

ORDRE DES EXPERTS-COMPTABLES
LUXEMBOURG

PROFESSIONAL GUIDANCE
CODE OF ETHICS- CODE DE DEONTOLOGIE

This professional guidance has been adopted by the June 27th, 2005.

ACKNOWLEDGEMENTS

OEC is addressing special thanks to organisations and members of the OEC working party who have helped make this comprehensive code of ethic a reality.

Special appreciation is extended to the following organisations:

- International Federation of Accountant Committee ("IFAC") for authorising the reproduction of the IFAC Code of Ethics which forms the basis of the volume 1 of the present document,
- Institut des Réviseurs d'Entreprises- Luxembourg for providing the OEC Commission with its own text called "Code of Ethics" which also forms a basis of the present document,

and to the OEC Commission "Ethique et Indépendance" itself.

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INDEX

FOREWORD

VOLUME 1

- IFAC Code of Ethics for Professional Accountants

VOLUME 2

- Applications to Luxembourg

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FOREWORD

The "Ordre des Experts-Comptables" (hereafter "OEC") has decided to reinforce its standards of ethics and integrity in order to respond to the constantly changing environment in which professional accountants operate. A clear Code of Ethics is necessary to demonstrate the commitment of the profession to work in the public interest. OEC is of the opinion that the IFAC Ethics Code allows the effective achievement of this objective and, as a consequence, has decided to refer to it.

OEC is in favor of an overall principle-based approach with regard to independence. A principle-based approach to professional accountants' independence is preferable to one based on detailed rules because it creates a robust structure within which professional accountants have to justify their actions. It also provides the profession with the flexibility to react promptly and effectively to new developments in business. At the same time, it avoids the highly legalistic and rigid approach to what is and is not permitted, which can arise in a rule-based regime. A principle-based approach can cater for the almost infinite variations in individual circumstances that arise in practice.

A specific section (volume 2) has been written with the aim of assisting professional accountants in applying the IFAC Code of Ethics in a Luxembourg context.

The OEC is aware that the provisions of the present code may raise questions with regard to its application in day-to-day practice. OEC members are therefore invited to forward to the Council any questions they may have regarding the application of the present code of ethics.

OEC Members, network firm(s) and their employees (including professional trainees) are required to comply with the ethical requirements issued by OEC for all services rendered in accordance with the Law of June 10, 1999 on the organization of the profession professional accountants and services compatible with the said profession. Apparent failure to do so may result in an investigation into the member's conduct by OEC Disciplinary Council.

The present code of ethics is applicable to all professional, their network firm(s), their employees and professional trainees from July 1st, 2005.

On behalf of OEC,

President

VOLUME 1

IFAC CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS

CONTENTS

| | |
|--|------------------|
| Preface | |
| Definitions | |
| | <u>Paragraph</u> |
| INTRODUCTION | 1 |
| THE PUBLIC INTEREST | 9 |
| OBJECTIVES | 14 |
| FUNDAMENTAL PRINCIPLES | 15 |
| THE CODE | 17 |
| <i>PART A—APPLICABLE TO ALL PROFESSIONAL ACCOUNTANTS</i> | |
| 1. Integrity and Objectivity | 1.1 |
| 2. Resolution of Ethical Conflicts | 2.1 |
| 3. Professional Competence | 3.1 |
| 4. Confidentiality | 4.1 |
| 5. Tax Practice | 5.1 |
| 6. Cross Border Activities | 6.1 |
| 7. Publicity | 7.1 |
| <i>PART B—APPLICABLE TO PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE</i> | |
| 8. Independence | 8.1 |
| 9. Professional Competence and Responsibilities Regarding the Use of Non-Accountants | 9.1 |
| 10. Fees and Commissions | 10.1 |
| 11. Activities Incompatible with the Practice of Public Accountancy | 11.1 |
| 12. Clients' Monies | 12.1 |
| 13. Relations with Other Professional Accountants in Public Practice | 13.1 |
| 14. Advertising and Solicitation | 14.1 |
| <i>PART C—APPLICABLE TO EMPLOYED PROFESSIONAL ACCOUNTANTS</i> | |
| 15. Conflict of Loyalties | 15.1 |
| 16. Support for Professional Colleagues | 16.1 |
| 17. Professional Competence | 17.1 |
| 18. Presentation of Information | 18.1 |

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PREFACE

Statement of policy

As a reminder, the International Federation of Accountants - IFAC's broad objective is developing and enhancing a coordinated worldwide accountancy profession with harmonized standards. In working toward this objective, IFAC develops guidance on ethics for professional accountants.

The "Ordre des Experts-Comptables" (hereafter "OEC") is not a member of the IFAC.

Nevertheless, with the permission of the IFAC Committee, the OEC has reproduced the IFAC Code of Ethics for Professional Accountants as the basis for approved ethical requirements in Luxembourg. OEC has prepared an explanatory foreword ("Foreword" section), which sets out the status and effective date of this decision. Significant differences between IFAC guidance and the law and practice in Luxembourg are highlighted within the present volume. Additional guidance is also presented within volume 2.

An explanatory foreword will be issued on the status of each additional IFAC pronouncement on Ethics that is reproduced by OEC. Where OEC deems it necessary, additional ethical requirements may be developed on matters of relevance in Luxembourg not covered by IFAC pronouncements.

It is not practical to establish ethical requirements, which apply to all situations and circumstances that professional accountants may encounter. Therefore, professional accountants should consider the ethical requirements as the basic principles which they should follow in performing their work.

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DEFINITIONS

In this Code of Ethics for Professional Accountants the following expressions appear in **bold type** when they are first used and have the following meanings assigned to them:

Advertising The communication to the public of information as to the services or skills provided by professional accountants in public practice with a view to procuring professional business.

| | |
|----------------------|------------------------------------|
| Audit client | Luxembourg : <i>Not applicable</i> |
| Audit Engagement | Luxembourg : <i>Not applicable</i> |
| Assurance client | Luxembourg : <i>Not applicable</i> |
| Assurance Engagement | Luxembourg : <i>Not applicable</i> |
| Assurance Team | Luxembourg : <i>Not applicable</i> |

| | |
|---|---|
| Luxembourg: <i>Accounting Client</i> | <i>An entity in respect of which a firm conducts an engagement relating to the professional activities defined in the article 1 of the law of June 10, 1999 (as amended) on the organisation of the profession of professional accountant</i> |
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| | |
|--|--|
| Luxembourg <i>Accounting Engagement</i> | <i>An engagement relating to professional activities as defined in the article 1 of the law of June 10, 1999 (as amended) on the organisation of the profession of professional accountant</i> |
| Luxembourg <i>Engagement as "commissaire"</i> | <i>An engagement as specified under the articles 61, or 109 or 200 of the commercial law of August 10, 1915 as modified</i> |

| | |
|--------------------------------------|---|
| Luxembourg <i>Accounting team</i> | <p>a) All professionals participating in the <i>accounting engagement</i>;</p> <p>b) All others within a firm who can directly influence the outcome of the <i>accounting engagement</i>, including:</p> <ul style="list-style-type: none"> o those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the <i>accounting engagement</i> partner in connection with the performance of the <i>accounting engagement</i>. o those who provide consultation regarding technical or industry specific issues, transactions or events for the <i>accounting engagement</i>; and o those who provide quality control for the <i>accounting engagement</i>. |
|--------------------------------------|---|

Client account Any bank account which is used solely for the banking of clients' monies.

Clients' monies Any monies — including documents of title to money *e.g.*, bills of exchange, promissory notes, and documents of title which can be converted into money *e.g.*, bearer bonds — received by a professional accountant in public practice to be held or paid out on the instruction of the person from whom or on whose behalf they are received.

Close family A parent, non-dependent child or sibling.

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| Direct financial interest | <p>A financial interest:</p> <ul style="list-style-type: none"> owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control. |
| Directors and officers | Those charged with the governance of an entity, regardless of their title, which may vary from country to country. |
| Employed professional accountant | <p>A professional accountant employed in industry, commerce, the public sector or education.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Luxembourg: <i>Professional trainees are included in the «employed professional accountant» definition.</i></p> </div> |
| Existing accountant | A professional accountant in public practice currently holding an audit appointment or carrying out accounting, taxation, consulting or similar professional services for a client. |
| Financial interest | An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest. |
| Firm | <p>a) A sole practitioner, partnership or corporation of professional accountants;</p> <p>b) An entity that controls such parties; and</p> <p>c) An entity controlled by such parties.</p> |
| Immediate family | A spouse (or equivalent) or dependent. |
| Independence | <p>Independence is:</p> <p>a) Independence of mind – the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism; and</p> <p>b) Independence in appearance – the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised.</p> |
| Indirect financial interest | A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control. |
| Lead Engagement Partner | <div style="border: 1px solid black; padding: 5px;"> <p>Luxembourg :<i>Not applicable</i></p> </div> |
| Listed entity | An entity whose shares, stock or debt are quoted or listed on a |

recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body.

Network firm An entity under common control, ownership or management with the firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally or internationally.

Objectivity A combination of impartiality, intellectual honesty and a freedom from conflicts of interest.

Office A distinct sub-group, whether organized on geographical or practice lines.

Practice A sole practitioner, a partnership or a corporation of professional accountants which offers professional services to the public.

Professional accountant Those persons, whether they be in public practice, (including a sole practitioner, partnership or corporate body), industry, commerce, the public sector or education, who are members of an IFAC member body.

Luxembourg:
*Professional accountant definition is as follows:
 Those persons, either being natural or legal persons, who are members of the OEC.
 Professional trainees are included in the «professional accountant» definition.*

Professional accountant in public practice Each partner or person occupying a position similar to that of a partner, and each employee in a practice providing professional services to a client irrespective of their functional classification (*e.g.*, audit, tax or consulting) and professional accountants in a practice having managerial responsibilities. This term is also used to refer to a firm of professional accountants in public practice.

Professional services Any service requiring accountancy or related skills performed by a professional accountant including accounting, auditing, taxation, management consulting and financial management services.

Publicity The communication to the public of facts about a professional accountant which are not designed for the deliberate promotion of that professional accountant.

Receiving accountant A professional accountant in public practice to whom the existing accountant or client of the existing accountant has referred audit, accounting, taxation, consulting or similar appointments, or who is consulted in order to meet the needs of the client.

Related entity An entity that has any of the following relationships with the client:

- a) An entity that has direct or indirect control over the client provided the client is material to such entity;
- b) An entity with a direct financial interest in the client provided that such entity has significant influence over the client and the interest in the client is material to such entity;
- c) An entity over which the client has direct or indirect control;

- d) An entity in which the client, or an entity related to the client under c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in c); and
- e) An entity which is under common control with the client (hereinafter a "sister entity") provided the sister entity and the client are both material to the entity that controls both the client and sister entity.

Solicitation The approach to a potential client for the purpose of offering professional services.

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|----------------------------------|--|
| Luxembourg: Statutory auditor | <i>The present code of Ethics understands by "statutory auditor" the approved person within the meaning of Article 2 (1) of the 8th Company Law Directive, either being a natural or a legal person, who is appointed to perform the statutory audit of the annual or consolidated accounts of a company and, as a result, who signs the audit report. In Luxembourg, this professional is called "Réviseur d'entreprises".</i> |
| Luxembourg: "commissaire" | <i>The present code of Ethics understands by "commissaire" the, either being a natural or a legal person, who is appointed under the terms of the articles 61 or 109 or 200 of the Commercial Law of August 10, 1915. A commissaire is not required to perform an audit of the annual accounts of a company in accordance with the ISA standards.</i> |

INTRODUCTION

The OEC is not a member of the IFAC. Nevertheless, the attention of the OEC members is drawn to the objectives of the IFAC supporting its Code of Ethics, which is the basis of the present volume.

Luxembourg :
1.,2.,3. of the Introduction of the IFAC Code of Ethics are not applicable.

4. This international Code issued by IFAC is intended to serve as a model on which to base national ethical guidance. It sets standards of conduct for professional accountants and states the fundamental principles that should be observed by professional accountants in order to achieve common objectives. The accountancy profession throughout the world operates in an environment with different cultures and regulatory requirements. The basic intent of the Code, however, should always be respected by IFAC members. It is also acknowledged that, in those instances where a national requirement is in conflict with a provision in the Code, the national requirement would prevail. For those countries that wish to adopt the Code as their own national Code, IFAC has developed wording which may be used to indicate the authority and applicability in the country concerned.
5. Further, the Code is established on the basis that unless a limitation is specifically stated, the objectives and fundamental principles are equally valid for all professional accountants, whether they be in public practice, industry, commerce, the public sector or education.
6. A profession is distinguished by certain characteristics including:
 - Mastery of a particular intellectual skill, acquired by training and education;
 - Adherence by its members to a common code of values and conduct established by its administering body, including maintaining an outlook which is essentially objective; and

- Acceptance of a duty to society as a whole (usually in return for restrictions in use of a title or in the granting of a qualification).
7. Members' duty to their profession and to society may at times seem to conflict with their immediate self interest or their duty of loyalty to their employer.
 8. Against this background it is beholden on IFAC member bodies to lay down ethical requirements for their members to ensure the highest quality of performance and to maintain public confidence in the profession.

THE PUBLIC INTEREST

9. A distinguishing mark of a profession is acceptance of its responsibility to the public. The accountancy profession's public consists of clients, credit grantors, governments, employers, employees, investors, the business and financial community, and others who rely on the **objectivity** and integrity of professional accountants to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on the accountancy profession. The public interest is defined as the collective well-being of the community of people and institutions the professional accountant serves.
10. A professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employer. The standards of the accountancy profession are heavily determined by the public interest, for example:
 - Independent auditors help to maintain the integrity and efficiency of the financial statements presented to financial institutions in partial support for loans and to stockholders for obtaining capital;
 - Financial executives serve in various financial management capacities in organizations and contribute to the efficient and effective use of the organization's resources;
 - Internal auditors provide assurance about a sound internal control system which enhances the reliability of the external financial information of the employer;
 - Tax experts help to establish confidence and efficiency in, and the fair application of, the tax system; and
 - Management consultants have a responsibility toward the public interest in advocating sound management decision making.
11. Professional accountants have an important role in society. Investors, creditors, employers and other sectors of the business community, as well as the government and the public at large rely on professional accountants for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters. The attitude and behavior of professional accountants in providing such services have an impact on the economic well-being of their community and country.
12. Professional accountants can remain in this advantageous position only by continuing to provide the public with these unique services at a level which demonstrates that the public confidence is firmly founded. It is in the best interest of the worldwide accountancy profession to make known to users of the services provided by professional accountants that they are executed at the highest level of performance and in accordance with ethical requirements that strive to ensure such performance.

13. In formulating their national code of ethics, IFAC member bodies should therefore consider the public service and user expectations of the ethical standards of professional accountants and take their views into account. By doing so, any existing "expectation gap" between the standards expected and those prescribed can be addressed or explained.

OBJECTIVES

14. The IFAC Code recognizes that the objectives of the accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement set out above. These objectives require four basic needs to be met:

Credibility

In the whole of society there is a need for credibility in information and information systems.

Professionalism

There is a need for individuals who can be clearly identified by clients, employers and other interested parties as professional persons in the accountancy field.

Quality of Services

There is a need for assurance that all services obtained from a professional accountant are carried out to the highest standards of performance.

Confidence

Users of the services of professional accountants should be able to feel confident that there exists a framework of professional ethics which governs the provision of those services.

FUNDAMENTAL PRINCIPALS

15. In order to achieve the objectives of the accountancy profession, professional accountants have to observe a number of prerequisites or fundamental principles.
16. The fundamental principles are:

Integrity

A professional accountant should be straightforward and honest in performing **professional services**.

Objectivity

A professional accountant should be fair and should not allow prejudice or bias, conflict of interest or influence of others to override objectivity.

Professional Competence and Due Care

A professional accountant should perform professional services with due care, competence and diligence and has a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives the advantage of competent professional service based on up-to-date developments in practice, legislation and techniques.

Confidentiality

A professional accountant should respect the confidentiality of information acquired during the course of performing professional services and should not use or disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose.

Professional Behavior

A professional accountant should act in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession. The obligation to refrain from any conduct which might bring discredit to the profession requires IFAC member bodies to consider, when developing ethical requirements, the responsibilities of a professional accountant to clients, third parties, other members of the accountancy profession, staff, employers, and the general public.

Technical Standards

A professional accountant should carry out professional services in accordance with the relevant technical and professional standards. Professional accountants have a duty to carry out with care and skill, the instructions of the client or employer insofar as they are compatible with the requirements of integrity, objectivity (*). In addition, they should conform with the technical and professional standards promulgated by the relevant legislation and the OEC (*).

() taking into consideration the Luxembourg specificities of the profession and context of the country.*

THE CODE

17. The objectives as well as the fundamental principles are of a general nature and are not intended to be used to solve a professional accountant's ethical problems in a specific case. However, the IFAC Code provides some guidance as to the application in practice of the objectives and the fundamental principles with regard to a number of typical situations occurring in the accountancy profession.
18. The Code of Ethics set out below, which has been prepared on the basis of the IFAC Code of Ethics, is divided into three parts:
 - Part A applies to all professional accountants unless otherwise specified.
 - Part B applies only to those professional accountants in public practice.
 - Part C applies to **employed professional accountants**, and may also apply, in appropriate circumstances, to accountants employed in public practice.

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PART A — APPLICABLE TO ALL PROFESSIONAL ACCOUNTANTS

SECTION 1

Integrity and Objectivity

- 1.1 Integrity implies not merely honesty but fair dealing and truthfulness. The principle of objectivity imposes the obligation on all professional accountants to be fair, intellectually honest and free of conflicts of interest.
- 1.2 Professional accountants serve in many different capacities and should demonstrate their objectivity in varying circumstances. Professional accountants in public practice undertake assurance engagements, and render tax and other management advisory services. Other professional accountants prepare financial statements as a subordinate of others, perform internal auditing services, and serve in financial management capacities in industry, commerce, the public sector and education. They also educate and train those who aspire to admission into the profession. Regardless of service or capacity, professional accountants should protect the integrity of their professional services, and maintain objectivity in their judgment.
- 1.3 In selecting the situations and practices to be specifically dealt within ethics requirements relating to objectivity, adequate consideration should be given to the following factors:
- a) Professional accountants are exposed to situations which involve the possibility of pressures being exerted on them. These pressures may impair their objectivity.
 - b) It is impracticable to define and prescribe all such situations where these possible pressures exist. Reasonableness should prevail in establishing standards for identifying relationships that are likely to, or appear to, impair a professional accountant's objectivity.
 - c) Relationships should be avoided which allow prejudice, bias or influences of others to override objectivity.
 - d) Professional accountants have an obligation to ensure that personnel engaged on professional services adhere to the principle of objectivity.
 - e) Professional accountants should neither accept nor offer gifts or entertainment which might reasonably be believed to have a significant and improper influence on their professional judgment or those with whom they deal. What constitutes an excessive gift or offer of entertainment varies from country to country but professional accountants should avoid circumstances which would bring their professional standing into disrepute.

SECTION 2

Resolution of Ethical Conflicts

- 2.1 From time to time professional accountants encounter situations which give rise to conflicts of interest. Such conflicts may arise in a wide variety of ways, ranging from the relatively trivial dilemma to the extreme case of fraud and similar illegal activities. It is not possible to attempt to itemize a comprehensive check list of potential cases where conflicts of interest might occur. The professional accountant should be constantly conscious of and be alert to factors which give rise to conflicts of interest. It should be noted that an honest difference of opinion between a professional accountant and another party is not in itself an ethical issue. However, the facts and circumstances of each case need investigation by the parties concerned.

2.2 It is recognized, however, that there can be particular factors which occur when the responsibilities of a professional accountant may conflict with internal or external demands of one type or another. Hence:

- There may be the danger of pressure from an overbearing supervisor, manager, **director** or partner; or when there are family or personal relationships which can give rise to the possibility of pressures being exerted upon them. Indeed, relationships or interests which could adversely influence, impair or threaten a professional accountant's integrity should be discouraged.
- A professional accountant may be asked to act contrary to technical and/or professional standards.
- A question of divided loyalty as between the professional accountant's superior and the required professional standards of conduct could occur.
- Conflict could arise when misleading information is published which may be to the advantage of the employer or client and which may or may not benefit the professional accountant as a result of such publication.

2.3 In applying standards of ethical conduct professional accountants may encounter problems in identifying unethical behavior or in resolving an ethical conflict. When faced with significant ethical issues, professional accountants should follow the established policies of the employing organization to seek a resolution of such conflict. If those policies do not resolve the ethical conflict, the following should be considered:

- a) Review the conflict problem with the immediate superior. If the problem is not resolved with the immediate superior and the professional accountant determines to go to the next higher managerial level, the immediate superior should be notified of the decision. If it appears that the superior is involved in the conflict problem, the professional accountant should raise the issue with the next higher level of management. When the immediate superior is the Chief Executive Officer (or equivalent) the next higher reviewing level may be the Executive Committee, Board of Directors, Non-Executive Directors, Trustees, Partners' Management Committee or Shareholders.
- b) Seek counseling and advice on a confidential basis with an independent advisor or the applicable professional accountancy body to obtain an understanding of possible courses of action.
- c) If the ethical conflict still exists after fully exhausting all levels of internal review, the professional accountant as a last resort may have no other recourse on significant matters (*e.g.*, fraud) than to resign and to submit an information memorandum to an appropriate representative of that organization.

2.4 Furthermore, in some countries local laws, regulations or professional standards may require certain serious matters to be reported to an external body such as an enforcement or supervisory authority.

2.5 Any professional accountant in a senior position should endeavor to ensure that policies are established within his or her employing organization to seek resolution of conflicts.

2.6 Member bodies are urged to ensure that confidential counseling and advice is available to members who experience ethical conflicts.

SECTION 3

Professional Competence

- 3.1 Professional accountants should not portray themselves as having expertise or experience they do not possess.

Luxembourg

COMPETENCE ET CONSCIENCE PROFESSIONNELLE

L'expert-comptable doit éviter d'accepter la prestation de services professionnels pour lesquels il n'est pas compétent sauf dans la mesure où il peut obtenir une assistance ou l'avis compétent qui lui permettra d'accomplir de façon satisfaisante de tels services.

- 3.2 Professional competence may be divided into two separate phases:

a) Attainment of professional competence

The attainment of professional competence requires initially a high standard of general education followed by specific education, training and examination in professionally relevant subjects, and whether prescribed or not, a period of work experience. This should be the normal pattern of development for a professional accountant.

b) Maintenance of professional competence

- (i) The maintenance of professional competence requires a continuing awareness of developments in the accountancy profession including relevant national and international pronouncements on accounting, auditing and other relevant regulations and statutory requirements.
- (ii) A professional accountant should adopt a program designed to ensure quality control in the performance of professional services consistent with appropriate national and international pronouncements.

SECTION 4

Confidentiality

- 4.1 Professional accountants have an obligation to respect the confidentiality of information about a client's or employer's affairs acquired in the course of professional services. The duty of confidentiality continues even after the end of the relationship between the professional accountant and the client or employer.

Luxembourg:

The code of client confidentiality of the professional accountants in public practice and their staff is governed by Article 458 of the Criminal Code and related articles of the Law of June 10, 1999 (as amended) on the organisation of the profession of professional accountant

- 4.2 Confidentiality should always be observed by a professional accountant unless specific authority has been given to disclose information or there is a legal or professional duty to disclose.

Luxembourg:

In accordance with Article 7 of the Law of June 10, 1999 as amended by the law of November 12, 2004, professional accountants in public practice are required to inform the public prosecutor of any instances where there is a suspicious transaction or client which may lead to money laundering activities or terrorist financing.

- 4.3 Professional accountants have an obligation to ensure that staff under their control and persons from whom advice and assistance is obtained respect the principle of confidentiality.
- 4.4 Confidentiality is not only a matter of disclosure of information. It also requires that a professional accountant acquiring information in the course of performing professional services does neither use nor appear to use that information for personal advantage or for the advantage of a third party.
- 4.5 A professional accountant has access to much confidential information about a client's or employer's affairs not otherwise disclosed to the public. Therefore, the professional accountant should be relied upon not to make unauthorized disclosures to other persons. This does not apply to disclosure of such information in order properly to discharge the professional accountant's responsibility according to the profession's standards.
- 4.6 It is in the interest of the public and the profession that the profession's standards relating to confidentiality be defined and guidance given on the nature and extent of the duty of confidentiality and the circumstances in which disclosure of information acquired during the course of providing professional services shall be permitted or required.
- 4.7 It should be recognized, however, that confidentiality of information is part of statute or common law and therefore detailed ethical requirements in respect thereof will depend on the law of the country of each member body.
- 4.8 The following are examples of the points which should be considered in determining whether confidential information may be disclosed:
- a) When disclosure is authorized. When authorization to disclose is given by the client or the employer the interests of all the parties including those third parties whose interests might be affected should be considered.
 - b) When disclosure is required by law. Examples of when a professional accountant is required by law to disclose confidential information are:
 - (i) To produce documents or to give evidence in the course of legal proceedings; and
 - (ii) To disclose to the appropriate public authorities infringements of the law which come to light.
 - c) When there is a professional duty or right to disclose:
 - (i) To comply with technical standards and ethics requirements; such disclosure is not contrary to this section;
 - (ii) To protect the professional interests of a professional accountant in legal proceedings;
 - (iii) To comply with the quality (or peer) review of a member body or professional body; and
 - (iv) To respond to an inquiry or investigation by a member body or regulatory body.

4.9 When the professional accountant has determined that confidential information can be disclosed, the following points should be considered:

- Whether or not all the relevant facts are known and substantiated, to the extent it is practicable to do so; when the situation involves unsubstantiated fact or opinion, professional judgment should be used in determining the type of disclosure to be made, if any;
- What type of communication is expected and the addressee; in particular, the professional accountant should be satisfied that the parties to whom the communication is addressed are appropriate recipients and have the responsibility to act on it; and
- Whether or not the professional accountant would incur any legal liability having made a communication and the consequences thereof.

In all such situations, the professional accountants should consider the need to consult legal counsel and/or the professional organization(s) concerned.

SECTION 5

Tax Practice

- 5.1 A professional accountant rendering professional tax services is entitled to put forward the best position in favor of a client, or an employer, provided the service is rendered with professional competence, does not in any way impair integrity and objectivity, and is in the opinion of the professional accountant consistent with the law. Doubt may be resolved in favor of the client or the employer if there is reasonable support for the position.
- 5.2 A professional accountant should not hold out to a client or an employer the assurance that the tax return prepared and the tax advice offered are beyond challenge. Instead, the professional accountant should ensure that the client or the employer are aware of the limitations attaching to tax advice and services so that they do not misinterpret an expression of opinion as an assertion of fact.
- 5.3 A professional accountant who undertakes or assists in the preparation of a tax return should advise the client or the employer that the responsibility for the content of the return rests primarily with the client or employer. The professional accountant should take the necessary steps to ensure that the tax return is properly prepared on the basis of the information received.
- 5.4 Tax advice or opinions of material consequence given to a client or an employer should be recorded, either in the form of a letter or in a memorandum for the files.
- 5.5 A professional accountant should not be associated with any return or communication in which there is reason to believe that it:
- a) Contains a false or misleading statement;
 - b) Contains statements or information furnished recklessly or without any real knowledge of whether they are true or false; or
 - c) Omits or obscures information required to be submitted and such omission or obscurity would mislead the revenue authorities.

- 5.6 A professional accountant may prepare tax returns involving the use of estimates if such use is generally acceptable or if it is impractical under the circumstances to obtain exact data. When estimates are used, they should be presented as such in a manner so as to avoid the implication of greater accuracy than exists. The professional accountant should be satisfied that estimated amounts are reasonable under the circumstances.
- 5.7 In preparing a tax return, a professional accountant ordinarily may rely on information furnished by the client or employer provided that the information appears reasonable. Although the examination or review of documents or other evidence in support of the information is not required, the professional accountant should encourage, when appropriate, such supporting data to be provided.

In addition, the professional accountant:

- a) Should make use of the client's returns for prior years whenever feasible;
 - b) Is required to make reasonable inquiries when the information presented appears to be incorrect or incomplete; and
 - c) Is encouraged to make reference to the books and records of the business operations.
- 5.8 When a professional accountant learns of a material error or omission in a tax return of a prior year (with which the professional accountant may or may not have been associated), or of the failure to file a required tax return, the professional accountant has a responsibility to:
- a) Promptly advise the client or employer of the error or omission and recommend that disclosure be made to the revenue authorities. Normally, the professional accountant is not obligated to inform the revenue authorities, nor may this be done without permission.
 - b) If the client or the employer does not correct the error the professional accountant:
 - (i) Should inform the client or the employer that it is not possible to act for them in connection with that return or other related information submitted to the authorities; and
 - (ii) Should consider whether continued association with the client or employer in any capacity is consistent with professional responsibilities.
 - c) If the professional accountant concludes that a professional relationship with the client or employer can be continued, all reasonable steps should be taken to ensure that the error is not repeated in subsequent tax returns.
 - d) Professional or statutory requirements in some countries may also make it necessary for the professional accountant to inform the revenue authorities that there is no longer any association with the return or other information involved and that acting for the client or employer has ceased. In these circumstances, the professional accountant should advise the client or employer of the position before informing the authorities and should give no further information to the authorities without the consent of the client or employer unless required to do so by law.

SECTION 6

Cross Border Activities

- 6.1 When considering the application of ethical requirements in cross border activities a number of situations may arise. Whether a professional accountant is a member of the profession in one country only or is also a member of the profession in the country where the services are performed should not affect the manner of dealing with each situation.

- 6.2 A professional accountant qualifying in one country may reside in another country or may be temporarily visiting that country to perform professional services. In all circumstances, the professional accountant should carry out professional services in accordance with the relevant technical standards and ethical requirements. The particular technical standards which should be followed are not dealt within this section. In all other respects, however, the professional accountant should be guided by the ethical requirements set out below.
- 6.3 When a professional accountant performs services in a country other than the home country and differences on specific matters exist between ethical requirements of the two countries the following provisions should be applied:
- a) When the ethical requirements of the country in which the services are being performed are less strict than the IFAC Code of Ethics, then the IFAC Code of Ethics should be applied.
 - b) When the ethical requirements of the country in which services are being performed are stricter than the IFAC Code of Ethics, then the ethical requirements in the country where services are being performed should be applied.
 - c) When the ethical requirements of the home country are mandatory for services performed outside that country and are stricter than set out in (a) and (b) above, then the ethical requirements of the home country should be applied. (In the case of cross border advertising and solicitation see also section 14 paragraph 14.4 and 14.5 below.)

SECTION 7

Publicity (*see also section 14*)

- 7.1 In the marketing and promotion of themselves and their work, professional accountants should:
- a) Not use means which brings the profession into disrepute;
 - b) Not make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; and
 - c) Not denigrate the work of other accountants.

PART B – APPLICABLE TO PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

SECTION 8

Independence

As written in the Code of IFAC, the section 8 relating to independence rules for assurance engagements, is not applicable to our profession in Luxembourg.

Luxembourg

PRINCIPES GENERAUX

- 8.1** *L'expert-comptable doit exercer sa profession avec indépendance et n'entreprendre aucune mission susceptible de le mettre en situation de conflit d'intérêt ou de porter atteinte à son objectivité.*
L'indépendance se manifeste par une attitude d'esprit qui s'exprime dans l'intégrité, l'objectivité, la compétence mais aussi dans le fait d'éviter toute situation qui par son apparence pourrait conduire un tiers de bonne foi à douter de l'indépendance et de l'objectivité de l'expert-comptable.
L'expert-comptable a une obligation de s'assurer que ces principes d'indépendance sont également respectés par ses collaborateurs et les tiers auxquels il fait appel dans l'exercice d'une mission.
Ces principes s'appliquent de manière identique aux experts-comptables, personnes physiques et personnes morales, ainsi qu'aux experts-comptables agissant dans le cadre de l'exercice d'une profession libérale ou d'un contrat de travail.
- 8.2** *Pour préserver son indépendance, l'expert-comptable doit remettre en cause voire refuser toute mission ou renoncer à la poursuite de celle-ci dès qu'il constate l'existence d'influences, de faits ou de liens de nature à diminuer son indépendance, son libre arbitre, sa liberté d'appréciation ou son impartialité.*
Sans déroger à ce qui précède, lorsqu'un expert-comptable est appelé à représenter un client, il doit conserver son indépendance tout en gardant à l'esprit que, dans cette mission, il représente les intérêts spécifiques de ce client.
- 8.3** *Dans l'ensemble de ses relations professionnelles, l'expert-comptable doit s'assurer avec objectivité et bonne foi de son indépendance. Dans le contexte de son jugement professionnel, il doit tout particulièrement être attentif aux situations susceptibles de porter atteinte à son indépendance, telles que :*
- *l'existence de liens familiaux, personnels et financiers entre l'expert-comptable et son client ;*
 - *l'existence de conflits déontologiques ;*
 - *l'existence d'autres prestations susceptibles d'incompatibilités pour un même client.*
- A noter que cette liste des cas cités n'est pas exhaustive.*

ACCEPTATION DE MANDATS D'ADMINISTRATEUR DELEGUE OU DE GERANT DE PERSONNES MORALES.

- 8.4** *Les activités de l'expert-comptable sont incompatibles avec tout mandat d'administrateur délégué ou de gérant ayant pour objet la gestion courante et journalière d'une société nécessitant une autorisation d'établissement des autorités luxembourgeoises. Cette incompatibilité ne s'applique pas aux mandats d'administrateur-délégué ou de gérant ayant pour objet la gestion courante et journalière d'une société ayant le statut de réviseur d'entreprises ou d'expert-comptable ou de conseil économique ou de comptable ou de centre de formation agréé.*

8.5 Sont compatibles avec l'exercice de la profession d'expert-comptable :

(i) Les mandats d'administrateur-délégué ou de gérant ayant pour objet la gestion courante et journalière d'une:

- *société qui gère son propre patrimoine mobilier et immobilier et qui n'exerce pas d'activité commerciale, artisanale ou industrielle*
- *société de participation financière régie par la loi du 31 juillet 1929*
- *société dont les produits sont constitués à plus de 95% par des produits de participation, des produits d'autres valeurs mobilières et de créances de l'actif immobilisé, des autres intérêts et produits assimilés tels que repris aux postes B5, B6 et B7 de l'article 46 de la loi du 19 décembre 2002 concernant les comptes annuels des entreprises ainsi que par des royalties et des services facturés à des entreprises liées ou avec lesquelles la société a un lien de participation et dont les actifs sont constitués à plus de 95% par des concessions, brevets, licences, marques, droits et valeurs similaires, des immobilisations financières, des créances sur des entreprises liées, des créances sur des entreprises avec lesquelles la société a un lien de participation, des valeurs mobilières, des avoirs bancaires tels que repris aux postes C I 2, C III, D II 2, D II 3, D III et D IV de l'article 34 de la loi du 19 décembre 2002 concernant les comptes annuels des entreprises ainsi que par des créances en relation avec l'acquisition d'actifs susmentionnés.*
- *société qui agit comme associé-commandité d'une société en commandite par actions respectant les conditions mentionnées ci-dessus*
- *association à but non lucratif*
- *fondation*
- *société privée ou d'un organisme public ayant pour objet l'enseignement Professionnel*

(ii) Les mandats de membre du Conseil d'Administration ou du Conseil de gérance d'une société ayant des activités de nature commerciales, artisanales ou industrielles à condition toutefois que l'exercice de ce mandat ne compromette pas l'indépendance de l'expert-comptable telle que prévue par l'article 4 de la loi du 10 juin 1999 portant organisation de la profession.

8.6 Sont également compatibles avec la profession d'expert-comptable :

(i) Les mandats de liquidateur à l'amiable

(ii) Les mandats résultant d'une nomination par décision de justice

(iii) Les mandats publics tels que député, conseil communal, membre du Conseil d'Etat etc...

8.7 Dans des situations exceptionnelles, telles que décès, succession, les mandats d'administrateur ou de gérant délégué à la gestion journalière nécessitant une autorisation d'établissement des autorités luxembourgeoises ne peuvent être exercés par un expert-comptable que moyennant une autorisation du Conseil de l'Ordre. Cette autorisation, qui est toujours révocable, doit faire l'objet d'une demande préalable à l'acceptation du mandat.

SECTION 9

Professional Competence and Responsibilities Regarding the Use of Non-Accountants

9.1 Professional accountants in public practice should refrain from agreeing to perform professional services which they are not competent to carry out unless competent advice and assistance is obtained so as to enable them to satisfactorily perform such services. If a professional accountant does not have the competence to perform a specific part of the professional service, technical advice may be sought from experts such as other professional accountants, lawyers, actuaries, engineers, geologists, valuers.

9.2. In such situations, although the professional accountant is relying on the technical competence of the expert, the knowledge of the ethical requirements cannot be automatically assumed.

Since the ultimate responsibility for the professional service rests with the professional accountant, the professional accountant should see that the requirements of ethical behavior are followed.

- 9.3. When using the services of experts who are not professional accountants, the professional accountant must take steps to see that such experts are aware of ethical requirements. Primary attention should be paid to the fundamental principles in paragraph 16 of the Introduction to this Code. These principles would extend to any assignment in which such experts would participate.
- 9.4 The degree of supervision and the amount of guidance that will be needed will depend upon the individuals involved and the nature of the engagement. Examples of such guidance and supervision might include:
- Asking individuals to read the appropriate ethical codes;
 - Requiring written confirmation of understanding of the ethical requirements; and
 - Providing consultation when potential conflicts arise.
- 9.5 The professional accountant should also be alert to specific independence requirements or other risks unique to the engagement. Such situations will require special attention and guidance/supervision to see that ethical requirements are met.

Luxembourg :

Example from section 8 of the IFAC Code of Ethics is not applicable

- 9.6 If at any time the professional accountant is not satisfied that proper ethical behavior can be respected or assured, the engagement should not be accepted; or, if the engagement has commenced, it should be terminated.

SECTION 10

Fees and Commissions

- 10.1 Professional accountants in public practice who undertake professional services for a client, assume the responsibility to perform such services with integrity and objectivity and in accordance with the appropriate technical standards. That responsibility is discharged by applying the professional skill and knowledge which professional accountants in public practice have acquired through training and experience. For the services rendered, the **professional accountant in public practice** is entitled to remuneration.

Professional Fees

- 10.2 Professional fees should be a fair reflection of the value of the professional services performed for the client, taking into account:
- a) The skill and knowledge required for the type of professional services involved;
 - b) The level of training and experience of the persons necessarily engaged in performing the professional services;
 - c) The time necessarily occupied by each person engaged in performing the professional services; and
 - d) The degree of responsibility that performing those services entails.

- 10.3 Professional fees should normally be computed on the basis of appropriate rates per hour or per day for the time of each person engaged in performing professional services. These rates should be based on the fundamental premise that the organization and conduct of the professional accountant in public practice and the services provided to clients are well planned, controlled and managed. They should take into account the factors set out in paragraph 10.2 and are influenced by the legal, social and economic conditions of each country. It is for each professional accountant in public practice to determine the appropriate rates.
- 10.4 A professional accountant in public practice should not make a representation that specific professional services in current or future periods will be performed for either a stated fee, estimated fee, or fee range if it is likely at the time of the representation that such fees will be substantially increased and the prospective client is not advised of that likelihood.
- 10.5 When performing professional services for a client it may be necessary or expedient to charge a pre-arranged fee, in which event the professional accountant in public practice should estimate a fee taking into account the matters referred to in paragraphs 10.2 through 10.4.
- 10.6 It is not improper for a professional accountant in public practice to charge a client a lower fee than has previously been charged for similar services, provided the fee has been calculated in accordance with the factors referred to in paragraphs 10.2 through 10.4.

Commentary

The fact that a professional accountant in public practice secures work by quoting a fee lower than another is not improper. However, professional accountants in public practice who obtain work at fees significantly lower than those charged by an existing accountant, or quoted by others, should be aware that there is a risk of a perception that the quality of work could be impaired.

Accordingly, when deciding on a fee to be quoted to a client for the performance of professional services, a professional accountant should be satisfied that, as a result of the fee quoted:

- The quality of work will not be impaired and that due care will be applied to comply with all professional standards and quality control procedures in the performance of those services, and
- The client will not be misled as to the precise scope of services that a quoted fee is intended to cover and the basis on which future fees will be charged.

10.7

Luxembourg

Ce point n'est pas applicable à notre profession à Luxembourg

- 10.8 The foregoing paragraphs relate to fees as distinct from reimbursement of expenses. Out-of-pocket expenses, in particular traveling expenses, attributable directly to the professional services performed for a particular client would normally be charged to that client in addition to the professional fees.
- 10.9 It is in the best interests of both the client and the professional accountant in public practice that the basis on which fees are computed and any billing arrangements are clearly defined, preferably in writing, before the commencement of the engagement to help in avoiding misunderstandings with respect to fees.

Luxembourg:

Reference to the ISA 210 included in the IFAC Code of Ethics is not applicable

Commissions

- 10.10 In those countries where payment and receipt of commissions are permitted, either by statute or by a member body, and the professional accountant in public practice accepts such a commission this fact should be disclosed to the client.

Luxembourg

L'expert-comptable ne peut accepter que ses honoraires soient payés sous forme d'avantages en nature quelconques.

- 10.11 Subject to paragraph 10.10, a professional accountant in public practice should not pay a commission to obtain a client nor should a commission be accepted for referral of a client to a third party. A professional accountant in public practice should not accept a commission for the referral of the products or services of others.
- 10.12 Payment and receipt of referral fees between professional accountants in public practice when no services are performed by the referring accountant are regarded as commissions for the purpose of paragraph 10.11.
- 10.13 A professional accountant in public practice may enter into an arrangement for the purchase of the whole or part of an accounting practice requiring payments to individuals formerly engaged in the practice or payments to their heirs or estates. Such payments are not regarded as commissions for the purpose of paragraph 10.10.

SECTION 11

Activities Incompatible with the Practice of Public Accountancy

- 11.1 A professional accountant in public practice should not concurrently engage in any business, occupation or activity which impairs or might impair integrity, objectivity or independence, or the good reputation of the profession and therefore would be incompatible with the rendering of professional services.

Luxembourg:

Professional accountants in public practice and their employees shall only engage activities which comply with Article 1 of the Law of June 10, 1999 (as amended) on the organisation of the profession of professional accountant and services compatible with the said profession

- 11.2 The rendering of two or more types of professional services concurrently does not by itself impair integrity, objectivity or independence.
- 11.3 The simultaneous engagement in another business, occupation or activity unrelated to professional services which has the effect of not allowing the professional accountant in public practice properly to conduct a professional practice in accordance with the fundamental ethical principles of the accountancy profession should be regarded as inconsistent with the practice of public accountancy.

11.4 Luxembourg:

See also paragraphs 8.4 to 8.7 of the section relating to independence.

SECTION 12

Clients' Monies

- 12.1 It is recognized that in some countries the law does not permit a professional accountant in public practice to hold **clients' monies**; in other countries there are legal duties imposed on professional accountants in public practice who do hold such monies. The professional accountant in public practice should not hold clients' monies if there is reason to believe that they were obtained from, or are to be used for, illegal activities.

Luxembourg:

In accordance with Article 7 of the Law of June 10, 1999 as amended by the law of November 12, 2004, professional accountants in public practice are required to inform the public prosecutor of any instances where there is a suspicious transaction or client which may lead to money laundering activities or terrorist financing.

- 12.2 A professional accountant in public practice entrusted with monies belonging to others should:

- a) Keep such monies separately from personal or firm monies;
- b) Use such monies only for the purpose for which they are intended; and
- c) At all times, be ready to account for those monies to any persons entitled to such accounting.

- 12.3 A professional accountant in public practice should maintain one or more bank accounts for clients' monies. Such bank accounts may include a general **client account** into which the monies of a number of clients may be paid.

Luxembourg:

The professional accountant in public practice must inform the credit institution of the nature of such bank account(s).

- 12.4 Clients' monies received by a professional accountant in public practice should be deposited without delay to the credit of a client account, or — if in the form of documents of title to money and documents of title which can be converted into money — be safeguarded against unauthorized use.
- 12.5 Monies may only be drawn from the client account on the instructions of the client.
- 12.6 Fees due from a client may be drawn from client's monies provided the client, after being notified of the amount of such fees, has agreed to such withdrawal.
- 12.7 Payments from a client account shall not exceed the balance standing to the credit of the client.
- 12.8 When it seems likely that the client's monies remain on client account for a significant period of time, the professional accountant in public practice should, with the concurrence of the client, place such monies in an interest bearing account within a reasonable time.
- 12.9 All interest earned on clients' monies should be credited to the client account.
- 12.10 Professional accountants in public practice should keep such books of account as will enable them, at any time, to establish clearly their dealings with clients' monies in general and the monies of each individual client in particular. A statement of account should be provided to the client at least once a year.

SECTION 13

Relations with Other Professional Accountants in Public Practice

Accepting New Assignments

- 13.1 The extension of the operations of a business undertaking frequently results in the formation of branches or subsidiary companies at locations where an **existing accountant** does not practice. In these circumstances, the client or the existing accountant in consultation with the client may request a **receiving accountant** practicing at those locations to perform such professional services as necessary to complete the assignment.
- 13.2 Referral of business may also arise in the area of special services or special tasks. The scope of the services offered by professional accountants in public practice continues to expand and the depth of knowledge which is needed to serve the public often calls for special skills. Since it is impracticable for any one professional accountant in public practice to acquire special expertise or experience in all fields of accountancy, some professional accountants in public practice have decided that it is neither appropriate nor desirable to develop within their firms the complete range of special skills which may be required.
- 13.3 Professional accountants in public practice should only undertake such services which they can expect to complete with professional competence. It is essential therefore for the profession in general and in the interests of their clients that professional accountants in public practice be encouraged to obtain advice when appropriate from those who are competent to provide it.
- 13.4 An existing accountant without a particular skill may however be reluctant to refer a client to another professional accountant in public practice who may possess that skill, because of the fear of losing existing business to the other professional accountant in public practice. As a result, clients may be deprived of the benefit of advice which they are entitled to receive.
- 13.5 The wishes of the client should be paramount in the choice of professional advisers, whether or not special skills are involved. Accordingly, a professional accountant in public practice should not attempt to restrict in any way the client's freedom of choice in obtaining special advice, and when appropriate should encourage a client to do so.
- 13.6 The services or advice of a professional accountant in public practice having special skills may be sought in one or other of the following ways:
- a) By the client;
 - (i) After prior discussion and consultation with the existing accountant;
 - (ii) On the specific request or recommendation of the existing accountant; and
 - (iii) Without reference to the existing accountant; or
 - b) By the existing accountant with due observance of the duty of confidentiality.
- 13.7 When a professional accountant in public practice is asked to provide services or advice, inquiries should be made as to whether the prospective client has an existing accountant. In cases where there is an existing accountant who will continue to provide professional services, the procedures set out in paragraphs 13.8–13.14 should be observed. If the appointment will result in another professional accountant in public practice being superseded, the procedures set out in paragraphs 13.15–13.26 should be followed.

- 13.8 The receiving accountant should limit the services provided to the specific assignment received by referral from the existing accountant or the client unless otherwise requested by the client. The receiving accountant also has the duty to take reasonable steps to support the existing accountant's current relationship with the client and should not express any criticism of the professional services of the existing accountant without giving the latter an opportunity to provide all relevant information.
- 13.9 A receiving accountant who is asked by the client to undertake an assignment of a type which is clearly distinct from that being carried out by the existing accountant or from that initially received by referral from the existing accountant or from the client, should regard this as a separate request to provide services or advice. Before accepting any appointments of this nature, the receiving accountant should advise the client of the professional obligation to communicate with the existing accountant and should immediately do so preferably in writing, advising of the approach made by the client and the general nature of the request as well as seeking all relevant information, if any, necessary to perform the assignment.
- 13.10 Circumstances sometimes arise when the client insists that the existing accountant should not be informed. In this case, the receiving accountant should decide whether the client's reasons are valid. In the absence of special circumstances a mere disinclination by the client for communication with the existing accountant would not be a satisfactory reason.
- 13.11 The receiving accountant should:
- a) Comply with the instructions received from the existing accountant or the client to the extent that they do not conflict with relevant legal or other requirements; and
 - b) Ensure, insofar as it is practicable to do so, that the existing accountant is kept informed of the general nature of the professional services being performed.
- 13.12 When there are two or more other professional accountants in public practice performing professional services for the client concerned it may be appropriate to notify only the relevant professional accountant in public practice depending on the specific services being performed.
- 13.13 When appropriate the existing accountant, in addition to issuing instructions concerning referred business, should maintain contact with the receiving accountants and cooperate with them in all reasonable requests for assistance.
- 13.14 When the opinion of a professional accountant, other than the existing accountant, is sought on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions, the professional accountant should be alert to the possibility of the opinion creating undue pressure on the judgment and objectivity of the accountant. An opinion given without full and proper facts can cause difficulty to the receiving accountant if the opinion is challenged or the receiving accountant is subsequently appointed by the company. Accordingly, the professional accountant should seek to minimize the risk of giving inappropriate guidance by ensuring that he or she has access to all relevant information. When there is a request for an opinion in the above circumstances there is a requirement for communication with the existing accountant. It is important that the existing accountant, with the permission of the client, provide the receiving accountant with all requested relevant information about the client. With the permission of the client, the receiving accountant should also provide a copy of the final report to the existing accountant. If the client does not agree to these communications, then the engagement should ordinarily not be performed.

Superseding Another Professional Accountant in Public Practice

13.15 The proprietors of a business have an indisputable right to choose their professional advisers and to change to others should they so desire. While it is essential that the legitimate interests of the proprietors are protected, it is also important that a professional accountant in public practice who is asked to replace another professional accountant in public practice has the opportunity to ascertain if there are any professional reasons why the appointment should not be accepted. This cannot effectively be done without direct communication with the existing accountant. In the absence of a specific request, the existing accountant should not volunteer information about the client's affairs.

13.16 Communication enables a professional accountant in public practice to ascertain whether the circumstances in which a change in appointment is proposed are such that the appointment can properly be accepted and also whether there is a wish to undertake the engagement. In addition, such communication helps to preserve the harmonious relationships which should exist between all professional accountants in public practice on whom clients rely for professional advice and assistance.

13.17 The extent to which an existing accountant can discuss the affairs of the client with the proposed professional accountant in public practice depend on:

- a) Whether the client's permission to do so has been obtained; and/or
- b) The legal or ethical requirements relating to such disclosure which may vary by country.

c) Luxembourg:

The code of client confidentiality of professional accountants in public practice and their staff is governed by Article 458 of the Criminal Code and related articles of the Law of June 10, 1999 (as amended) on the organisation of the profession of professional accountant. The communication on client's affairs with the preceding professional accountant in public practice does not form part of the exceptions stated in the national legislation. As a result, the client's outgoing professional accountant in public practice must obtain the formal ex-client authorisation before any communication to the new client's professional accountant in public practice regarding the client's affairs.

13.18 The proposed professional accountant in public practice should treat in the strictest confidence and give due weight to any information provided by the existing accountant.

13.19 The information provided by the existing accountant may indicate, for example, that the ostensible reasons given by the client for the change are not in accordance with the facts. It may disclose that the proposal to make a change in professional accountants in public practice was made because the existing accountants stood their ground and properly carried out the duties as professional accountants in public practice despite opposition or evasion on an occasion on which important differences of principles or practice have arisen with the client.

13.20 Communication between the parties therefore serves:

- a) To protect a professional accountant in public practice from accepting an appointment in circumstances where all the pertinent facts are not known.
- b) To protect the minority proprietors of a business who may not be fully informed of the circumstances in which the change is proposed, and
- c) To protect the interests of the existing accountant when the proposed change arises from, or is an attempt to interfere with, the conscientious exercise of the existing accountant's duty to act as an independent professional.

13.21 Before accepting an appointment involving recurring professional services hitherto carried out by another professional accountant in public practice, the proposed professional accountant in public practice should:

- a) Ascertain if the prospective client has advised the existing accountant of the proposed change and has given permission, preferably in writing, to discuss the client's affairs fully and freely with the proposed professional accountant in public practice.
- b) When satisfied with the reply received from prospective client, request permission to communicate with the existing accountant. If such permission is refused or the permission referred to in (a) above is not given, the proposed professional accountant in public practice should, in the absence of exceptional circumstances of which there is full knowledge, and unless there is satisfaction as to necessary facts by other means, decline the appointment; and
- c) On receipt of permission, ask the existing accountant, preferably in writing:
 - i. To provide information on any professional reasons which should be known before deciding whether or not to accept the appointment and, if there are such matters; and
 - ii. To provide all the necessary details to be able to come to a decision.

13.22 The existing accountant, on receipt of the communication referred to in paragraph 13.21 c) should forthwith:

- a) Reply, preferably in writing, advising whether there are any professional reasons why the proposed professional accountant in public practice should not accept the appointment.
- b) If there are any such reasons or other matters which should be disclosed, ensure that the client has given permission to give details of this information to the proposed professional accountant in public practice. If permission is not granted, the existing accountant should report that fact to the proposed professional accountant in public practice; and
- c) On receipt of permission from the client, disclose all information needed by the proposed professional accountant in public practice to be able to decide whether or not to accept the appointment, and discuss freely with the proposed professional accountant in public practice all matters relevant to the appointment of which the latter should be aware.

13.23 If the proposed professional accountant in public practice does not receive, within a reasonable time, a reply from the existing accountant and there is no reason to believe that there are any exceptional circumstances surrounding the proposed change, the proposed professional accountant in public practice should endeavor to communicate with the existing accountant by some other means. If unable to obtain a satisfactory outcome in this way, the proposed professional accountant in public practice should send a further letter, stating that there is an assumption that there is no professional reason why the appointment should not be accepted and that there is an intention to do so.

13.24 The fact that there may be fees owing to the existing accountant is not a professional reason why another professional accountant in public practice should not accept the appointment.

13.25 The existing accountant should promptly transfer to the new professional accountant in public practice all books and papers of the client which are or may be held after the change in appointment has been effected and should advise the client accordingly, unless the professional accountant in public practice has a legal right to withhold them.

13.26 Certain organizations, either because of legislative requirements or otherwise, call for submissions or tenders, e.g., competitive bids, in relation to professional services offered by accountants in public practice. In reply to a public advertisement or an unsolicited request to

make a submission or submit a tender, a professional accountant in public practice should, if the appointment may result in the replacement of another professional accountant in public practice, state in the submission or tender that before acceptance the opportunity to contact the other professional accountant in public practice is required so that inquiries may be made as to whether there are any professional reasons why the appointment should not be accepted. If the submission or tender is successful, the existing accountant should then be contacted.

SECTION 14

Advertising and Solicitation

- 14.1 Whether or not **advertising** and **solicitation** by individual professional accountants in public practice are permitted is a matter for member bodies to determine based upon the legal, social and economic conditions in each country.
- 14.2 When permitted, such advertising and solicitation should be aimed at informing the public in an objective manner and should be decent, honest, truthful and in good taste. Solicitation by the use of coercion or harassment should be prohibited.
- 14.3 Examples of activities which may be considered not to meet the above criteria include those that:
- Create false, deceptive or unjustified expectations of favorable results;
 - Imply the ability to influence any court, tribunal, regulatory agency or similar body or official;
 - Consist of self-laudatory statements that are not based on verifiable facts;
 - Make comparisons with other professional accountants in public practice;
 - Contain testimonials or endorsements;
 - Contain any other representations that would be likely to cause a reasonable person to misunderstand or be deceived; and
 - Make unjustified claims to be an expert or specialist in a particular field of accountancy.
- 14.4 A professional accountant in public practice in a country where advertising is permitted should not seek to obtain an advantage by advertising in newspapers or magazines published or distributed in a country where advertising is prohibited. Similarly, a professional accountant in public practice in a country where advertising is prohibited should not advertise in a newspaper or magazine published in a country where advertising is permitted.
- 14.5 In situations where professional accountants in public practice in their international cross border activities violate the provisions of paragraph 14.4, contact should take place between the member body in the country in which the violation takes place and the member body of the home country of the professional accountant in public practice to ensure that the member body in the home country is made aware of such violation.
- 14.6 It is clearly desirable that the public should be aware of the range of services available from a professional accountant. Accordingly there is no objection to a member body communicating such information to the public on an institutional basis, *i.e.*, in the name of the member body.

Publicity by Professional Accountants in Public Practice in a Non-Advertising Environment

14.7 When advertising is not permitted, publicity by individual professional accountants in public practice is acceptable provided:

- a) It has as its object the notification to the public or such sectors of the public as are concerned, of matters of fact in a manner that is not false, misleading or deceptive;
- b) It is in good taste;
- c) It is professionally dignified; and
- d) It avoids frequent repetition of, and any undue prominence being given to the name of the professional accountant in public practice.

14.8 The examples which follow are illustrative of circumstances in which publicity is acceptable and the matters to be considered in connection therewith subject always to the overriding requirements mentioned in the preceding paragraph.

Appointments and Awards

It is in the interests of the public and the accountancy profession that any appointment or other activity of a professional accountant in a matter of national or local importance, or the award of any distinction to a professional accountant, should receive publicity and that membership of the professional body should be mentioned. However, the professional accountant should not make use of any of the aforementioned appointments or activities for personal professional advantage.

Professional Accountants Seeking Employment or Professional Business

A professional accountant may inform interested parties through any medium that a partnership or salaried employment of an accountancy nature is being sought. The professional accountant should not, however, publicize for subcontract work in a manner which could be interpreted as seeking to procure professional business. Publicity seeking subcontract work may be acceptable if placed only in the professional press and provided that neither the professional accountant's name, address or telephone number appears in the publicity. A professional accountant may write a letter or make a direct approach to another professional accountant when seeking employment or professional business.

Directories

A professional accountant may be listed in a directory provided neither the directory itself nor the entry could reasonably be regarded as a promotional advertisement for those listed therein. Entries should be limited to name, address, telephone number, professional description and any other information necessary to enable the user of the directory to make contact with the person or organization to which the entry relates.

Books, Articles, Interviews, Lectures, Radio and Television Appearances

Professional accountants who author books or articles on professional subjects, may state their name and professional qualifications and give the name of their organization but shall not give any information as to the services that firm provides.

Similar provisions are applicable to participation by a professional accountant in a lecture, interview or a radio or television program on a professional subject. What professional accountants write or say, however, should not be promotional of themselves or their firm but should be an objective professional view of the topic under consideration. Professional accountants are responsible for using their best endeavors to ensure that what ultimately goes before the public complies with these requirements.

Training Courses, Seminars, etc.

A professional accountant may invite clients, staff or other professional accountants to attend training courses or seminars conducted for the assistance of staff. Other persons should not be invited to attend such training courses or seminars except in response to an unsolicited request. The requirement should in no way prevent professional accountants from providing training services to other professional bodies, associations or educational institutions which run courses for their members or the public. However, undue prominence should not be given to the name of a professional accountant in any booklets or documents issued in connection therewith.

Booklets and Documents Containing Technical Information

Booklets and other documents bearing the name of a professional accountant and giving technical information for the assistance of staff or clients may be issued to such persons or to other professional accountants.

Other persons should not be issued with such booklets or documents except in response to an unsolicited request.

Staff Recruitment

Genuine vacancies for staff may be communicated to the public through any medium in which comparable staff vacancies normally appear. The fact that a job specification necessarily gives some detail as to one or more of the services provided to clients by the professional accountant in public practice is acceptable but it should not contain any promotional element. There should not be any suggestion that the services offered are superior to those offered by other professional accountants in public practice as a consequence of size, associations, or for any other reason.

In publications such as those specifically directed to schools and other places of education to inform students and graduates of career opportunities in the profession, services offered to the public may be described in a businesslike way.

More latitude may also be permissible in a section of a newspaper devoted to staff vacancies than would be allowed if the vacancy appeared in a prominent position elsewhere in a newspaper on the grounds that it would be most unlikely that a potential client would use such media to select a professional adviser.

Publicity on Behalf of Clients

A professional accountant in public practice may publicize on behalf of clients, primarily for staff. However, the professional accountant in public practice should ensure that the emphasis in the publicity is directed towards the objectives to be achieved for the client.

Brochures and Firm Directories

A professional accountant in public practice may issue to clients or, in response to an unsolicited request, to a non-client:

- a) A factual and objectively worded account of the services provided; and
- b) A directory setting out names of partners, office addresses and names and addresses of associated firms and correspondents.

Stationery and Nameplates

Stationery of professional accountants in public practice should be of an acceptable professional standard and comply with the requirements of the law and of the member body concerned as to names of partners, principals and others who participate in the practice, use of professional descriptions and designatory letters, cities or countries where the practice is represented, logotypes, etc. The designation of any services provided by the practice as being of specialist nature should not be permitted. Similar provisions, where applicable, should apply to nameplates.

Newspaper Announcements

Appropriate newspapers or magazines may be used to inform the public of the establishment of a new practice, of changes in the composition of a partnership of professional accountants in public practice, or of any alteration in the address of a practice.

Such announcements should be limited to a bare statement of facts and consideration given to the appropriateness of the area of distribution of the newspaper or magazine and number of insertions.

Inclusion of the Name of a Professional Accountant in Public Practice in a Document Issued by a Client

When a client proposes to publish a report by a professional accountant in public practice dealing with the client's existing business affairs or in connection with the establishment of a new business venture, the professional accountant in public practice should take steps to ensure that the context in which the report is published is not such as might result in the public being misled as to the nature and meaning of the report. In these circumstances, the professional accountant in public practice should advise the client that permission should first be obtained before publication of the document.

Similar consideration should be given to other documents proposed to be issued by a client containing the name of a professional accountant in public practice acting in an independent professional capacity. This does not preclude the inclusion of the name of a professional accountant in public practice in the annual report of a client.

When professional accountants in their private capacity are associated with, or hold office in, an organization, the organization may use their name and professional status on stationery and other documents. The professional accountant in public practice should ensure that this information is not used in such a way as might lead the public to believe that there is a connection with the organization in an independent professional capacity.

PART C — APPLICABLE TO EMPLOYED PROFESSIONAL ACCOUNTANTS

The following sections contain guidance which is particularly relevant to professional accountants working in industry, commerce, the public sector or education. Professional accountants employed in public practice should be aware they may find that the principles set out below are also of application to their particular circumstances. If professional accountants employed in practice are in doubt as to the applicability of any particular guidance, they should seek assistance from their professional body.

SECTION 15

Conflict of Loyalties

15.1 Employed professional accountants owe a duty of loyalty to their employer as well as to their profession and there may be times when the two are in conflict. An employee's normal priority should be to support his or her organization's legitimate and ethical objectives and the rules and procedures drawn up in support of them. However, an employee cannot legitimately be required to:

- a) Break the law;
- b) Breach the rules and standards of their profession;
- c) Lie to or mislead (including misleading by keeping silent) those acting as auditors to the employer; or
- d) Put their name to or otherwise be associated with a statement which materially misrepresents the facts.

15.2 Differences in view about the correct judgment on accounting or ethical matters should normally be raised and resolved within the employee's organization, initially with the employee's immediate superior and possibly thereafter, where disagreement about a significant ethical issue remains, with higher levels of management or non executive directors.

15.3 If employed accountants cannot resolve any material issue involving a conflict between their employers and their professional requirements they may, after exhausting all other relevant possibilities, have no other recourse but to consider resignation. Employees should state their reasons for doing so to the employer but their duty of confidentiality normally precludes them from communicating the issue to others (unless legally or professionally required to do so).

15.4 For further guidance as to the considerations involved see Section 2—Resolution of Ethical Conflicts.

SECTION 16

Support for Professional Colleagues

16.1 A professional accountant, particularly one having authority over others, should give due weight for the need for them to develop and hold their own judgment in accounting matters and should deal with differences of opinion in a professional way.

SECTION 17

Professional Competence

- 17.1 A professional accountant employed in industry, commerce, the public sector or education may be asked to undertake significant tasks for which he or she has not had sufficient specific training or experience. When undertaking such work the professional accountant should not mislead the employer as to the degree of expertise or experience he or she possesses, and where appropriate expert advice and assistance should be sought.

SECTION 18

Presentation of Information

- 18.1 A professional accountant is expected to present financial information fully, honestly and professionally and so that it will be understood in its context.
- 18.2 Financial and non-financial information should be maintained in a manner that describes clearly the true nature of business transactions, assets or liabilities and classifies and records entries in a timely and proper manner, and professional accountants should do everything that is within their powers to ensure that this is the case.

VOLUME 2

APPLICATION TO LUXEMBOURG

PREAMBLE

The present volume has been written with the aim of assisting professional accountants in applying the IFAC Code of Ethics except the section 8 “independence for Assurance Engagements”, in Luxembourg context. As set out in the “Foreword”, the OEC has adopted an overall principle-based approach with regard to the application of the IFAC Code of Ethics in the Luxembourg context. Therefore, this guidance is limited to situations particular to the Luxembourg environment. For any other issues, the professional accountant in public practice should refer to the present Code of Ethics as a whole.

Differences between specific IFAC guidance and the law and practice in Luxembourg are highlighted throughout the text of the IFAC Code of Ethics.

Members of the OEC and their employees, including professional trainees, are required to observe the requirements in Luxembourg, if there is any conflict between such requirements and those of the IFAC Code of Ethics.

GENERAL

Order assistance

The OEC is aware that the provisions of the present code may raise questions with regard to its application in day-to-day practice. OEC members are therefore invited to forward to the Council any unsolved questions they may have regarding the application of the present code of ethics.

Such questions should clearly set out the facts and circumstances, and be strictly related to the interpretation of the present Code of Ethics.

The response may be made public to the profession in an anonymous form.

Duty to the “Ordre des Experts-Comptables”

OEC members and professional trainees undertake to respond to any correspondence from the Order with regard to professional or administrative matters, to national standards and any other requests forwarded by the Order to ensure the good conduct of the profession in accordance with Article 11 of the Law of June 10, 1999 (as amended) organising the profession of professional accountant. Responses must be submitted to the Order within the time limit stated in such correspondence. Professional accountants and trainees are required to inform the Order and the Ministry of “Classes Moyennes” of any changes in their status as soon as they occur.

OEC members are required to ensure that the legal entities under their control comply with the rules set out in the previous paragraph.

LUXEMBOURG SPECIFICITIES

The “Commissaire”

Luxembourg company law provides for a “Commissaire” (sometimes also referred to familiarly as “commissaire aux comptes”) who is elected by the general meeting of the shareholders of a company in accordance with Article 61, or 109 or 200 of the Law of August 10, 1915 on commercial companies, as amended.

His main duties consist in the supervision of the company's financials (Art. 61 or 109 of the Law of August 10, 1915 on commercial companies, as amended.) Article 200 of the said Law relates to liquidation matters.

Further to Art. 62 of this Law relating to the engagement of "commissaire", this includes the examination of the accounts prepared by the company's management and a report on any findings from such examination to the shareholders at the annual general meeting of the company.

A "Commissaire" does not have to be independent of the company. National legislation also remains silent as to the professional qualifications required to be a "Commissaire".

The incorporation of the 8th European Directive within national law resulted in the abolition of the office of the "Commissaire" for companies exceeding the thresholds for medium-sized or large companies. In such cases, the audit of the annual or consolidated accounts and the report to the shareholders has to be carried out by a "réviseur d'entreprises".

For entities operating in regulated sectors (financial services and insurance sectors), Luxembourg legislation requires an audit to be performed by a "réviseur d'entreprises". Consequently, for such companies, there is no "Commissaire" even though such entities might not fulfil the size criteria as mentioned above.

Professional accountants in public practice who have been appointed as "Commissaire" and who are also qualified as "réviseurs d'entreprises" may either carry out an audit as per International Standards on Auditing ("ISA") or restrict themselves to complying with Article 62 of the Law of August 10, 1915 on commercial companies, as amended, without carrying out an audit in accordance with ISA standards.

Moreover, should the professional accountant in public practice, acting as "Commissaire", not apply ISA standards, he shall not issue an audit opinion. His report shall clearly state:

- the scope and the nature of work performed;
- that the management of the company is responsible for the financial information presented;
- that neither an audit nor a review has been carried out in accordance with international standards on auditing and that accordingly no assurance is expressed on the financial information provided.

Liquidation

Upon liquidation of a company, the term of office of its "Commissaire" comes to an end. The incumbent "Commissaire", who has been appointed as "Commissaire à la liquidation" is considered to be conducting an engagement which is comparable to his engagement prior to the liquidation. As a result, there is no threat to the independence of the incumbent "Commissaire", when acting as "Commissaire à la liquidation" on similar terms to his preceding engagement.

The incumbent "Commissaire" must observe the rules set forth in the section on "Commissaire" of the present volume.

For bankrupt entities (in compulsory liquidation), it is difficult to reduce the threat to the appearance of independence to an acceptable level, even when the safeguards set out in the Code of Ethics are taken into consideration. Therefore, the incumbent "Commissaire" of an entity in compulsory liquidation must refrain from accepting appointment as Liquidator for the same entity.

In any event, the "Commissaire à la liquidation" shall never act also as Liquidator due to the fact that the "Commissaire à la liquidation" has a duty to report independently on the financial information prepared by the Liquidator.

The terms "Commissaire" include the professional accountant in public practice and the network of firms of which the professional accountant in public practice is a member.

Company administration ("domiciliation") services

Professional accountants in public practice performing company administration services shall apply the principles presented in the present Code of Ethics, and in particular sections 8-4 to 8-7, as supplemented by the relevant statutory and regulatory requirements in Luxembourg (in particular the " NORME PROFESSIONNELLE : Diligences professionnelles de l'expert-comptable qui agit comme domiciliataire de sociétés").