
Code of Ethical and Professional conduct

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Code of Ethical and Professional Conduct

PREFACE

The Compliance Institute Southern Africa's (CI) objective is to establish professional and ethical standards for the compliance profession. CI identified and advocates the principles and values in the Code of Ethical and Professional Conduct ('the Code') as the foundation for Registered Compliance Officers in Southern Africa. All Registered Compliance Officers are expected to adopt and promote the Code and enhance the reputation of the profession. The Code serves as the basis on which members are held accountable for ethical and professional conduct. The Code supports the CI's objective as a professional body to act in the public interest.

SCOPE

CI requires all Registered Compliance Officers to have conceptual knowledge of the content of the Code, the necessary skill to apply and practise, as well as the resolve to implement the Code. The Code will be operative from 1 October 2012 and supersedes the Code of Ethics and Standards of Professional Conduct (for all members) and the Code of Conduct for Independent Compliance Practitioners.

HOW TO USE THIS CODE

Professionals often face ethical dilemmas while carrying out professional duties. It is difficult to anticipate all situations that might result in unethical behaviour in a code of ethical and professional conduct. The Code is a **principles-based code**. It thus provides guidelines and does not list all the possible situations that could occur.

The Code establishes a conceptual framework approach. This means that threats to the underlying principles have to be identified (refer to 1.1 for the underlying principles and 1.3 for the threats). The significance of the threats must also be determined and pre-cautionary measures must be implemented to reduce the threats to an acceptable level.

Section 1 Code of ethical and professional conduct applicable to all Registered Compliance Officers (hereafter referred to as Compliance Officers)

1.1 Underlying Principles

The CI requires all Registered Compliance Officers to, at all times, base their professional conduct on the following underlying principles:

1.1.1 Integrity

Integrity is regarded as the honesty and truthfulness or accuracy of one's actions

1.1.2 Professional skill and due care

Professional skill is the ability to perform the duties of the profession competently.

Due care is the care that a reasonable person would exercise under the circumstances.

1.1.3 Confidentiality

Ensuring that information is accessible only to those authorised to have access. Confidential information obtained from a client in the course of the performance of professional duties may not be shared with anyone, unless the client has given written express permission was obtained, or the information is known to the general public, or the Compliance Officer has a legal obligation to disclose.

1.1.4 Independence

Independence is when the Compliance Officer's judgement is not influenced by emotion or personal preference. Independence should be in both mind and appearance.

1.1.5 Professional conduct

Compliance Officers should act in such a way as to promote the interests of the compliance profession as well as the public interest and not to bring the profession or CI into disrepute.

1.2 Conceptual framework

A conceptual framework is applied whereby Compliance Officers shall:

- a) Identify threats to the Code's underlying principles;
- b) Evaluate the seriousness of the threat; and
- c) Implement precautionary measures to reduce the threats to an acceptable level.

1.3 Types of threats

Threats may be created by a broad range of instances. When such a threat arises it could affect the Compliance Officer's ability to comply with the Code's underlying principles. The threats could fall into one of the following categories:

1.3.1 Self-benefit threat

The threat that an interest, financial or otherwise, may unduly influence the Compliance Officer's judgement or behaviour

1.3.2 Activism threat

The threat that the Compliance Officer will promote the position of a client so that the Compliance Officer's independence is compromised

1.3.3 Acquaintance threat

The threat that the Compliance Officer will become overly sympathetic towards the interests of a client based on a too close or long term relationship

1.3.4 Bulldozing threat

The threat, real or perceived, that the Compliance Officer will be forced to act in a certain manner

1.4 Precautionary measures

Precautionary measures are measures that may reduce the aforementioned threats to an acceptable level. Sections 2 and 3 cover the precautionary measures applicable to independent Compliance Officer and Internal Compliance Officers respectively.

1.5 Maintaining professional competence

Compliance Officers should maintain professional skills and competence on an ongoing basis as required by the Continuous Professional Development (CPD) policy.

1.6 Relationships with stakeholders and regulators

Compliance Officers should conduct themselves professionally and responsibly, recognising the interests of stakeholders and encouraging this behaviour with other Compliance Officers.

1.7 Conflict of interest resolution

Conflicts of interest between Compliance Officers and other stakeholders should be managed in order that the Compliance Officer maintains his / her independence.

The following should be done in order to manage conflicts of interest:

- The detail of the conflict should be disclosed to all relevant parties in writing;
- Acting in such a way as to eliminate the conflict;
- Use of established internal processes within an organisation to address conflict resolution;
- Consider alternative courses of action.

1.8 Discrimination

Compliance Officers should respect the principles of equal opportunity and cultural diversity and should not discriminate unfairly against anyone.

Section 2 Code of Conduct applicable to Registered Independent Compliance Officers (hereafter referred to as Independent Compliance Officers)

This part of the Code is applicable to Independent Compliance Officers. It does not describe all the circumstances that may be encountered by Independent Compliance Officers.

Compliance with the Code's underlying principles may potentially create certain threats. As described in Section 1 of the Code, the threats fall into one of the following categories:

- Self-benefit threat
- Activism threat
- Acquaintance threat
- Bulldozing threat

2.1 Examples of threats applicable to Independent Compliance Officers

2.1.1 Self-benefit threat

- Financial interests in the client;
- Employment negotiations with the client;
- Concerns about losing a client;
- Over-dependence on the fees of one client;
- Involved in illegal activities with the client.

2.1.2 Activism threat

- Advancing one client over the other, e.g. promotes a client in legal action or disputes with third parties

2.1.3 Acquaintance threat

- A long association with the client;
- Gifts and privileged treatment from a client unless clearly insignificant;
- A previous partner or director of the Independent Compliance Officer now employed by the client;
- Family relationships between the independent compliance team and the client

2.1.4 Bulldozing threat

- The Independent Compliance Officer being pressured to reduce the coverage of work to be performed;
- The Independent Compliance Officer being threatened with dismissal;
- The Independent Compliance Officer being threatened with legislation

2.2 Precautionary measures

Examples of precautionary measures that could be implemented by the Independent Compliance Officer when threats exist while performing an engagement:

- Policies and procedures to monitor quality control of compliance engagements;
- Policies and procedures to monitor and manage the reliance on revenue from a single client;
- Alerting the compliance team to clients where independence is required (e.g. new clients where Compliance Officers and the compliance teams cannot own shares);
- Having an independent Compliance Officer who is not involved with the client to review the work done;
- Consultation with an independent third party, e.g. lawyer or Compliance Institute;
 - Discussing ethical issues with those charged with governance

2.3 When accepting a new client

Before accepting a new client, the Independent Compliance Officer needs to consider whether there are any threats to compliance with the Code's underlying principles. A potential self-benefit threat to integrity may be created when the client is involved in illegal activities or dishonesty.

The Independent Compliance Officer should evaluate the seriousness of the threat and implement precautionary measures to reduce the threat to an acceptable level.

Examples of precautionary measures are:

- Obtaining an understanding of the client and its activities;
- Securing the client's commitment to obeying laws

2.4 When accepting a new engagement

Before accepting a specific engagement, the Independent Compliance Officer should determine if there are any threats to the Code's underlying principles. A self-benefit threat to professional skill and due care could be created if the Independent Compliance Officer does not have the necessary skill to perform an engagement. The seriousness of the threat should be evaluated.

Possible precautionary measures that may be considered should the threat be serious:

- Consider if the Independent Compliance Officer has the necessary skills, expertise, experience and resources, including financial and physical resources, to operate effectively and efficiently;
- Consider if the necessary training can be obtained to perform the engagement if the matters fall outside of their own expertise;
- Consider employing the services of a specialist or obtaining other advice if the matters fall outside the expertise of the Independent Compliance Officer;
- Assigning enough personnel with the necessary competencies;
- Allocate sufficient time for performance of the engagement;
- Implementing quality control policies and procedures;
- A full and reasonable enquiry should be made into the client's compliance risk profile, compliance experience and business opportunities;
- The appropriateness of the recommendations should, where applicable, be reviewed by a senior member of the compliance team;
- The recommendations should be measured against the client's needs, risk profile, experience and business objectives;
- Apply intellect, exercise diligence and thoroughness in making recommendations;
- Have a reasonable basis for making recommendations or performing actions which must be supported by appropriate research and investigation;
- Comply with and observe both the letter and the spirit of legislation and regulation relevant to their areas of practice, as well as the codes, principles and standards of the CI.

2.5 Changes in professional appointment

Should an Independent Compliance Officer be asked to replace another Independent Compliance Officer, consideration must be given to any reason, professionally or otherwise, as to whether the engagement should not be accepted or not. This includes determining whether there are any threats to the Code's underlying principles and the seriousness of the threats.

Precautionary measures include:

- Obtaining the client's permission to contact the existing Independent Compliance Officer;
- Requesting the existing Independent Compliance Officer to provide information to the new Independent Compliance Officer regarding the client;
- Obtaining information from other sources

2.6 Undertaking complementary work

When an Independent Compliance Officer is requested to undertake complementary or additional work without replacing the existing Independent Compliance Officer, a self-benefit threat to professional skill and due care could be created if the Independent Compliance Officer has incomplete information regarding the client's circumstances. The seriousness of the threats should be evaluated.

Precautionary measures that could be implemented include:

- Obtaining the client's permission to contact the existing Independent Compliance Officer.

The existing Independent Compliance Officer is bound by the underlying principle of confidentiality. The information should only be disclosed if:

- The client gives permission;

- There is a legal or ethical requirement to disclose the information

2.7 Fees charged

2.7.1 Determination of fees

The following should be taken into account when determining the fees charged for consulting services:

- Time involved in performing the engagement;
- Level of skills and knowledge required to perform the engagement;
- The level of experience required by the Independent Compliance Officer performing the engagement

Fees charged for the provision of consulting services should be a fair reflection of the value of the consulting services provided.

2.7.2 Quotations

The Independent Compliance Officer may issue a quote to the client, lower than that of another Independent Compliance Officer. Charging a lower fee than another Independent Compliance Officer is not unethical, but consideration should be given as to whether any threats to the Code's underlying principles are created. A self-benefit threat to professional skill and due care could be created if the fee charged is so low that it will be difficult to perform the engagement according to the compliance standards. The seriousness of the threat will be determined by the level of the fee quoted and the services provided.

Precautionary measures that can be implemented include:

- Making the client aware of what is included in the fee;
- Assigning sufficient time and staff to the engagement;
- Implementing quality control procedures

2.7.3 Referral fees

The Independent Compliance Officer could be asked to pay, or may receive, a referral fee to obtain or refer a client. A self-benefit threat to independence and professional conduct could be created. The seriousness of the threat should be evaluated and precautionary measures should be implemented.

- Any commission or referral fees paid or received should be disclosed in writing to the client

2.7.4 Relative size of the fee

When the total fee of a client represents a large percentage of the total income of the compliance practice, then self-benefit and bulldozing threats may be created. The seriousness of the threat will depend on:

- Whether it is a new or established firm;
- The significance of the client qualitatively or quantitatively

Precautionary measures that could be implemented include:

- Reducing the dependency on the client;
- External quality control procedures;
- Consulting with a third party such as the CI, or another Compliance Officer

2.8 Marketing of services

When an Independent Compliance Officer solicits for new work, a self-benefit threat to the underlying principles of professional conduct is created if services, achievements or products are marketed in a way that is inconsistent with that underlying principle.

An Independent Compliance Officer should not:

- Misrepresent the terms and conditions of the engagement, capabilities, credentials, qualifications or experience

2.9 Conflicts of interest

2.9.1 Financial interests in the client

When the Independent Compliance Officer or immediate family has a financial interest in the prospective client, it creates a self-benefit threat to objectivity. To determine the seriousness of the threat the following need to be considered:

- The amount of shares that is owned by the Independent Compliance Officer, family member or team member;
- The nature of control exercised with the financial interest, whether the Independent Compliance Officer has control over the investment and can make the investment decision (where to invest) or if the Independent Compliance Officer has no control over the investment (e.g. unit trusts).

If the threat is serious, the following precautionary measures could be implemented to reduce the threat to an acceptable level:

- Consideration should be given to disposing of the financial interest;
- Not accepting the engagement;
- Disclosing the interest to those charged with client's governance client and other relevant stakeholders;
- Have another Compliance Officer review the recommendations made.

2.9.2 Loans and guarantees

2.9.2.1 Loans and guarantees made by a client

If a loan or guarantee is received from a client that is not under the normal lending agreements, a self-benefit threat to independence could be created. The threat will always be serious and the only safeguard that can be applied is that the loan or guarantee should not be accepted.

2.9.2.2 Loans and guarantees to clients

Loans or guarantees made to clients could create self-benefit threats to independence. The threat will always be serious and the only precautionary measure is not to make a loan or issue a guarantee to a client.

2.9.3 Business relationships with the client

Business relationships between the Independent Compliance Officer or his/her family members could create a self-benefit and bulldozing threat to independence. Unless the relationship is immaterial, the threat that is created by the relationship will be so serious that no safeguard will reduce the threat to an acceptable level. The relationship should be ended or the engagement should not be accepted.

2.9.4 Family relationships

Family or personal relationships between the client and the Independent Compliance Officer or team members could create self-benefit, acquaintance or bulldozing threats to independence. Precautionary measures that could be implemented include the following:

- Not accepting the engagement;
- Have another Compliance Officer review the recommendations made;
- Disclosing the interest to those charged with governance and relevant stakeholders

2.9.5 Employment with the client

Acquaintance and bulldozing threats to independence could be created if an Independent Compliance Officer, or a member of the independent compliance team, is offered a job at the client during the compliance engagement which will commence after the completion of the engagement. The threat will be significant. The following precautionary measures could be implemented:

- Removing the individual from the compliance engagement;
- Reviewing of the work completed by the individual by a senior Independent Compliance Officer

2.9.6 Gifts and hospitality

The acceptance of gifts and hospitality from a client could create a self-benefit and an acquaintance threat to independence. Unless the value of the gift and hospitality is clearly immaterial, the threat will be so serious that no precautionary measure will reduce the threat to an acceptable level. The Independent Compliance Officer should not accept or offer any gifts, benefits, compensation or consideration that may be perceived to compromise his/her independence.

SECTION 3 Code of Conduct Applicable to Registered Internal Compliance Officers (hereafter referred to as Internal Compliance Officers)

Compliance with the Code's underlying principles may potentially create certain threats.

Threats fall into one of the following categories:

- Self-benefit threat
- Activism threat
- Acquaintance threat
- Bulldozing threat

3.1 Examples of threats:

3.1.1 Self-benefit threat

- Having financial interest, loans or guarantees from the employing organisation;
- Participating in incentive compensation schemes;
- Inappropriate personal use of company assets;
- Concern over employment security

3.1.2 Activism threat

Furthering the legitimate goals of the organisation and promoting the organisation provided that it is legal will not create an activism threat

3.1.3 Acquaintance threat

- Long association with business contacts;
- Accepting gifts or preferential treatment unless the value is insignificant

3.1.4 Bulldozing threat

- Threat of dismissal or replacement;
- Dominant personality attempting to influence the decision making process

3.2 Precautionary measures

- Employing organisation's corporate oversight structures;

- Employing organisation's ethics and conduct programmes;
- Employing organisation's recruitment procedures emphasising employing high calibre employees;
- Appropriate disciplinary procedures;
- Strong internal controls;
- Leadership that stresses the importance of ethical behaviour;
- Monitoring of employee performance;
- Policies and procedures to encourage the communication to higher levels of management on any ethical concerns;
- Consultation with another Compliance Officer

In circumstances where the Internal Compliance Officer believes that the unethical behaviour will be recurring, the Internal Compliance Officer may obtain legal advice. If all available precautionary measures have been applied, then the Internal Compliance Officer should consider resigning from the employing organisation.

3.3 Conflict of loyalties

An Internal Compliance Officer should still comply with the Code's underlying principles. There may be situations where the responsibilities to the employee organisation and the underlying principles of the profession are in conflict. An Internal Compliance Officer may be pressured to act contradictory to what the CI expects from the Internal Compliance Officer. Threats such as bulldozing threats should be identified and the seriousness of the threat determined. The following precautionary measures could be implemented when threats arise:

- Obtaining advice from other Compliance Officers and the CI;
- Obtaining legal advice;
- Resigning from the employing organisation

3.4 Acting with sufficient expertise

Knowledge of all regulatory requirements applicable to the industries in which they operate in should be maintained and enhanced.

An Internal Compliance Officer should not mislead the employer on the level of expertise or knowledge.

Situations which will create threats to the Internal Compliance Officer's professional competence and due care include:

- If a specific area falls outside the Internal Compliance Officer's own professional competence, the employer should be informed about this and specialist advice should be gathered;
- If insufficient time is allocated when completing assignments;
- Insufficient education, experience and training;
- Incomplete information to complete the task

The seriousness of the threat will be determined by factors such as whether the Internal Compliance Officer is working with others, the level of supervision and review and the level of seniority. If the threat is serious, the following precautionary measures could be implemented:

- Obtaining support from another Compliance Officer with the required expertise;
- Allocating sufficient time to complete the assignment;
- Obtaining advice and training;
- Consulting with superiors, Independent experts and the CI

3.5 Preparation of findings and report writing

Findings should be objective and impartial, based on thorough research and application of judgement.

An Internal Compliance Officer should comply with, and observe both the letter and the spirit of legislation and regulation relevant to their areas of practice as well as the codes, principles and standards of the CI.

3.6 Financial interests

An Internal Compliance Officer or his/her family members having financial interests in the employing organisation such as shares, share options, performance bonuses could

create a self-benefit threat causing the Internal Compliance Officer not to act in accordance with the Code's underlying principles. Examples of when such threats will exist are:

- Direct or indirect holding of shares in the employing organisation;
- Profit-related bonus;
- Share options in the employing organisation

When these threats exist the following safeguards should be applied:

- Policies and procedures to determine the level or form of remuneration;
- Disclosure of all relevant interests and any plans to trade in these interests to senior management and those charged with governance

3.7 Allurements

3.7.1 Receiving offers

An Internal Compliance Officer may be offered an allurement. Allurements can take various forms including gifts, hospitality, and preferential treatment to influence actions or decisions of the Internal Compliance Officer.

The seriousness of the threat will be determined by its value, nature and the intent behind it.

The seriousness of the threat should be considered and precautionary measures applied to reduce the threats to an acceptable level.

The following precautionary measures could be implemented:

- Informing higher levels of management or those charged with governance when such offers are made;
- Seeking legal advice;
- Informing the CI;
- Advising close family members of relevant threats and precautionary measures if an allurement is being made;

- Do not accept the gift unless it can be perceived as clearly insignificant

3.7.2 Making offers

An Internal Compliance Officer may be in a situation where s/he is expected, or is pressurised, into offering allurements to influence the judging or decision making process of an individual or an organisation.

An Internal Compliance Officer may not offer such allurements to influence the potential judgement of a third party.

If such pressure comes from the employing organisation, the Internal Compliance Officer should follow the procedures set out in 1.7 of this Code.

SECTION 4 Code of Conduct Applicable to All members - membership

4.1 Membership (applicable to all members)

Only a member is entitled to use the professional designations conferred by CI.

Members of the Institute are entitled to use the designation “Compliance Practitioner (South Africa)” or CPrac (SA). Refer to CI website for qualifying criteria.

Members of the Institute are entitled to use the designation “Compliance Officer (South Africa)” or CProf (SA). Refer to the CI website for qualifying criteria.

SECTION 5 Whistleblowing

5.1 What is whistleblowing?

Whistleblowing encourages and enables members to raise serious concerns with CI.

Fellow members are often first to realise that something is wrong. However, they may not express their concerns as they feel that speaking up would be disloyal.

5.2 The aims of whistleblowing

- To encourage members to feel confident in raising concerns and to act upon concerns;
- To provide avenues to raise concerns in confidence and receive feedback on any action taken;
- To reassure that the member will be protected from possible reprisals or victimisation

5.2.1 What types of concerns can be reported?

- Conduct which is an offence or breach of law;
- Failure to comply with a legal obligation;
- Possible fraud or corruption;
- Other unethical conduct
- Actions which are unprofessional, inappropriate or in conflict with the Policies procedures or codes

5.2.2 How to raise a concern

As a first step, the ethical conflict resolution process should be followed. This is included in point 1.7. – Conflict of Interest Resolution

To report matters confidentially please consult CI website for further details.

SECTION 6 Improper conduct and disciplinary process

6.1 Improper conduct

Certain acts or omissions may constitute improper conduct on the part of a Compliance Officer and are punishable in terms of paragraph 5.2 of this Policy, procedures or codes. A Compliance Officer shall be guilty of improper conduct if such Compliance Officer, without reasonable cause or excuse (*this is by no means intended to be an exhaustive list of improper conduct*):

- 6.1.1 Contravenes or fails to comply with the applicable provisions of any Acts;
- 6.1.2 Contravenes or fails to comply with any compliance pronouncements as prescribed by CI;
- 6.1.3 Conducts him or herself with gross negligence in connection with any work performed by the member;
- 6.1.4 Has been found guilty in some other forum, including a Court, of any offence involving dishonesty and, in particular, but without prejudice to the generality of the foregoing, theft, fraud, forgery or uttering a forged document, perjury, bribery or corruption;
- 6.1.5 Is dishonest in the performance of any work or duties undertaken in relation to any professional services performed by a Compliance Officer;
- 6.1.6 Conducting him or herself with gross negligence in connection with any work performed by the Compliance Officer;
- 6.1.7 Improperly obtaining work or attempting to obtain work;
- 6.1.8 Committing a breach of any rule or policies procedures or codes prescribed by CI from time to time;
- 6.1.9 Conducting him or herself in a manner which, in the opinion of the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular, unworthy or offensive to CI or brings the profession into disrepute;
- 6.1.10 Failing to answer, within a reasonable time, any disciplinary-related correspondence or communication from the CI;

6.1.11 Failing to comply, within a reasonable time, any disciplinary- related order, requirement or request within the mandate, of the CI;

6.1.12 Failing, after demand, to pay any subscription or any fee or levy payable to the CI;

6.1.13 Failing to comply with the Continuous professional Educational policy

6.2 Disciplinary process

Any complaints received against a member of non-compliance with the code or improper conduct will be dealt with as set out in the disciplinary policy.

DEFINITIONS

Close family member

A parent, child, sibling, spouse or dependant

Compliance

This is either a state of being in accordance with established guidelines, specifications, or legislation or the process of becoming so.

Compliance Officer

An individual who is employed or operates in the field of compliance risk management. This is not a formal term or designation, but rather a collective term that encompasses all types of compliance workers

Compliance Practitioner (CPrac (SA))

A compliance officer upon whom the CPrac (SA) designation has been conferred by CI

Compliance Professional (CProf (SA))

A compliance officer upon whom the CProf (SA) designation has been conferred by CI

Financial interest

An interest in 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

A partnership, company or sole proprietor providing compliance services

Independence

Independence of mind - the state of mind that permits the expression of a conclusion without being affected by influences that compromise judgement, allowing the individual to act with integrity and exercise independence and scepticism

Independence in appearance - the avoidance of facts and circumstances that is so serious that a reasonable and informed third party would be likely to conclude that a Compliance Officer's integrity, independence and scepticism has been compromised

Independent Compliance Professional

A Compliance Professional who operates independently or as a consultant

Internal Compliance Professional

A Compliance Professional who is a full-time employee of a company or an entity

Independent Compliance Practitioner

A Compliance Practitioner who operates independently or as a consultant

Internal Compliance Practitioner

A Compliance Practitioner who is a full time employee of a company or an entity

Registered Compliance Officer

An individual who is employed or operates in the field of compliance risk management who is also a registered member of the Compliance Institute Southern Africa

Stakeholders

This includes all the entities and individuals with whom Compliance Officers interact, e.g. general public, employers, employees, colleagues, regulators, industry bodies, clients, potential clients, CI and CI members



I, (_____) admitted as a member of Compliance Institute Southern Africa on (_____) hereby pledge to adhere to the Code of Professional Conduct, in its spirit and application and to lead by example.

Signed at _____ this _____ day of _____ 20_____

Member