

Briefing Memo: IESBA CAG – Part II

September 11, 2023

New York, USA

Disclaimer: This memo is prepared by PIOB staff, in advance of the SSB/CAG meeting, applying their best knowledge and their own judgement in identifying and communicating matters of public interest and due process. PIOB Staff views are discussed with the PIOB observer and the PIOB Board and do not pre-empt further PIOB's views or discussions. The main objectives of this memo are to support the PIOB member in his/her SSB/CAG meeting observation and to help maintaining consistency and continuity of oversight.

The Agenda includes the following topics:

- D – TAX PLANNING
- F – STRATEGY AND WORK PLAN

D – TAX PLANNING AND RELATED SERVICES

Objective of the project: The objective of the project is to develop a principle-based framework, leveraging the fundamental principles and the conceptual framework, to guide professional accountants' (PAs) ethical conduct when providing tax planning and related services (TP) to employing organizations and clients.

Background and status: The IESBA approved the project proposal in September 2021 and the exposure draft in December 2022. The IESBA discussed a high-level summary of comments received during the June 2023 meeting and will discuss the full comments and revised proposals during the September 2023 meeting. The TF will ask CAG representatives for feedback on the proposed revisions.

The approval of the final pronouncement is targeted for December 2023.

Notes/key points from the review of the documentation for this meeting

The Presentation (item D-1) summarizes key comments received from respondents to the ED and TF's proposed recommendations to address them. The TF has also provided the revisions to the proposals marked up from the ED (items D-2 for Section 380, and D-3, for Section 280).

The consultation received 49 comment letters¹, none of them from MG members and only one from an IFIAR member (IRBA). Comments from tax professional organizations and regulators (outside PA organizations) were received from the Tax Practitioners Board of Australia, the European Tax Adviser Federation and the Taxation Institute of Hong Kong. Nevertheless, the majority of the comment letters (89%) came from the profession (PAOs and Firms).

The PIOB Staff reviewed a sample of comment letters and identified a number of key comments and recommendations², that are consistent with those reported in the presentation (Item D-1). Main comments relate to: Description of Tax planning and of Related Services, role of the PA to act in the public interest, credible basis, stand-back test, disagreements and documentation.

The TF is proposing reviews to the ED to clarify the scope and descriptions, align terminology with proposals from the Use of experts project, clarify the process to determine whether there is credible basis, including a new requirement to reassess the determination if circumstances change (R380.12), and clarify the provisions on disagreements and the stand-back test. No revisions are proposed related to documentation (only encouraged, not required).

Public Interest Issues

Please refer to the [PIOB PI Issues on IESBA projects](#) on the Tax planning project, as of June 2023, published in the PIOB website.

PIOB Staff comments on PI

As noted in our PI issues and previous Briefing and Observation Memos, overall, the proposed ethical framework for TP services provided by PAs addresses the objectives set out in the project proposal and meets PIOB recommendations, in particular the stand-back assessment that considers "the reputational, commercial, and wider economic consequences".

¹ The Cover note (item D) includes an appendix with 48 respondents. The difference is due to a late submission from GSM Law LLP (Singapore) on August 18, 2023, included in the IESBA website.

² Refer to [BM IESBA June 2023](#) for description of key comments and recommendations.

The revisions proposed by the TF are responsive to comments from stakeholders, addressing key concerns and challenges raised, without reducing ethical requirements. This is a welcome approach, as some respondents had suggested that the provisions would create unfair competition from other “unregulated” tax professionals. Given recent tax related scandals affecting accounting firms, the Tax planning provisions provide a strong ethical framework for PAs and the accounting profession (PAOs, firms, regulators, etc.) to ensure high quality services and gain public trust.

The PIOB had also recommended some additional considerations, such as requiring documentation or strengthening the communication/transparency requirements with external parties. These recommendations have also been raised by some of the respondents, however there are no proposed revisions to address these concerns.

Regarding the participation of a broad range of stakeholders (as set out in the PIF), in our prior comments, the PIOB had encouraged the IESBA to carry out further targeted outreach to obtain input from stakeholders beyond the accounting profession, such as tax regulators, international organizations (e.g., OECD) and other tax professionals. The recommendation to continue the targeted outreach is still relevant, since the representation from organizations beyond the accounting profession was quite limited. We welcome the outreach carried out to date and encourage IESBA to continue the relationship with other tax professional organizations to encourage them to develop ethical codes for tax professionals that are equivalent or based on the proposed provisions.

As noted in Part I of the BM, the IESBA Planning Committee is proposing a new work stream on firm culture and governance in light of responses to the SWP consultation which raised concerns about high-profile unethical behavior in the firms. It appears important in the public interest to give consideration to how relevant the proposed new Tax Planning provisions could have been if already adopted in the specific cases of unethical behavior at both national firm and international network level relating to tax matters. It is recognized that the full facts of the relevant cases may not be available for some time, but there appears to be an opportunity to draw on initial evidence generated through Parliamentary Inquiries in Australia and draw some reflections which are relevant for principles-based standard-setting.

F - 2024-2027 STRATEGY AND WORKPLAN

Objective: The IESBA needs to finalize its upcoming 2024-2027 Strategy and Work Plan (SWP).

Background and Status: The Consultation Paper (CP) of the 2024-2027 SWP closed its comment period on July 7, 2023. Comments from respondents will be analyzed and discussed by the IESBA at its September 2023 meeting, taking into account the CAG's input. At the September meeting, there will be a joint session with the IAASB to discuss the SWPs of both SSBs. As with the IAASB, the IESBA intends to approve the final document in December 2023.

Notes/key points from the review of the documentation for this meeting

The CAG is provided with a cover note summarizing the overall IESBA procedural approach including the role of the Planning Committee which is leading the work (Agenda Item F) and a presentation analyzing feedback to the consultation and the Planning Committee's proposals (Agenda Item F-1).

In the documentation made available for the IESBA meeting there is additional documentation, namely a Summary of Significant Comments on the Consultation Paper and the Planning Committee's Proposal and a marked-up (i.e. revised) version of the SWP for the IESBA's detailed discussion. Some of the comments in this Briefing Memo draw from these documents.

The 2024-2027 IESBA SWP Consultation Paper generated 44 comment letters, split among the following stakeholder groups: 36 from accounting firms, IFAC/PAOs and regional profession groupings; 2 from NSS; and 7 from MG members, regulators and oversight bodies. The MG member responses were from IFIAR and IOSCO. The IESBA acknowledges that it did not receive any responses from other stakeholder groups, for example investors and those charged with governance – but refers to having received useful input from prior engagements as part of its ongoing outreach initiatives. No specific details of this input have been given at this stage.

The consultation generated overall support for the SWP and, within this, a number of comments and suggestions. There is strong support for the developing ethics and independence standards for sustainability reporting and assurance – the CAG presentation notes that all preparers of sustainability should adhere to a high standard of ethical behavior. Among the other stand-out feedback points are: calls for IESBA to consider the issue of audit firm culture and governance - this in light of what are referred to as high profile "ethical lapses" and "ethical breaches" – terminology which potentially could be more plainly stated as "unethical behavior". The ongoing impact of technology is recognized; the importance of PIRs receives considerable attention and there is strong support for IESBA's external engagement with stakeholders and coordination with standard-setters.

Some of the key points and concerns³ from MG members and other regulators are as follows:

IOSCO strongly supports the careful monitoring of new and emerging issues, citing not only sustainability and technology but also recent corporate and audit failures, noting that IESBA should seek to relocate resources to some degree as per need and should intensify efforts to enhance the quality and clarity of the Code, and thereby assist global adoption. Reference is also made to the potential addition of an “expedited process” to the IESBA standard-setting tool kit. IOSCO also strongly encourages IESBA to pursue benchmarking work with national regimes in order to better understand gaps.

IOSCO regards the profession-agnostic sustainability-related work and the related project on use of experts as high priority. In terms of new projects, IOSCO calls for the prioritization of audit firm-audit client relationship, to include also the reconsideration of the network definition – the latter being viewed as a narrow scope project. IOSCO also reiterates its calls from earlier submission on perceived shortcomings in the Code with respect to materiality-based premises for the loans to and close business relationships with an audit client. In other areas, IOSCO reiterated its concerns about the inadequacy of some safeguards in cases of the provision of non-assurance services to assurance clients.

Finally, IOSCO expresses support for the suggested PIRs in the pre-committed work streams and suggests adding an accelerated PIR in relation to the sustainability standard-setting projects. IOSCO calls for a general intensification of PIR efforts.

IFIAR expressed support for the SWP, stressing as per previous comments that the sustainability project must not be pursued at the expense of ethics and independence standards for accountants in other areas. IFIAR encourages IESBA to pursue ethical requirements for assurance on sustainability information which are “at least equivalent” to those for financial statements. IFIAR also encourages IESBA to look beyond the ISSB and engage in other national or regional standard-setters.

IFIAR comments that the recent “ethical breaches” at firms re-enforce IESBA’s importance. IFIAR emphasizes the importance of monitoring existing provisions in force and learning from this to pursue further enhancements. IFIAR called for further clarification on how IESBA will promote use of the standards outside of non-PAs.

With respect to the new proposals in the SWP, IFIAR called for greater focus on the expected outcomes of the projects. In this context and in similar vein to IOSCO, IFIAR

³ This is just a selection from PIOB staff and does not imply completeness.

sees the need to add prohibitions to the existing threats and safeguards where non-audit services are concerned.

An indication of some key comments from other respondents are as follows:

- NASBA expresses concerns about practitioners outside of PAs, specifically raising questions about requisite skills and oversight and noting that the SEC is still to decide what non-CPAs are authorized to do with regard to sustainability reports. It is a recurrent theme in responses from the profession.
- The APESB (Australia) calls for a systemic or holistic analysis of the trust crisis to be performed, noting that the ethical failures relate to the firms in Australia, US and Canada (not only in the tax area, as being investigated by the Australian Parliamentary Committee).
- The CEAOB emphasizes that, while ethical provisions on sustainability assurance engagements are required for non-PAs as well as PAs, as well as on the use of experts, the work in these areas must not lead to any weakening of the Code with respect to auditors.

In relation to the Planning Committee's responses, the following are some of the most significant points which stand out as new and especially relevant:

- A workstream on "Firm Culture and Governance" will be added as part of the strategic drivers and themes: coordination with the IAASB is foreseen due to the requirements of ISQM1.
- More consideration is needed on the point concerning all preparers adhering to a high standard of ethical behavior – and that this is explored in the next strategy period. We presume this to mean that, while IESBA will be attentive broadly to developments, it will not actively explore until 2028. See comments under PI section below.

More specifically, the Planning Committee is proposing the following in relation to projects and work streams of greatest focus to the PIOB at the current time:

- *Ongoing projects (Table A):*
 - o *Sustainability Work streams 1 and 2 and Use of Experts to proceed as planned with ED expected in Q1 2024; CIV, Pension Funds and Investment Company to proceed ("cautiously") and PIR-NOCLAR to be pursued as information gathering.*
- *Pre-committed Work Streams (Table C):*
 - o *All work streams to be included in the SWP, but no acceleration for the PIR for sustainability, NAS and fees and technology. PIE Definition and Restructured Code to go ahead [the CAG presentation is not fully clear on this in relation to timing, but IESBA meeting documentation refers to 2025 for the former and 2027 for the latter].*

- Potential Work Streams (Table B):
 - o *The following prioritization is to be pursued: Role of CFOs and other senior PAIBs; Business relationships; Audit firms-audit clients relationships; Definitions and Description of Terms. Custody of data and Communication with those charged with governance are considered lower priority.*
 - o *It is noted that the work streams will not automatically result in standard-setting projects.*
 - o *As noted, the intention is to include the “Firm culture and governance” as a new workstream but it is still to be clarified how this will impact the above priority list.*

Public Interest Issues

Please refer to the [PIOB PI Issues on IESBA projects](#) as of June 2023, published on the PIOB website.

PIOB Staff comments on PI

While recognizing the PI comments as of June, (ensuring integrity and trust in the preparation of sustainability information do, in some respects, go beyond matters of ethics), it appears worthwhile to question whether the Planning Committee’s proposal to defer detailed consideration of the ethical behavior of non-PAs until 2028 is the most appropriate decision when the relevance of sustainability information is so high for the public interest. This may need to be reconsidered before the SWP is finalized in December 2023.

In a system of principles-based standard-setting, it would appear feasible to pursue amendments and/or additions to the Code relevant to sustainability reporting which are clear and accessible, and profession-agnostic, to the greatest degree possible. Adopting a principles-first approach appears possible even without prior agreement among the enforcement community – and indeed could enhance the engagement with the enforcement community.

To pursue, on the contrary, changes to the Code with the distinct perspective in mind that the standards being prepared are only for PAs would only render less likely their use by the wider groups of preparers outside of PAs. Moreover, there is a risk that deferring to 2028 will mean that IESBA has missed a key opportunity. In this context, it may be worth further encouraging reflection by the CAG and IESBA on this point,

weighting in the feedback received from previous outreach, roundtables and Consultation Paper.

The proposals in the revised SWP document (item I-2) need to be discussed at the IESBA September meeting as they now reflect the recommendations of the Planning Committee, in response to comments to the CP.

The SAC will replace the CAG and its input will be, in principle, more strategic. Nevertheless, the CAG's input is one important part of the due process, as the CAG has been involved in the projects which are underway and which will be completed by the end of 2024.

The joint session with the IAASB will be an important element to consider as well, as the two SWPs are now aligned in terms of timeline and require close cooperation between the two SSBs, for the several topics overlapping (e.g. sustainability, use of experts, etc.) and the consistency expected in the outcome of their projects.

The IESBA will need to update the table of the potential new projects which may start in the 2024-2027 cycle (Table B in the SWP document), on the basis of its discussion at the September meeting and the priorities expressed by respondents on the different projects.