

B: Business and Ethics

B.1 Introduction

'As chartered management accountants, CIMA members (and registered students) throughout the world have a duty to observe the highest standards of conduct and integrity, and to uphold the good standing and reputation of the profession. They must also refrain from any conduct which might discredit the profession. Members and students must have regard to these guidelines irrespective of their field of activity, of their contract of employment or of any other professional memberships they may hold' (Preface to the CIMA Code of Ethics for Professional Accountants).

It has become increasingly popular in recent years for the use and application of ethics in business.

Professional bodies often produce codes of practice and conduct for their members. These provide details of ethical resolution frameworks, examples of good practice, and they may outline the consequences for breach. Evidently professions such as accounting may be very interested in the ethical actions of members of its profession. Consider the following (not uncommon) situations:

- Accounting equitably could result in less profit for a business / client (and this may negatively impact on the accountant with a reduction / loss of a bonus).
- There may be pressure from senior managers who wish for the accountant (the employee) to act in such a way so as to take some unethical action.
- Further, ethical implications can arise where another person has acted unethically (performed some wrong-doing at work) of which the employee is aware and is unsure whether disclose of this information may lead to disciplinary action against him/her.

As such, ethical codes provide certainty and guidance to persons in these positions as to the action expected from them to maintain their own credibility and honour, but also to comply with the professional body's rules of conduct. As such, ethics in business are essential.

For the professional accounting bodies, this has led to the establishment of a code of ethics which members of those bodies must adhere. Not only does the Code instil values which are a sign of good practice and would be welcomed by all involved with the profession, but it also develops a concern for individuals to act in the public interest and with social responsibility. Awareness of the wider implications of decision-making will assist the individual in acting in a professional, conscientious manner. Accounting requires that a professional acts as independently and impartially as possible to present facts upon which action may be taken.

Business ethics is often seen in professional bodies' codes of conduct for its members, and is now an embedded feature in its assessment instruments. However, it affects all aspects of the corporation. From the way board members operate; employment relationships; the conduct of human resources departments; the contracting with suppliers; advertising and the possibility of transgressing laws through, for example, misleading advertising; and so on, it is becoming an essential feature of corporate life and corporate culture.

B.2 Why Ethics?

Consider a branch of accounting such as management accountants. These professionals provide accounting information that allows management to make the best-informed business decisions possible. The information is generally used 'in-house' and enables a manager to formulate effective policies and plans for the operation of the business. Therefore, the information that is presented must be as accurate, and carefully researched and prepared, as possible. The term coined in the computer industry could equally be used here – 'garbage in, garbage out.' Management accountants must ensure that they follow the appropriate accounting standards, but

also act in good faith when preparing reports that will be used for strategic decision making. *Caparo*¹ demonstrated the effects of negligence on the part of auditors when preparing accounts. However, this raises an important issue. Ethics does not seek to remove or replace the legal consequences of negligent acts, but rather it seeks to provide guidelines as to how such a person must act in the course of their employment. Negligent acts may lead to a civil claim for losses incurred by the victim, but these are often very complex cases and, especially when concerned with pure economic loss, they are frequently unsuccessful. As such they may not provide the protection that is required. Further, whilst a negligent employee may be fairly dismissed from his/her employment for a breach of contract, this will not of itself rectify the decisions made on the basis of a poorly researched and drafted report. It may also not be in the wider interests of an organization or the profession generally to resolve problems of negligence, bad faith, lack of due diligence etc through criminal and/or civil action. Law then, may not necessarily provide the best solution to an issue of ethics.

Increasingly, businesses are identifying standards and values to which they aspire and those they will observe in their business dealings. This is likely to be of importance to internal and external stakeholders who expect the organization to go beyond 'mere' legal and industry / governing body specific regulation. Compliance with the law is a fundamental requirement, whilst ethical behaviour can ensure good industrial practice, good relations with stakeholders, and it may also be used to gain competitive advantage. As such, ethical behaviour of an organization can be based on 'pure' and 'impure' motives, but ultimately it can lead to tangible benefits for the organization as a whole.

B.3 What is Business Ethics?

Business ethics may be considered as an outline of behaviour that will serve as a foundation of action which the organization considers acceptable (ethical values) and will result in responsible behaviour.² Underlying values of honesty, equitable behaviour, integrity, transparency and openness may each impact on the businesses' conduct. Such values may begin in the boardroom and trickle-down through the organization via policies and rules of practice, they may also be formed by membership rules of bodies such as the Association of Chartered Certified Accountants (ACCA), the Chartered Institute of Management Accountants (CIMA), the Institute of Chartered Accountants in England and Wales and the International Federation of Accountants (IFAC) etc.

Ethics policies may be applicable to the relationships within the organization and extend to dealings with customers and suppliers. Further, the major accountancy bodies in the UK have their own guidelines on ethical behaviour to which their members (accountants who will work with organizations) will adhere.

It is also worthy of consideration that ethics has moved on from financial practices to include issues such as corporate social responsibility. The duties imposed on directors in s. 172 Companies Act 2006 identify some of the wider issues directors' must consider in relation to their impact on the community, environment and suppliers. Think also about s. 176 and the duty not to accept bribes. This is a potentially very complex issue as when does corporate hospitality become a bribe? Clearly, effective communication, transparency of decision-making and corporate policies at the Board level can ensure that possible conflicts and (seemingly) unethical behaviour are avoided.

B.4 Ethical Policy

An ethical policy is required for businesses now as part of a wider consideration of responsible business, effective leadership, and the external view of the business and its corporate social responsibility in its widest sense. By establishing an ethical business policy, the internal and external stakeholders (should) have confidence of the business' values and commitments, it confirms a leadership role in these principles, and it also identifies tangible mechanisms to ensure compliance and monitoring systems present to identify breaches, along with consequences for transgressions.

¹ *Caparo Industries Plc v Dickman and Others* [1990] 2 AC 605.

² See the UK Institute of Business Ethics for valuable resources and information in this area.

Ethical policies can be very broad. Many may deal with the actions of individuals in relation to the codes of ethical standards required from the professional bodies of which they are members. Further they could be in relation to subjects such as the environment, bullying and harassment and so on. By championing, maintaining, and enforcing the policies, it gives everyone to has a relationship with the business an understanding of how it conducts its operations. It may very well have significant positive benefits for the financial wellbeing of the business.³

A vital point about the successful implementation of ethics in business is that it is not just seen a requirement of membership of a professional body – abstract and separated from where the individual works. To be successful in establishing a model of ethical behaviour in the corporation it needs to be established from the board level down. Hence, this is a further aspect of good corporate governance that was discussed more widely in relation to corporate management in Chapter 26. The actions of the board members, duties imposed on directors and effective regulation and evaluation of these, set out clearly the corporations values. Corporate culture derives from the board establishing and following these ethical values.

B.4.1 Ethical Policies and Shareholder Value

Shareholder value is a topic often referred to when discussing issues such as whistleblowing, ethics and corporate scandals. At the heart of these debates comes the key term – trust. Many investors lost trust in large organizations following corporate scandals at the Bank of Credit and Commerce International, Enron, WorldCom and so on. The outcome was legislative action on both sides of the Atlantic, and of great concern was the policies in place at companies such as Enron which had, apparently, a world-leading whistleblowing policy. It transpires that it was just not used! However, simply because there exist high-profile examples of internal systems not working correctly, this does not mean that their use and value is diminished and should be disregarded by all. Indeed, the value of corporate ethics policies in gaining shareholders, investment and commercial success is tangible. Research undertaken by the Institute of Business Ethics in the UK discovered a strong correlation between companies who had developed codes of ethics and the benefits to their business when measured against financial performance. As such ethical policies do not only protect those who work with and within the corporation, but also impact positively on companies' finances. Establishing a corporate culture, recognising the importance of ethical standards and behaviour, and instilling a 'moral compass' in the employees, gives rise to achieving improved performance. However, the more harsh the regulations, and the greater the onus on employees to undertake tasks complying with codes which they may consider to be a further hurdle to be tackled in completing day-to-day tasks, the more likely change will be resisted. This is perhaps one of the main reasons why the professional bodies use the 'conceptual framework approach.' As way of an example, if you consider the findings of the government of the United States' investigation into the collapse of Lehman Bros, the directors / executives used different legal jurisdictions and accounting standards to move debt on and off its balance sheets. As such, they complied with the most convenient standards to suit its purposes, and by following the law and not having any meaningful benchmark of standards or conduct by which to be measured, it did not break rules. Laws often work against ethical values as they provide specific instructions which by their nature lend themselves to the finding and exploitation of loopholes.

The corporate culture is more likely to succeed in establishing ethical values and standards where it is made clear to all stakeholders of the existence of the policy(ies), the corporation has taken the responsibility to outline the necessary practices to ensure compliance, and these are integrated throughout the organization. Many corporations are also requiring similar ethical values to be in place with suppliers as a pre-requisite of contracting. The ethical culture must be just that. More than a mere mission statement or statement of intent, they must be values applied everyday. They must be understood from the senior management down to all workers and suppliers.

B.5 Examples of Professional Bodies' Code of Professional Ethics

³ See Ug Oji, K., Dando, N., and Moir, L. (2007) 'Does Business Ethics Pay?' Institute of Business Ethics. <http://www.ibe.org.uk>.

CIMA and ACCA, among others, each have codes of practice for members instructing them of the obligations under which they operate their trade and provide case study examples of how to act when faced with potentially unethical or questionable requests / practices. Broader standards, such as the International Federation of Accountants' Code of Ethics are often the benchmark which individual professional Codes adhere to. It is important to note that the Codes are a set of minimum standards in which the person is expected to act, rather than a set of standards that persons / organizations should aim to achieve. Indeed, CIMA's Code provides: 'It is also hoped that this Code will facilitate and inspire voluntary compliance with standards considerably higher than the required minimums.'

CIMA expects its employees (a representative of CIMA) to act at all times in a professional, ethical, compassionate manner. The employee's do so through acting in a competent, professional, diligent manner whilst maintaining open, honest communication with all and to keep in confidence information to which he/she is privileged. In so doing he/she fulfils the following obligations:

- providing our customers with professional service of excellence:
- assisting our customers in every way possible in constructing, developing, and maintaining a viable risk management/insurance program to aid in the growth and profitability of their operations; and
- respecting and working with fellow employees.

CIMA requires compliance with the Code and violation subjects the employee to proper disciplinary action (in accordance with employment legislation and the Advisory, Conciliation and Arbitration Service Code of Practice).

One of the main reasons why global ethical standards are often used as a framework for individual or national Codes of practice are because of the use of the 'conceptual framework approach.' As bodies such as CIMA have members working in the public and private sectors, each with their own challenges and methods of practice, precise definition of each eventuality which may possess an ethical dimension, or precise rules and regulation would be impractical and unworkable to construct and adhere to in many instances. Hence, this framework approach enables professionals such as accountants to identify potential threats, evaluate their potential scope and impact, and then to respond correctly in light of the broad principles established in the Code. Therefore compliance of the Code is achieved without technical and draconian regulations which need interpretation and consideration by legally qualified advisors. The greater the technical detail and drafting of rules, the more chance there is for escape through a 'loophole' or a possible defence. These 'broad aims' ensure the 'bigger picture' of compliance with professional standards and the 'spirit of the law' is at the forefront of compliance.

B.6 Ethical Dilemmas

An ethical dilemma is where one or more of the principles enshrined in the Code is threatened. As identified in the introduction to the chapter, an accountant may have discovered evidence of unethical, unlawful, illegal, fraudulent activity, malpractice generally in a workplace or by a colleague, or he/she could have been asked to do something or omit to take action which compromises their professional ethics.

In such circumstances, CIMA advises its members to adopt the following practice in resolving the dilemma in an ethical manner.

1 st Stage:	Gather Information: Ensure that as much evidence is gathered to inform you of the relevant facts and to determine whether your suspicions have any substance. It may be that you are correct in your concerns, it may equally be possible that you misunderstood or took facts out of context. How you will ultimately know is by fact-finding.
2 nd Stage:	Raise Matter Internally: It would be then appropriate, having gathered the information and had your concerns satisfied, that there is a potential ethical problem that requires further examination. Enquire as to internal whistleblowing procedures at the workplace, or contact the

personnel / human resources department to clarify grievance procedures that may be applicable. Someone with whom you have trust, a line manager or someone of this nature may be the person to pass your concerns to. If the organizational structure does not make this possible, it may be appropriate to take the matter to another, more senior manager, or perhaps even to the board of directors.

3rd Stage: **Raise Matter(s) Externally:** Where internal routes have been exhausted and you still have concerns either that the practice / issue is continuing or adequate steps have not been taken by senior managers to deal with the issue, you may wish to consider taking the matter externally. However, to protect your interests it may be advisable to obtain advice from an industry regulator, professional body or lawyer before embarking on this course of action.

Ultimately: **Remove Yourself from the Situation:** Where each of the stages have been followed and no effective resolution is achieved, it may be appropriate for you to remove yourself from the situation. This could be to leave the employment / contract – although this, naturally, is a significant course of action and should only be considered in the most extreme circumstances following professional legal advice. It could be that you ask to be moved to a different team / department, or perhaps you ask not work for a particular client, or indeed you ask to stop working on a particular report or request that your name is not associated with its conclusions. It is the outward sign of your distrust or unease with the activities of others that will establish a ‘paper-trail’ that can be used to defend yourself against any potential repercussions. Make sure, as far as is possible, that you keep records and get correspondence in writing. Tangible evidence may be very important in such circumstances.

Conclusion

This chapter has aimed to present some information to allow you to think about how business and ethics relate, the importance of ethical policies in the workplace generally, and how professional bodies govern the ethical behaviour of their members. Each professional body will have its own ethics and provide guidance and advice to its members on such issues. These are often based on common international standards (examples of the standards used by the ACCA are included in the Appendix to this chapter as way of an example). The standards ensure that good faith, respect and accountability are strongly encouraged through their membership, and they set a tone for how students and future accountants should behave in their professional lives. As demonstrated in Section 3, not only is following ethical standards seen as ‘doing the right thing’ it also has tangible financial benefits for the organization.

Appendix: Code of Ethics – ACCA

Section 3 Code of Ethics and Conduct ACCA

3.7 The ethical responsibilities of members in business

Introduction

1. Members in business owe a duty of loyalty to their employers as well as to their profession.
2. Members in business are bound by the same fundamental principles and the same standards of behaviour and competence as apply to all other members of ACCA. Members must therefore comply with the appropriate technical and professional standards relevant to their work. The "client" of an employed member is his employer.
3. The Introduction to the Code of Ethics and Conduct at [3.1](#), [3.2](#), The fundamental principles, [3.3](#), The conceptual framework, and [3.5](#), Professional duty of confidence in relation to defaults and unlawful acts of clients and others, are also of relevance to members in business and should be read in conjunction with this section.
4. All members, whether employed or not, are liable to disciplinary action under the bye-laws.
5. Investors, creditors, employers and other sectors of the business community, as well as governments and the public at large, may all rely on the work of members. Members may be solely or jointly responsible for the preparation and reporting of financial and other information, on which both their employing organisations and third parties may rely. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters, including reviewing internal controls.
6. Members may be salaried employees, directors (whether executive or non-executive), owner managers, consultants, partners, volunteers or others engaged in one or more employing organisation. The legal form of the relationship with the organisation in which they are engaged has no bearing on the ethical responsibilities incumbent on members.
7. Members have a responsibility to further the legitimate aims of their employing organisation. This Code does not seek to hinder members from properly fulfilling that responsibility, but considers circumstances in which conflicts may arise with their duty to comply with the fundamental principles.
8. In some cases, members working in the public sector may, by law or public expectation, need to maintain a degree of independence greater than that normally expected of an employee, and where this applies the guidelines should be interpreted accordingly.
9. Members often occupy senior positions within employing organisations. The more senior they become, the greater will be their ability and opportunity to influence events, practices and attitudes. Members in such positions are expected, therefore, to encourage an ethics-based culture in their employing organisations.
10. The following sections are intended to illustrate the application of the fundamental principles and the types of safeguards that can be implemented. These sections are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by members that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for members merely to comply with the examples; rather, they should apply the principles to the particular circumstances they face.
11. In circumstances where members in business believe that, after exhausting all relevant possibilities, the matter remains unresolved, members should, where possible, disassociate themselves from the matter. They may also consider whether, in the circumstances, it is appropriate to withdraw from the specific project or in extreme circumstances resign from the organisation in which they are engaged.

12. This section does not provide detailed advice on the legal obligations of members.

Independence

13. The concept of independence, which is central to the role of members in public practice, has no direct relevance to members in business, whose first duty is to their employer.
14. Independence is not an end in itself, it is merely a means of securing a more important result, namely an objective approach to work. The requirement for objectivity is of equal importance to all members.
15. Members in business cannot be fully independent of their employers and thus it is all the more important that they strive constantly to maintain objectivity in every aspect of their work.

Objectivity

16. Objectivity is described in section 3.2, The fundamental principles, as the state of mind which has regard to all considerations relevant to the task in hand but no other. It presupposes intellectual honesty.
17. It follows that the interests of a member's employer should no more affect the objectivity of a member's judgement in a professional matter than his/her own interests.

Integrity

18. Members in business must observe the terms of their employment. These cannot, however, require them to be implicated in dishonest transactions.
19. If members in business are instructed or encouraged to engage in any activity which is unlawful, they are entitled, and required, to decline.

Examples

Potential conflicts

20. Members have a professional obligation to comply with the fundamental principles. There may be times, however, when their responsibilities to an employing organisation and their professional obligations to comply with the fundamental principles are in conflict. Ordinarily, members should support the legitimate and ethical objectives established by their employing organisation and the rules and procedures drawn up in support of those objectives. Nevertheless, where compliance with the fundamental principles is threatened, members must consider their response to the circumstances.
21. As a consequence of their responsibilities to their employing organisation, members 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 organisation. As a result, members may find themselves under pressure to:
- (a) act contrary to law or regulation;
 - (b) act contrary to technical or professional standards;
 - (c) facilitate unethical or unlawful earnings management strategies;
 - (d) lie to, or otherwise intentionally mislead (including misleading by keeping silent), others, in particular
 - (i) those acting as auditors to the employing organisation; or
 - (ii) regulators;
 - (e) issue, or otherwise be associated with, a financial or non-financial report that materially misrepresents the facts, including statements in connection with, for example:

- (i) the financial statements;
 - (ii) tax compliance;
 - (iii) legal compliance; or
 - (iv) reports required by regulators.
- 22.** 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:
- (a) obtaining advice where appropriate from within the employing organisation, an independent professional advisor or a relevant professional body;
 - (b) the existence of a formal dispute resolution process within the employing organisation; and
 - (c) seeking legal advice.

Preparation and reporting of information

- 23.** Members are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include but is not limited to financial or management information, for example forecasts and budgets, financial statements, management discussion and analysis, and the management letter of representation provided to the auditors as part of an audit of financial statements. Members should prepare or present such information fairly, objectively, honestly and in accordance with relevant professional standards so that the information will be understood in its context.
- 24.** Members 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.
- 25.** Threats to compliance with the fundamental principles, for example self-interest or intimidation threats to objectivity, competence and performance, may arise where members may be pressurised (either externally or by the possibility of personal gain) to become associated with misleading information or to become associated with misleading information through the actions of others.
- 26.** Accordingly, members 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;
 - (c) has been prepared with bias; or
 - (d) omits or obscures information required to be included where such omission or obscurity would be misleading.
- 27.** 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 eliminate them or reduce them to an acceptable level. Such safeguards might include consultation with superiors within the employing organisation, for example the audit committee or other body responsible for governance, or with ACCA or another relevant professional body.
- 28.** Where it is not possible to reduce the threat to an acceptable level, members 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 3.5, Professional duty of confidence in relation to defaults and unlawful acts of clients and others. They may also wish to seek legal advice or resign.

Acting with sufficient expertise

- 29.** The fundamental principle of professional competence and due care requires that members should only undertake significant tasks for which they have, or can obtain, sufficient specific training or experience. Members should not intentionally mislead employers as to the level of expertise or experience possessed, nor should members fail to seek appropriate expert advice and assistance when required.
- 30.** Circumstances that may threaten the ability of members to perform their duties with the appropriate degree of professional competence and due care include:
- (a) insufficient time for properly performing or completing the relevant duties;
 - (b) incomplete, restricted or otherwise inadequate information for performing the duties properly;
 - (c) insufficient experience, training and/or education; and
 - (d) inadequate resources for the proper performance of the duties.
- 31.** The significance of such threats will depend on factors such as the extent to which members 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 eliminate them or reduce them to an acceptable level. Safeguards that may be considered include:
- (a) obtaining additional advice or training;
 - (b) ensuring that there is adequate time available for performing the relevant duties;
 - (c) obtaining assistance from someone with the necessary expertise; and
 - (d) consulting, where appropriate, with:
 - (i) superiors within the employing organisation;
 - (ii) independent experts; and
 - (iii) a relevant professional body, such as ACCA.
- 32.** Where threats cannot be eliminated or reduced to an acceptable level, members should consider whether to refuse to perform the duties in question. If members determine that refusal is appropriate, the reasons for doing so should be clearly communicated.

Financial interests

- 33.** Members may have financial interests, or may know of financial interests of immediate or close family members, that could, in certain circumstances, give rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or duty of confidentiality may be created through the existence of the motive and opportunity to manipulate price-sensitive information in order to gain financially.
- 34.** Examples include situations where the member or an immediate or close family member:
- (a) holds a significant direct or indirect financial interest in the employing organisation and the value of that financial interest could be directly affected by decisions made by the member;
 - (b) is eligible for a profit-related bonus and the value of that bonus could be directly affected by decisions made by the member;
 - (c) holds, directly or indirectly, share options in the employing organisation, the value of which could be directly affected by decisions made by the member;
 - (d) holds, directly or indirectly, share options in the employing organisation, the value of which are, or

will soon be, eligible for conversion; or

- (e) may qualify for share options in the employing organisation or performance-related bonuses if certain targets are achieved.
- 35.** 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, members 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 organisation will vary from individual to individual, depending on personal circumstances.
- 36.** If threats 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:
- (a) policies and procedures for a committee independent of management to determine the level or form of remuneration of senior management;
 - (b) disclosure of all relevant interests, and of any plans to trade in relevant shares, to those charged with the governance of the employing organisation, in accordance with any internal policies;
 - (c) consultation, where appropriate, with superiors within the employing organisation;
 - (d) consultation, where appropriate, with those charged with the governance of the employing organisation or relevant professional bodies such as ACCA;
 - (e) internal and external audit procedures; and
 - (f) up-to-date education on ethical issues and the legal restrictions and other regulations around potential insider trading.
- 37.** Members should neither manipulate information nor use privileged information for personal gain.

Inducements

Receiving offers

- 38.** Members or immediate or close family members may be offered an inducement intended to encourage unethical behaviour. Inducements may take various forms, including gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty.
- 39.** Offers of inducements may create threats to compliance with the fundamental principles. When members or their immediate or close family members are offered inducements, the situation should be carefully considered. Self-interest threats to objectivity or confidentiality are created where an inducement is 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 are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the member or an immediate or close family member.
- 40.** The significance of such threats will depend on the nature and value of the offer and the intent behind the offer. If a reasonable and informed third party, having knowledge of all relevant information, would consider the inducement insignificant and not intended to encourage unethical behaviour, then members may conclude that the offer is made in the normal course of business and may generally conclude that there is no significant threat to compliance with the fundamental principles.
- 41.** If evaluated threats are other than clearly insignificant, members should not accept the inducement. 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. Members should assess the risk associated with all such offers and consider whether the following actions should be taken:
- (a) where such offers have been made, immediately inform higher levels of management or those charged with governance of the employing organisation;

- (b) inform third parties of the offer – for example, a professional body (for example ACCA) or the employer of the individual who made the offer; members 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) inform higher levels of management or those charged with governance of the employing organisation where immediate or close family members are employed by competitors or potential suppliers of that organisation.

Making offers

- 42. Members may find themselves in situations where they are expected to, or are under other pressure to, offer inducements to subordinate the judgement of another individual or organisation, influence a decision-making process or obtain confidential information.
- 43. Such pressure may come from within the employing organisation, for example from a colleague or superior. It may also come from an external individual or organisation suggesting actions or business decisions that would be advantageous to the employing organisation, possibly influencing the member improperly.
- 44. Members should not offer an inducement to improperly influence the professional judgement of a third party.
- 45. Where the pressure to offer such an unethical inducement comes from within the employing organisation, members should follow the principles and guidance regarding ethical dilemma resolution set out in section [3.3](#), The conceptual framework.

Disclosing confidential information

- 46. Members should observe the principle of confidentiality. Confidentiality is the duty to keep private another person's information given or obtained in confidence. The duty of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Members should not disclose confidential information acquired or received in the course of their work unless they have a right or obligation to do so or they have received informed consent from their employer to whom the duty of confidentiality is owed.
- 47. The possession of confidential information may give rise to specific threats to confidentiality in certain circumstances. For example, the non-disclosure of confidential information in a member's possession may threaten compliance with the fundamental principles when members:
 - (a) are required by law to disclose information to the appropriate public authorities or suspected infringements of the law that come to light, for example in connection with anti-money laundering or anti-terrorist legislation;
 - (b) are required to produce documents or other provision of evidence in the course of legal proceedings;
 - (c) are permitted by law to disclose and are authorised by the organisation in which they are engaged;
 - (d) believe that confidential information should be disclosed in the public interest, for example where the employing organisation has committed, or proposes to commit, a crime or fraudulent act; or
 - (e) have 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 member in legal proceedings;

- (iii) to comply with the quality review of a professional body such as ACCA; or
- (iv) to respond to an inquiry or investigation by ACCA or a regulatory body.

Whistleblowing

48. 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 their employing organisation, members should always disclose that information in compliance with relevant legal requirements.
49. In some circumstances, members may consider disclosing information outside the employing organisation, when not obligated to do so by law or regulation, because they believe it would be in the public interest. When considering such disclosure, members should, where appropriate, follow the internal procedures of the employing organisation in an attempt to rectify the situation. If the matter cannot be resolved within the employing organisation, members should consider the following:
- (a) legal constraints and obligations;
 - (b) whether members of the public are likely to be adversely affected;
 - (c) the gravity of the matter, for example the size of the amounts involved and the extent of likely financial damage;
 - (d) the possibility or likelihood of repetition;
 - (e) the reliability and quality of the information available; and
 - (f) the reasons for the employing organisation's unwillingness to disclose matters to the relevant authority.
50. In deciding whether to disclose confidential information, they should also consider the following points:
- (a) when the employer gives authorisation 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 this is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement should be used in determining the type of disclosure to be made, if any;
 - (c) the type of communication that is expected and to whom it is addressed; in particular, members should be satisfied that the parties to whom the communication is addressed are appropriate recipients; and
 - (d) the legal or regulatory obligations and the possible implications of disclosure for the member.

Advisory Services

51. Members in business faced with an ethical problem may call upon the Advisory Services Section within ACCA for confidential advice.
52. Members are also referred to guidance ACCA has issued for members in business to assist them in discharging their professional obligations. This can be viewed at http://www.accaglobal.com/members/professionalstandards/rules_standards/guidelines.
53. There are also independent organisations which have been established to provide support for employees troubled by ethical dilemmas at work, such as Public Concern at Work (www.pcaw.co.uk) in the United Kingdom, which can provide more detailed guidance on the requirements of the whistleblowing legislation.
54. Guidance for non-executive directors may be obtained from ACCA's corporate governance resource at <http://www.accaglobal.com/publicinterest/activities/library/governance/>.



Section 3 Code of Ethics and Conduct

3.9 Whistleblowing responsibilities placed on auditors

Introduction

1. In certain circumstances, auditors may be required to report to the appropriate regulator if a client has not complied with any law or regulation or if any other matters occur which give rise to a reporting obligation. For example, auditors of financial institutions which are subject to statutory regulation in the United Kingdom are required to report to the regulator any information which may be of material significance to that regulator, such as the client's breach of a regulation or a serious downward turn in the client's financial position.
2. Auditors must ensure that they are aware of the requirements identified in the relevant local legislation and regulatory frameworks which assist them in identifying matters that should be reported.
3. Failure to report may constitute an offence and could render an auditor liable to fines or even imprisonment.
4. Members are referred to the International Standards on Auditing or the equivalent standards of the country in which the member practises for further detail as to the types of non-compliance that must be reported and the appropriate authorities to whom reports should be made.

Whistleblowing duty: non-compliance with law or regulation

5. Where auditors become aware of a suspected or actual non-compliance with law and regulation, which gives rise to a statutory right or duty to report, they should report this to the proper authority immediately.
6. Save where paragraph 7 applies, where auditors become aware of a suspected or actual non-compliance with law or regulation and they conclude that it is a matter that should be disclosed in the public interest, they should notify the directors, trustees, etc. in writing of their view. If the entity does not voluntarily make a disclosure of the default, or is unable to provide evidence that the matter has been reported, they should report it themselves to the proper authority.
7. Where there is a real risk that disclosure to the directors or trustees might prejudice any investigation or court proceedings or is proscribed by law (for example in the UK where it might constitute the offence of "tipping off") and auditors become aware of a suspected or actual non-compliance with law or regulation, they should make their report to the proper authority without delay and without first informing the directors, trustees, etc. Occasions when disclosure may give rise to prejudice include where the disclosure is of a matter which casts doubt on the integrity of the directors, trustees, etc., or their competence to conduct the business of the regulated entity and which gives rise to a statutory duty to report.

Circumstances indicating non-compliance with law or regulation

8. Auditors should have a general understanding of the laws and regulations that are central to an entity's ability to carry out its business.
9. The laws and regulations affecting companies may vary from country to country. The following examples (a) to (d), whilst not exhaustive, highlight some circumstances where an entity may be in breach of a law or regulation under UK law:
 - (a) an entity whose main activity is the development of a single property should be complying with the appropriate planning regulations (including planning permission);
 - (b) an entity whose main activity is waste disposal should hold the relevant licences to allow it to

dispose of hazardous waste;

- (c) an entity whose main activity is financial services work, such as investment business, should hold appropriate authorisation to undertake this type of activity;
- (d) when undertaking an audit of a pension scheme, auditors need to ensure that they understand concepts such as the minimum funding requirement, the contributions schedule etc., since they will be required to report any breach of the scheme's rules, that is material to the regulator, to the proper authority.

Professional duty of confidence

- 10.** Disclosure by an auditor shall not constitute a breach of any obligation of confidence imposed by the fundamental principle of confidentiality provided that:
- (a) disclosure is made in the public interest;
 - (b) disclosure is made to a proper authority; and
 - (c) there is no malice motivating the disclosure; or
 - (d) disclosure is made under compulsion of law.
- 11.** Auditors are reminded that the duties of confidence owed to clients are also questions of law and that the law may vary from country to country. Auditors should take legal advice before making a decision on whether a disclosure of a suspected or actual non-compliance with law or regulation should be made to a proper authority in the public interest.

Method of reporting

- 12.** Auditors making a disclosure of a suspected or actual non-compliance with law or regulation directly to a proper authority should ensure that their report includes:
- (a) the name of the entity;
 - (b) the statutory authority under which the report is made;
 - (c) the auditing standard under which the report has been prepared;
 - (d) the context in which the report is made;
 - (e) the matters giving rise to the report;
 - (f) a request that the recipient acknowledge that the report has been received; and
 - (g) their name and the date on which the report was written.

Whistleblowing duty: other matters of material significance

- 13.** Members should familiarise themselves with and comply with the law. Auditors not only have a professional duty but may also have a statutory duty to report directly to regulators where, in the course of their work, they become aware of matters that are, or are likely to be, of material significance in determining either, by way of illustration, in the UK:
- (a) whether a person is a fit and proper person to carry on the regulated work; or
 - (b) whether disciplinary action should be taken, or powers of intervention exercised, in order to protect clients against significant risk of loss.
- 14.** The following circumstances may require auditors to make a report:
- (a) when there has been an adverse change in the circumstances of the business;
 - (b) where an event has resulted in a material loss or loss of control over the assets or records which would impact on the entity's ability to adhere to the rules and regulations for the conduct of the

regulated business; and

- (c) where the financial position of the entity is such that clients' interests might be better safeguarded if the matter were reported to the regulator.

15. Auditors of certain entities may be required to report directly to regulators where they discover non-compliance with law or regulation.

Non-audit assignments

16. Whilst the whistleblowing responsibilities outlined above apply to auditors, members should bear in mind the foregoing guidance for non-audit situations.
17. Where members become aware of a suspected or actual non-compliance with law or regulation, they should consider its impact on the reporting entity. Members have a professional duty to ensure that all accounts/returns that they are party to are not in any way incorrect or misleading.
18. Where members become aware of irregularity and the client does not take steps to correct it and notify the proper authority, they should not only consider their position but whether they should make voluntary disclosure to a third party. Before making any disclosure, members should consider taking legal advice and are referred to section [3.5](#), Professional duty of confidence in relation to defaults and unlawful acts of clients and others, for further guidance.