm shall not diminish the responsibility of any other warrant holder in public practice/principal of the firm to ensure that both the firm as a whole and himself individually complies with and abides by the provisions of this Directive.

Quality Assurance Process

9. The Quality Assurance Process is intended to be a means through which the Board provides assurance as to the quality of the professional work of warrant holders in public practice and firms and on the maintenance of appropriate levels of professional standards thereby. The Quality Assurance process shall be conducted in a transparent manner and satisfaction of this obligation shall require among others the publication by the Board of annual work programmes and activity reports as part of the annual report specified in article 7(19) of the Act.

10. The QAOC shall act on behalf of the Board in the implementation and supervision of the Quality Assurance process contemplated in the provisions set out in this Directive.

11. The Quality Assurance process shall include:

(i) the submission of a detailed return issued in a form and at a time prescribed by the QAOC;
(ii) periodic review visits to firms with the object of carrying out an assessment of compliance with applicable auditing standards and independence requirements, of the quantity and quality of resources spent, of the audit fees charged and of the internal quality control system of the audit firm supported by adequate testing of audit files;
(iii) the drawing up of a report which contains the main conclusions of the Quality Assurance process in respect of any particular firm; and
(iv) the annual publication of the overall results of the Quality Assurance process.

12. The QAOC shall, in its absolute discretion, determine the selection of firms in respect of which to conduct the Quality Assurance process including the conduct of periodic review visits, as well as the methods to be adopted in the conduct of the said process and visits and in the review of the detailed returns.

Professional Standards

13. Warrant holders in public practice and firms are required to comply with all laws, regulations, directives, and professional guidelines which seek to ensure the maintenance of appropriate professional standards and in particular the provisions of the Act and the regulations, directives and guidelines issued in terms thereof, other professional standards which may be mandated by law, standards or directives issued by any other relevant regulatory authority, and guidance issued by any approved accountancy body.

The QAOC

14. (a) The QAOC shall be composed of five (5) individual members appointed for a period determined by the Board which shall not exceed three (3) years. For the avoidance of doubt, any member shall be eligible for re-appointment. The remuneration (if any) of the members of the QAOC shall be determined by the Board.

(b) The members of the QAOC shall be appointed by the Board prior to the commencement of their term of office and:

(i) two (2) of the members shall be nominated from a list of not less than four (4) persons provided by any association or associations for the time being recognised as an approved accountancy body or bodies; and

(ii) not less than three (3) of the members shall be individuals who have, for at least three (3) years prior to their appointment as members of the QAOC (and throughout the entire term of their appointment (including any relevant re-appointment)), not carried out statutory audits, nor held voting rights in a firm, nor been a member of the administrative or management body of a firm and has not been employed by, or otherwise associated with a firm.

(c) The number of members necessary to form a quorum at a meeting of the QAOC shall be three (3), but subject to the presence of a quorum of members, the Board may act notwithstanding any vacancy among its members. Decisions of the QAOC shall be approved by simple majority of the members present at the particular QAOC meeting.

(d) The Chairman of the QAOC shall be appointed from time to time by the Board from among the members referred to in sub-sub-paragraph (ii) of subparagraph (b) of this paragraph.

(e) Save as aforesaid and subject to such directions as may be given thereto by the Board, the QAOC may make its own rules and otherwise regulate its own procedure.

15. The QAOC shall have the following responsibilities and powers:

(i) the development of policy in relation to quality assurance on behalf of the Board, including:

(a) recommending to the Board amendments to this Directive and all other directives and guidelines which have a bearing on the operation of the quality assurance system;

(b) deciding the content and frequency of submission of any return required by this Directive and submitting this for the formal approval of the Board;

(c) deciding on and establishing policies with respect to the form and frequency of review visits conducted in terms of this Directive:

Provided that in all cases review visits shall take place at least every six (6) years and in the case of auditors carrying out audits of public interest entities at least every three (3) years.

(ii) acting on behalf of the Board in ensuring the application of the provisions of this Directive and ensuring compliance therewith and with any other regulations governing the proper performance of professional work by firms.

(iii) requiring the co-operation of firms and the production of any document or information it considers appropriate to the proper performance of its duties.

(iv) reviewing all returns made under the provisions of this Directive, investigating failure to make such returns or reports and reviewing all returns received by the Board in terms of the Annual Return and Annual Fees Directive as amended.

(v) reviewing all reports made under the requirements of this Directive and taking such regulatory action as it may deem appropriate in the particular circumstances.

(vi) authorising, with the approval of the Board, any duly appointed agent to enquire into all matters related to the exercise of its functions under this Directive and for this purpose the QAOC may, at its discretion, delegate certain of its responsibilities and powers to such agent. In particular, the QAOC may require any such agent to make appropriate enquires

to confirm whether or not a firm is complying with the requirements of this Directive (by writing, visiting the warrant holder's or firm's office or offices, using a periodic return, third party enquiry or in any other way). In this respect the following provisions shall apply:

(a) The QAOC shall ensure that such agents are persons of integrity who have the necessary qualifications, expertise and experience and receive the necessary training to ensure that they can carry out their duties competently and impartially.

(b) The QAOC shall ensure that such agents adopt a code of conduct appropriate to their duties and responsibilities. Without prejudice to the generality of the foregoing, this code shall include provisions aimed at ensuring that there are no conflicts of interest between the reviewers and the firms under review, including prohibiting such persons from being engaged in public practice throughout the entire period during which they are acting as agents of the QAOC.

(c) The QAOC, after obtaining the written approval of the Board, may enter into such arrangements as it may consider appropriate, to compensate such agents for the carrying out of the duties and responsibilities it has assigned to them.

(vii) To establish appropriate procedures to ensure that the confidentiality of any information obtained thereby which is identified by the firm to constitute strategic commercially sensitive information is adequately protected;

(viii) To appear in front of a disciplinary committee appointed in terms of sub-article (16) of article 7 of the Act, to provide evidence on any of its findings as may be relevant to any enquiry held in terms of paragraph (a) of sub-article (1) of article 15 of the Act.

Provision of information to the QAOC and its duly appointed agents

16. In exercising its powers and carrying out its duties under this Directive, the QAOC (and any of its duly appointed agents) has the power, to the extent reasonably necessary in the particular circumstances of the case, to require a firm to provide access to the place or places from which they carry on their profession as accountants and to all and any information held by or concerning the firm. Without prejudice to the generality of the foregoing, this information may include among others, books, papers and records – whether electronic or otherwise relative to the firm, or its clients. The disclosure and provision of the relative information in such circumstances is deemed to take place in the course of the firm obtaining directions from the body regulating the accountancy profession and such disclosure and provision is a necessary measure in the interest of preventing, investigating, detecting and prosecuting breaches of ethics within the accountancy profession.

Disclosure of Information

17.In exercising its powers and carrying out its duties under the provisions of this Directive, the QAOC (including, for the avoidance of doubt, all and any agents appointed thereby in terms of this Directive):

(i) shall determine on a case by case basis, the extent to which identification of any particular client is necessary in order to properly exercise its powers and carry out its duties;

(ii) shall treat all information as covered by a duty of professional secrecy, but may disclose any information if in its opinion, such course of action is appropriate in the following circumstances:

(a) to a disciplinary committee appointed by the Board in terms of sub-article (16) of article 7 of the Act, to investigate complaints against warrant holders, and firms;

(b) to the Board in connection with the Board's duties and responsibilities set out in the Act, the regulations and any directives (including for the avoidance of doubt, this Directive) issued in terms thereof ;

(c) as may otherwise be required by law.

Waivers

18. The Board, acting on the advice of the QAOC, may waive or relax any of the requirements of this Directive if it is satisfied that altering the requirements of the Directive will not result in any undue risk to all or any of the clients of any firm or to the general public.

Compliance Principal

19. All firms are required to appoint a compliance principal.

Returns

20. All firms are required to provide such returns, statements or other information, as the QAOC may consider necessary and the said information shall be provided in such form and within such time frames as may be set by the QAOC.

21. All returns shall be subject to an internal desk-top review process and all firms are required to provide all such further details as may be requested as a result of the review.

22. The Board shall make available to the QAOC all returns, statements or other information from firms and shall grant to the QAOC access to the Board's database containing information extracted from such returns.

Periodic Visits

23. The QAOC may at its discretion:

(a) determine the selection of warrant holders, in public practice and firms for a periodic visit;

(b) determine the professional activities to be reviewed;

(c) require the production of a report on the results of the visit; and

(d) report back to the particular firm the results of the visit.

24. The QAOC may, upon receipt and consideration of such reports:

(a) require any firm to make improvements to its professional standards;

(b) require any firm to seek external support and assistance to implement improvements;

(c) require a third party external review or a follow up visit to any firm;

(d) recommend to the Board the issue of an order imposing such restrictions and / or conditions in respect of any warrant issued by the Board;

(e) advise the Board that in its opinion an enquiry should be held in terms of paragraph (a) of sub-article (1) of article 15 of the Act by the disciplinary committee appointed in terms of sub-article (16) of article 7 of the Act ;

(f) recommend to the Board that regulatory action may be required urgently within the parameters set by the Board, stating the reason for the need for urgent action.

Restrictions and conditions

25. The Board, acting on the advice of the QAOC, may issue an order imposing such restrictions or conditions on the manner in which a firm conducts its practice if it considers that any of the circumstances mentioned below exist, or are likely to exist, and the restrictions or conditions contemplated below are justified in the circumstances:

(a) the firm has not complied with the provisions of this Directive;

(b) the firm is likely not to comply with the provisions of this Directive in the immediate future;

(c) the holding by the firm of a warrant or the holding of such warrant without restrictions or conditions could have an adverse effect on all or any of its clients or the general public.

(d) the firm no longer fulfils one or more of the eligibility requirements for the holding of a warrant;

(e) the firm has not complied with its professional indemnity obligations under the Act or under any regulations or directives issued thereunder;

(f) the firm is regularly late in submitting any required returns or reports under the Act, or under any regulations or directives issued thereunder;

(g) the firm has not settled the annual fees mandated by this Directive or any charge or costs due under this or any other Directive issued by the Board, within thirty (30) days of the service of a notice by the Board requesting the settlement of any such fees, charges or costs;

(h) the firm has not complied with any restriction or condition imposed by the QAOC or the Board under this Directive;

(i) the firm has not complied with any provision of the Act, or of any regulations or directives issued thereunder.

26. After the issue of an order in terms of paragraph 25 above, within a period of not more than two (2) calendar weeks thereafter, the Board shall be obliged to grant to the particular firm an opportunity to make oral or written representations thereto. Having considered any such representations the Board may deem fit to:

(a) withdraw or vary the order with effect from such date as may be determined by the Board; or

(b) retain the order in effect.

27. Any firm which is subjected to any act determined in terms of paragraph 24 or paragraph 25 above, shall be obliged to comply in full with the terms of the particular action, restriction or condition imposed thereon within a reasonable period of time fixed by the QAOC. Should any default be committed by the particular firm in this respect, the Board, acting on the advice of the QAOC, shall be entitled to take such further disciplinary and/or regulatory action in respect of such default as it may deem fit.

Regulatory Penalties

28. The QAOC may propose to a firm the imposition thereon of a regulatory penalty, subject to the following terms and conditions:

(a) the QAOC shall not be entitled to propose the imposition of the regulatory penalty before the firm agrees that a breach of the provisions of this Directive has been committed thereby;

(b) after considering any representations made by the firm in respect of the penalty and the payment date(s), the QAOC shall determine the quantum of the penalty and when it is to be paid and this determination shall be final, conclusive and not subject to appeal. The QAOC will set this out in writing in the letter sent thereby to the firm, proposing the imposition of the penalty:

Provided that the penalties for the breaches listed in Schedule 1 hereof shall not exceed the amounts prescribed in the said schedule;

(c) if the firm accepts the penalty which is being proposed for imposition thereon by the QAOC and the relative terms thereof, written confirmation in this sense must be received by the QAOC within a period of two (2) calendar weeks from the date of service of the letter from the QAOC containing the proposal, in which case the proposed regulatory penalty and the relative terms shall become effective and binding on the firm, so however that in such case no further disciplinary action shall be taken in respect of the firm;

29. Any regulatory penalty which is imposed by the QAOC in terms of paragraph 28 above shall be deemed to be imposed directly by the Board.

30. If a firm does not agree that a breach of the provisions of this Directive has been committed, or does not notify its acceptance of the penalty as set out in paragraph 28(c) above, or does not fully adhere to the terms of the penalty imposed thereon by the QAOC, the QAOC shall inform the Board of the breach of the provisions of this Directive and recommend that disciplinary action should be taken in respect of the particular firm in terms of article 15 of the Act.

31. The application by the QAOC of paragraphs 28 and 29 above shall be subject to the prior issue by the Board of written guidelines detailing the manner in which Regulatory Penalties shall be imposed. Any deviations from these guidelines shall require the prior written approval of the Board.

Restrictions or conditions in respect of warrants

32. Without prejudice to the other provisions of this Directive, the Board may issue an order imposing restrictions or conditions in respect of any warrant where, on the recommendation of the QAOC, it is of the view that all or any of the circumstances referred to in paragraph 25 above exist or may exist.

33. After the issue of an order imposing restrictions or conditions in terms of paragraph 32 above, within a period of not more than two (2) calendar weeks thereafter, the Board shall be obliged to grant the firm an opportunity to make oral or written representations thereto. Having considered any such representations the Board may deem fit to:

(a) withdraw or vary the order with effect from such date as may be determined by the Board; or

(b) retain the order in effect.

Enquiries in terms of Article 15 of the Act

34. If the Board considers that any of the circumstances referred to in paragraphs (i) to (iv) of sub-article (1)(a) of article 15 of the Act exist or may exist in respect of any firm, the Board may order an enquiry to be held, with the required degree of urgency, by the disciplinary committee appointed under sub-article (16) of article 7 of the Act and apart from any penalties contemplated elsewhere in this Directive, the penalties contemplated in the Act may be imposed on the particular firm where it is found guilty of the particular acts or omissions in terms of law.

Dispensation

35. If it is impossible or impractical for any firm to comply with any of these provisions at any time, it shall be obliged to notify the QAOC in writing. Such notification must be received by the QAOC within a period of two (2) calendar weeks from the date from when the particular situation arose and it must specify the reasons therefore and the action which the firm proposes to take in order to return to a situation of full compliance with the provisions of this Directive.

36. If the QAOC determines that the firm is taking all practical steps required to resolve the problem and that the continued holding by the particular firm of any warrant would not be against the public interest, it may grant a dispensation from the requirement to comply with any or all provisions of this Directive for such period of time as the QAOC deems fit, so however that such period shall in no case exceed ninety (90) days from the date when the situation referred to in paragraph 35 above arose. If the QAOC is not satisfied with the steps being adopted or proposed to be adopted by the firm to resolve the problem, it may recommend to the Board the taking of such action as it may deem fit in terms of the provisions of the Act, the Regulations and this Directive.

Continuing responsibility

37. If a firm no longer holds a warrant, disciplinary action may still be taken in respect of the firm and/or all or any of the principals thereof, for any failure to comply with the provisions of this Directive during the time in which it held any such warrant. A firm shall also be subject to subsequent disciplinary action if it fails to comply with any provision having a continuing effect even after the firm ceases to hold such warrant. Furthermore the Board's right to recover any unpaid fees or other amounts due from a firm under the provisions of this Directive shall continue to subsist even after the firm ceases to hold the particular warrant.

The implementation of orders

38. Subject to any other provision of this Directive, an order made by the QAOC or the Board under this Directive shall enter into effect as soon as notice thereof is served on the particular firm or at such later date as the QAOC or the Board (as the case may be) may specify.

The serving of notice

39. A notice or any other document to be served under these regulations shall be delivered by hand, or sent by registered mail. In this respect the following shall apply:

(a) If delivered by hand, the said notice or other document must be handed to a principal of the firm and service thereof shall be deemed to have been effected as soon as such document is handed to the said principal.

(b) If sent by registered mail, the said notice or other document shall be addressed to a principal of the firm and be sent to the latest address given by the firm to the Board; service thereof shall be deemed to have been effected five business days after the date on which the particular notice or other document is posted.

Fees

40. Warrant holders in public practice and firms shall be required to pay an annual regulatory fee for each calendar year commencing on or after the 1 January 2007, in accordance with the list of fees prescribed in Schedule 2.

41. The Board shall determine the quantum of the annual regulatory fee and the manner in which such fee is calculated shall be such as to cover in whole or in part the direct and indirect costs of the quality review process.

42. A firm shall pay an additional fee charged at the rate of €34.94 (thirty-four euro and ninety-four cents) per man hour to cover the costs of any visit which the QAOC considers to be required to ensure that the firm is operating to the required professional standards:

Provided that the hours charged for such visit shall be limited to what is reasonably required to achieve the purpose of the visit.

Schedule 1

Quality Assurance Penalties

The regulatory penalties for the following breaches shall not exceed the following:

Re-scheduling of review visit without justifiable reason	€232.94
Failure to respond to any requests made by the QAOC within the time limits set out in such requests	€23.29 per day;
Delays in submission of fees and returns due	€23.29 per day;
Failure to submit documentation requested by the QAOC within the specified time	€23.29 per day;
Failure to provide access to information in terms of paragraph 16	€23.29 per day;
Failure to respond to the QAOC on requested remedial action	€23.29 per day;

Schedule 2

Quality Assurance Regulatory Fee

The regulatory fees shall be the following:

For firm with five or more principals	€5,590.50
For firms with less than five but more than two principals	€1,630.56
For firms with less than three but more than one principal	€582.34
For full time sole practitioners	€232.94
For part time sole practitioners	€116.47

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