

Shades of grey

Anne Davis explains how IFA members can identify and manage potential conflicts of interest.



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TEN SECOND SUMMARY

- 1 Act within the law and professional ethical requirements to resolve conflicts of interest.
- 2 The Code of Ethics does not prohibit members from undertaking engagements when different client interests conflict.
- 3 Fundamental principles and effective safeguards must be applied.

We have recently received some queries relating to identifying and managing conflicts of interest, particularly from members engaged in public practice. This is not surprising given such members represent more than one client. They are, therefore, more likely to come across situations in which client engagements conflict with the interests of other clients or the interests of the public practice firm. That's not to say that members in business don't also experience conflicts of interest – they do. What is important is that, as long as members act within the law and their professional ethical requirements, these conflicts of interest can generally be resolved by discussion and disclosure with their employer.

This article is aimed at helping members in public practice to identify and manage conflicts of interest. However, some of the guidance may also be helpful to business members.

IFA's Code of Ethics

The IFA's Code of Ethics, which follows that of the International Federation of Accountants (IFAC), does not prohibit members from undertaking engagements when different client interests conflict. This is as long as particular effective safeguards are applied and, generally, informed consent from the clients is obtained. However, on occasion, the threats to objectivity due to a conflict of interests and the duty referred to above may

be of such significance that adequate safeguards cannot be established. In such cases, members will not be able to act for one or more clients.

When analysing a potential conflict of interest, consideration must be given to whether actions, relationships or circumstances might lead to threats to the fundamental principles. If necessary, safeguards must be applied to eliminate the threats or reduce them to an acceptable level. Safeguards are necessary if a professional accountant determines that threats to compliance with the fundamental principles are not acceptable. In these circumstances they must determine the appropriate and available safeguards and how these can be applied to eliminate threats or reduce them to an acceptable level. To assess what is acceptable, the member should take account of what a reasonable and informed third party would be likely to conclude is acceptable, weighing all the specific facts and circumstances available at the time.

Basic principles

As a reminder, the fundamental principles that must be adhered to are as follows.

- *Integrity.* To be straightforward and honest in all professional and business relationships.
- *Objectivity.* Not to allow bias, conflict of interest or undue influence of others to override professional or business judgements.
- *Professional competence and due care.* To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. Further, to act diligently and in accordance with applicable technical and professional standards.
- *Confidentiality.* To respect the confidentiality of information acquired as a result of professional and business relationships. Such information must not be disclosed to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose.



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Nor should the information be used for personal advantage or that of third parties.

- *Professional behaviour.* To comply with relevant laws and regulations and avoid any conduct that discredits the profession.

Threats to the fundamental principles can fall into the following categories:

- *Self-interest.* The threat that a financial or other interest will inappropriately influence judgement or behaviour.
- *Self-review.* The threat that the results of a previous judgement, activity or service performed personally or by the firm or employing organisation, on which reliance will be based when forming a judgement as part of performing a current activity or providing a current service, will not be evaluated appropriately.
- *Advocacy.* The threat that a client's or employer's position will be promoted to the point that objectivity is compromised.
- *Familiarity.* The threat that, due to a long or close relationship with a client or employer, the adviser will be too sympathetic to their interests or too accepting of their work.
- *Intimidation.* The threat that the practitioner will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over them.

Actual or potential conflicts of interest

The IFA's code includes specific guidance on conflicts of interest for members in public practice and members in business in section 220 and section 310 respectively. In most cases, it will be obvious if there is an actual or potential conflict of interest. Such matters are likely to be identified at the beginning of the engagement or sometimes throughout it when there are changes in circumstances that create a new conflict or change the nature of an existing conflict.

Examples of potential conflicts of interest that arise include the following.

- Providing accounting and/or assurance reports to a client where the adviser has a financial or benefit-in-kind interest.
- Providing bookkeeping services, having day-to-day involvement with a charity or close relationships with trustees and acting as an independent examiner for a charity.
- Advising two clients at the same time who are competing to acquire the same company where the advice might be relevant to the clients' competitive positions.
- Representing two clients on the same matter when they are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership.
- Advising a client to invest in a business in which, for example, the spouse of the member in public practice has a financial interest.

Sometimes, identifying who the client in an engagement is can be tricky especially if multiple stakeholders are involved. For example, there may

be many legal entities in a group with different interests or the instructions being received from an individual represent a shareholder or their own personal interests which differ from the corporate client interests.

It is important to identify the client, their expectations and what the engagement is to avoid potentially misleading a client or clients. The practitioner should be acting in the best interests of the client not the person providing the instructions.

It is also important to note that assessments of actual or potential conflicts of interest may change as new facts or circumstances are disclosed or the engagement changes. Therefore, it is important that assessments relating to conflicts of interest are undertaken throughout the engagement as part of the client review meetings as well as at the beginning of the engagement.

Managing conflict of interests

The Code of Ethics does not prohibit a member from acting in situations in which there are conflicts. However, if these generate potential threats, particularly to objectivity, the code does require safeguards to be applied.

Actual or potential conflicts of interest might be managed in the following ways.

- Obtaining informed consent from clients to continue the engagement, particularly in situations involving adversarial interests. If consent has been sought and not given by the client, the member must cease to act.
- Applying safeguards such as:
 - conducting the engagement by different individuals or teams and setting up information barriers between them;
 - obtaining a review or approval of the adviser's work by someone in the firm who is independent of the matter; and
 - obtaining a consultation or review from a third party.

More detailed guidance on safeguards for members in practice and business is available in section 220 and section 310 of the code. It must be remembered that, on occasions, actual or potential conflicts cannot be managed. For example, this might be if there is a legal or regulatory requirement regarding particular engagements, such as independent examinations.

Documentation

If there are ethical matters to be considered, IFA members are strongly encouraged to document their reasoning and evidence of their assessment of any threats and safeguards to the fundamental principles. The conflict resolution framework included in part A of the code may help provide a framework and guidance for how members may want to consider documenting such matters. Although not documenting the considerations and steps that have been taken is not evidence of professional misconduct, having such documentation may provide a defence should a complaint be lodged with the IFA.

FURTHER INFORMATION

Further information on the Code of Ethics is available at: tinyurl.com/mxbbe5w and tinyurl.com/ycttkd6u