



PROPOSED REVISIONS TO THE NON-ASSURANCE SERVICES PROVISIONS OF THE CODE

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ICAEW welcomes the opportunity to comment on the Exposure Draft 'Proposed Revisions to the Non-Assurance Services Provisions of the Code' published by IESBA on 21 January 2020, a copy of which is available from this [link](#).

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KEY POINTS

1. It is wholly appropriate to keep a key part of an international code of ethics such as the provision of non-assurance services 'NAS' to audited entities under frequent review. However, we have set out a number of detailed concerns and other comments below in our responses to the questions asked.
2. Our concerns relate principally to:
 - a. The proposal to implement a general prohibition of NAS in respect of PIE-audits where there is a self-review threat. This seems to go beyond the current approach of specific targeted service-by-service prohibitions adopted in the IESBA Code of Ethics (the Code) but neither does it adopt the wholesale 'NAS are perceived to be unacceptable' approach now adopted by, for example, the UK Financial Reporting Council. We are unclear whether the Board intends this proposed prohibition to be a marginal extension of the existing detailed prohibitions approach, or something much more sweeping.
 - b. The proposal to disallow immaterial services seems illogical as an immaterial item, by definition, cannot pose a significant threat to actual independence. It is unclear to us that reasonable and informed third party concern about audit is driven by immaterial NAS per se and if the concern is one of misuse, that is a matter of process and enforcement.
 - c. A number of the individual service proposals in respect of technical assistance, tax avoidance, and expert witness services. We have given more detail in our response to question 10.

ANSWERS TO SPECIFIC QUESTIONS

Prohibition on NAS that Will Create a Self-review Threat for PIEs

Question 1. Do you support the proposal to establish a self-review threat prohibition in proposed paragraph R600.14?

3. The Code is based on the principles-based approach which, by its nature, allows for any actual threats to unethical behaviour to be addressed. That approach will result in a number of specific prohibitions in specific circumstances where those circumstances indicate that there can never be an acceptable safeguard. Any more broadly-based prohibition can, therefore, only be addressing perception of threats to independence.
4. We are unclear whether the Board intends this proposed prohibition to be a marginal extension of the existing detailed prohibitions approach, or something much more sweeping.
5. Given that it applies where there is any level of self-review threat, and that 'threat' has no built in concept of significance, even the smallest issue is captured regardless of the underlying circumstances. It appears therefore to be quite a wide-ranging prohibition.
6. Yet, the prohibition only focuses on one type of threat. It is unclear to us that the reasonable and informed third party, or for that matter any other third party, would perceive the self-review threat to be more serious than, say, a potential self-interest threat resulting from a conflict of interest. Either the perception of the whole idea that NAS should not be supplied to a PIE audited entity is a reasonable concern – in which case focusing only on self-review threats is insufficient, or it is not a reasonable concern, in which case a sweeping prohibition on one type of threat even when it is at an otherwise 'acceptable' level following the framework approach discussed in s120, makes no sense.
7. The Board should be clear, and make it clear, what it is trying to achieve here.

8. If the intent is a sweeping prohibition, some discussion would be merited, perhaps outside of the Code, on the boundaries between assurance and non-assurance services, which would become of critical importance.

Consequences for taking on an audit

9. We note the prohibitions on taking on an audit, where a prohibited NAS has previously been provided to a non-audit PIE client, if a self-review threat would result, unless there is an external review. Given the proposed prohibition discussed above, this is logical: a circumstance that we would hope firms would have been wary of already. However, we also note that internal review by another person is not seen as an acceptable safeguard. We believe there is an argument for allowing internal review where the threat would have been considered to be at an acceptable level in the absence of the overall PIE self-review prohibition.

Structure of the section

10. We understand that the restructured Code now applied, is based on the premise that a requirements paragraph precedes relevant application material. R600.14 should be positioned before 600.13 A1 and A2 (with appropriate renumbering).

Question 2. Does the proposed application material in 600.11 A2 set out clearly the thought process to be undertaken when considering whether the provision of a NAS to an audit client will create a self-review threat? If not, what other factors should be considered?

11. Subject to our concerns on clarity of intent, set out under question 1 above, and given the way the conceptual framework operates, yes in terms of the topics addressed.
12. Item c within the paragraph addresses the existence of relevant judgments. It would be helpful to expand the point, either here or in the discussion in 600.12 A1 on advice (see question 3 below), to clarify that the degree of threat resulting from the judgement will also be impacted by the existence of external evidence supporting the judgment, as discussed in the tax planning material in 604.12 A2.

Providing Advice and Recommendations

Question 3. Is the proposed application material relating to providing advice and recommendations in proposed paragraph 600.12 A1, including with respect to tax advisory and tax planning in proposed paragraph 604.12 A2, sufficiently clear and appropriate, or is additional application material needed?

13. Subject to our comment on judgment in question 2 above, yes.

Project on Definitions of Listed Entity and PIE

Question 4. Having regard to the material in section I, D, "Project on Definitions of Listed Entity and PIE," and the planned scope and approach set out in the approved project proposal, please share your views about what you believe the IESBA should consider in undertaking its project to review the definition of a PIE.

14. The underlying requirements of the Code must be to ensure compliance with the fundamental principles in all professional and business activities, and independence in assurance activities. In our view, those are the baseline requirements. Additional requirements, particularly in respect of independence, apply to PIE engagements because perception takes on a particular importance so additional requirements apply to ensure there

is not a perception concern, even where the core requirements would result in no actual threat to compliance.

15. It follows that a PIE will be an entity where there is a legitimate public interest in the subject matter of the activity (for example financial statements in an audit engagement) such that it is a proportionate measure to apply these additional perception-related requirements. Factors leading to an entity being determined to be a PIE might therefore include, for example, the existence of a wide range of legitimate stakeholders who would not be able to discuss potential threats and safeguards with the professional accountant.
16. In an international code of ethics, it is unlikely to be possible to come up with a very precise definition which encompasses all entities that a particular culture or jurisdiction might regard as a PIE having regard to perception and proportion. It would be better for the Board to set out a series of likely criteria, leading to some rebuttable presumptions of the types of entity that would be likely to be a PIE, but allowing for local variations to add or remove types of entity to suit the local balance of perception and proportionality.

Materiality

Question 5. Do you support the IESBA's proposals relating to materiality, including the proposal to withdraw the materiality qualifier in relation to certain NAS prohibitions for audit clients that are PIEs (see Section III, B "Materiality")?

17. No: this proposal seems illogical. An immaterial item, by definition, cannot pose a significant threat to actual independence. As regards perception it is unclear to us that reasonable and informed third party concern about audit is driven by immaterial NAS per se.
18. We note that the consultation refers to comments from "some" stakeholders about inconsistent usage, but the point of the conceptual framework approach is to provide an effective but proportionate approach to independence in different circumstances. This can result in what seems to be inconsistent approaches. If the concerns are over misuse of the materiality provisions, or over creeping immateriality, those are matters of process and enforcement, not an issue with the underlying ethical approach.

Question 6. Do you support the proposal to prohibit the following NAS for all audit clients, irrespective of materiality:

- ***Tax planning and tax advisory services provided to an audit client when the effectiveness of the tax advice is dependent on a particular accounting treatment or presentation and the audit team has doubt about the appropriateness of that treatment or presentation (see proposed paragraph R604.13)?***
 - ***Corporate finance services provided to an audit client when the effectiveness of such advice depends on a particular accounting treatment or presentation and the audit team has doubt about the appropriateness of that treatment or presentation (see proposed paragraph R610.6)?***
19. We do not agree with extending these prohibitions to immaterial items – see our comments under question 5. Even if the perception concerns referred to above were indicative of a legitimate concern with allowing immaterial services as an ethical concept, there is no justification at all for extending the tightening up to non-PIE audits. Perception is less of an issue with such audits and for smaller entities, in particular, potentially counter-productive to quality: it is likely that if the auditor is unable to deal with a small matter, nobody will.

Communication with TCWG

Question 7. Do you support the proposals for improved firm communication with TCWG (see proposed paragraphs R600.18 to 600.19 A1), including the requirement to obtain concurrence from TCWG for the provision of a NAS to an audit client that is a PIE (see proposed paragraph R600.19)?

20. These seem reasonable, given that the application material allows for practicality through the concept of approval via an appropriate agreed policy or other approved process.

Other Proposed Revisions to General NAS Provisions

Question 8. Do you support the proposal to move the provisions relating to assuming management responsibility from Section 600 to Section 400, and from Section 950 to Section 900?

21. Yes.

Question 9. Do you support the proposal to elevate the extant application material relating to the provision of multiple NAS to the same audit client to a requirement (see proposed paragraph R600.10)? Is the related application material in paragraph 600.10 A1 helpful to implement the new requirement?

22. Yes: we would have expected this to be applied in effect as a requirement already.

Proposed Revisions to Subsections

Question 10. Do you support the proposed revisions to subsections 601 to 610, including:

- **The concluding paragraph relating to the provision of services that are “routine or mechanical” in proposed paragraph 601.4 A1?**
- **The withdrawal of the exemption in extant paragraph R601.7 that permits firms and network firms to provide accounting and bookkeeping services for divisions and related entities of a PIE if certain conditions are met?**
- **The prohibition on the provision of a tax service or recommending a tax transaction if the service or transaction relates to marketing, planning or opining in favor of a tax treatment, and a significant purpose of the tax treatment or transaction is tax avoidance (see proposed paragraph R604.4)?**
- **The new provisions relating to acting as a witness in subsection 607, including the new prohibition relating to acting as an expert witness in proposed paragraph R607.6?**

23. Except as noted below, and subject to our overall concerns about the treatment of immaterial NAS (questions 5 and 6 above), we concur with the amendments proposed.
24. Routine and mechanical accounting services - we agree with the concept that such services do not of themselves create an insuperable threat to independence, but question the styling of the final paragraph: “The firm may provide such services to audit clients...”. Statements that grant positive permission to provide a service risk being interpreted as an absolute carve out, other threats and safeguards analyses notwithstanding. It would be better to phrase it in terms of such activities not being prohibited subject to the relevant conditions referred to.
25. Other accounting matters – we support the withdrawal of the accounting and bookkeeping exception for PIE divisions exception, which had no particular basis under the threats and safeguards approach anyway. However, within the same sub-section we note the de-facto inclusion of technical assistance within the services now prohibited for PIE audited entities, as a result of the change in description of accounting services. There is a risk that removing

this exception risks the auditors being able to say that something in the financial statements is wrong but not being able to give an indication as to what would be right. This could be addressed in the discussion on the boundaries between what constitutes assurance and non-assurance services (see our comments under question 1 above).

26. Tax services in respect of tax avoidance – the professional accountant’s role in respect of tax avoidance is an interesting point. Indeed the UK has taken a lead in this area evolving ethics-derived standards around tax planning, which focus on highly contrived or highly artificial tax avoidance, in its ‘Professional Conduct in Relation to Taxation’¹. However, we see this as an extension of the fundamental principle of integrity, rather than an independence matter. Independence concerns in this area are surely met by the requirement of what in the exposure draft is R604.13, covering treatment in the financial statements.
27. Acting as expert witness – acting as such for PIE audited entities will often, as noted in the sub-section, be more of a potential advocacy threat than a potential self-review threat. It does not relate to the other prohibitions referred to above and it is unclear what the primary motivation for this prohibition is. If to address some perception concerns, does appointment by the court, which is still an exception, make a difference to externally perceived threats?
28. Other litigation support matters - the structure of subsection 607 is confusing: 607.7 A2 states that acting as a witness of fact does not create a threat under certain circumstances; R607.9 states that acting as an expert witness is prohibited for PIEs. Is the first paragraph an exception to the second, or not?

Proposed Consequential Amendments

Question 11. Do you support the proposed consequential amendments to Section 950?

29. Yes.

Question 12. Are there any other sections of the Code that warrant a conforming change as a result of the NAS project?

30. No.

¹ <https://www.icaew.com/-/media/corporate/files/technical/tax/pcrt/pcrt.ashx>