

SECTION 220

Conflicts of interest

- 220.1 A professional accountant in public practice shall take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may create threats to compliance with the fundamental principles. For example, a threat to objectivity may be created when a professional accountant in public practice competes directly with a client or has a joint venture or similar arrangement with a major competitor of a client. A threat to objectivity or confidentiality may also be created when a professional accountant in public practice performs services for clients whose interests are in conflict or the clients are in dispute with each other in relation to the matter or transaction in question.
- 220.2 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level. Before accepting or continuing a client relationship or specific engagement, the professional accountant in public practice shall evaluate the significance of any threats created by business interests or relationships with the client or a third party.
- 220.3 Depending upon the circumstances giving rise to the conflict, application of one of the following safeguards is generally necessary:
- (a) Notifying the client of the firm's business interest or activities that may represent a conflict of interest and obtaining their consent to act in such circumstances; or
 - (b) Notifying all known relevant parties that the professional accountant in public practice is acting for two or more parties in respect of a matter where their respective interests are in conflict and obtaining their consent to so act; or
 - (c) Notifying the client that the professional accountant in public practice does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service) and obtaining their consent to so act.
- 220.4 The professional accountant shall also determine whether to apply one or more of the following additional safeguards:
- (a) The use of separate engagement teams;
 - (b) Procedures to prevent access to information (e.g., strict physical separation of such teams, confidential and secure data filing);
 - (c) Clear guidelines for members of the engagement team on issues of security and confidentiality;
 - (d) The use of confidentiality agreements signed by employees and partners of the firm; and

(e) Regular review of the application of safeguards by a senior individual not involved with relevant client engagements.

(f) *advising one or more clients to seek additional independent advice.*

220.5 Where a conflict of interest creates a threat to one or more of the fundamental principles, including objectivity, confidentiality, or professional behavior, that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant in public practice shall not accept a specific engagement or shall resign from one or more conflicting engagements.

220.6 Where a professional accountant in public practice has requested consent from a client to act for another party (which may or may not be an existing client) in respect of a matter where the respective interests are in conflict and that consent has been refused by the client, the professional accountant in public practice shall not continue to act for one of the parties in the matter giving rise to the conflict of interest.

220.7 *Any decision on the part of a sole practitioner shall take account of the fact that the safeguards at (a) to (e) of paragraph 220.4 above will not be available to him/ her. Similar considerations apply to small firms.*

Conflicts between professional accountants' and clients' interests

220.8 *A professional accountant in public practice shall not accept or continue an engagement in which there is, or is likely to be, a significant conflict of interest between the professional accountant and the client.*

220.9 *Any form of financial gain which accrues or is likely to accrue to a professional accountant in public practice as a result of an engagement, or as a result of using information known to him/her about a client, will always amount to a significant conflict of interest between the professional accountant and the client unless the financial gain is declared under the provisions of paragraph 220.11 below.*

220.10 *Whether any other form of interest is such as to amount to significant conflict will depend on all the circumstances of the case.*

Commission and other financial gains

220.11 *Where any commission, fee, reward or other financial gain is received by a firm or anyone in the firm, in return for the introduction of clients, as a result of advice or other services given to clients, or as a result of using information known about clients, the professional accountant in public practice shall, when necessary, establish safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards shall generally include:*

(a) *disclosing to the client in writing any arrangement to receive a referral fee, both of the fact that such commission, fee, reward or other financial gain will be or has been received and, as soon as practicable, of its amount and terms; and*

(b) *obtaining advance agreement from the client for any referral arrangement in connection with the sale by a third party of goods or services to the client.*

220.12 *The provisions in paragraph 220.11 apply to any commission, fee, reward or other financial gain received, whether it relates to a single transaction concerning a client or more than one client, or a series or group of transactions concerning a client or more than one client. For the avoidance of doubt, this includes “override” commission, whereby in some jurisdictions commission may be earned if the number of financial products of a particular type sold by a professional accountant in public practice reaches a certain level.*

220.13 *Where the commission, fee, reward or other financial gain results from advice given to a client, special care shall be taken that the advice is in fact in the best interests of the client.*

Agency work

220.14 *The acceptance by a professional accountant in public practice of an agency for the supply of services or products may present a conflict of interest which threatens compliance with the fundamental principles.*

220.15 *Before accepting or continuing an agency, a professional accountant shall satisfy himself/herself that:*

(a) *his/her compliance with the fundamental principles would not be compromised; and*

(b) *such acceptance or continuance would not be rendered inappropriate by the nature of the services he/she is to provide under the agency, or the manner in which those services may be brought to the attention of the public.*

220.16 *In this section, references to “clients” are references to clients of the firm. A person does not become a client of the firm merely by virtue of being a customer or member of the organisation for which the firm is an agent. However, where the firm provides advice to such a person (whether gratuitously or for a fee) that person may become a client of the firm.*

Conflicts between the interests of different clients

220.17 *There is, on the face of it, nothing improper in a firm having two or more clients whose interests may be in conflict, provided the work that the firm undertakes is not, itself, likely to be the subject of dispute between those clients.*

220.18 *In such cases, however, the firm’s work shall be so managed as to avoid the interests of one client adversely affecting those of another.*

220.19 *Where the acceptance or continuance of an engagement would, even with safeguards, materially prejudice the interests of any client, the appointment shall not be accepted or continued.*

220.20 *Such prejudice might arise in a variety of ways, including the leakage of information from one client to another and the firm being forced into a position where it has to choose between the interests of different clients.*

Managing conflicts between clients' interests

- 220.21 *All reasonable steps shall be taken to ascertain whether any conflict of interest exists, or is likely to arise in the future, both in regard to new engagements and to the changing circumstances of existing clients, and including any implications arising from the possession of confidential information.*
- 220.22 *Relationships with clients and former clients need to be reviewed before accepting a new appointment and regularly thereafter.*
- 220.23 *Where a professional accountant in public practice becomes aware of possible conflict between the interests of two or more clients, all reasonable steps shall be taken to manage the conflict and thereby avoid any adverse consequences.*
- 220.24 *Relationships which ended over two years before are unlikely to constitute conflict. The nature of the engagement is relevant in this connection. (Professional accountants in public practice are referred to Section B12, Corporate finance advice including take-overs.)*

Conflicts between the interests of professional accountants and firms

- 220.25 *A professional accountant in public practice obtaining confidential information as a result of his/her role as principal or employee of a firm shall not use, or appear to use, that information for his/her personal advantage or the advantage of a third party.*
- 220.26 *Such a requirement shall generally be incorporated in the partnership agreement or contract of employment. However, before incorporating such a requirement into the partnership agreement or contract of employment, professional accountants are strongly recommended to seek legal advice.*

Disengagement

- 220.27 *Wherever a professional accountant in public practice is required to disengage from an existing engagement, he/she shall do so as speedily as is compatible with the interests of the clients concerned.*