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Explanatory material on the Verordening gedrags- en beroepsregels accountants (VGBA)

Nederlandse
Beroepsorganisatie
van Accountants



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Explanation of the Proposed Regulation Code of Ethics for Professional Accountants

General

The Wet op het accountantsberoep (Wab, Auditors Profession Act) has been effective since 1 January 2013. The Wab introduces one professional body for both Accountant-Administratieconsulenten (AA) and Registeraccountants (RA). Article 19, second paragraph, introduction and part a, of the Wab commits the general meeting of the professional body to establish a regulation regarding rules for professional conduct for a sound performance of the work of professional accountants. The VGBA takes care of implementing this.

The revised version of the Code of Ethics for Professional Accountants (CoE) of the International Ethics Standards Board for Accountants (IESBA) of the International Federation of Accountants (IFAC), effective since 1 January 2011, also gives occasion for a change in the existing rules for professional conduct. The existing rules on professional conduct have been incorporated in NIVRA's VGC¹ of 14 December 2006, most recently amended on 14 June 2010.

Furthermore, the opportunity was taken to phrase rules for professional conduct chiefly in accordance with the 'Aanwijzingen voor de regelgeving' (Directions for the regulation) – a tool for the establishment of law and regulation of good quality. This facilitates understanding and readability of the regulation. The disclosure is not part of the arrangement but is valuable in spite of this. It provides an explanation with the provisions and reflects the realization history of the regulation.

The Code of Ethics and the international convergence have been the foundation for establishing this regulation. This regulation deviates from the Code of Ethics if the Dutch situation requires to do so. Where a deviation has occurred, this is indicated in the article related disclosure. For the purpose of international (audit) engagements the applicable ethical requirements should be the equivalent of parts A and B of the Code of Ethics. This regulation meets those requirements.

This regulation starts from the idea that the professional service provided by a professional accountant determines his behavior and this is not primarily determined by the member group of which the professional accountant is a member. For example, public accountants as well as accountants in business can perform other engagements in the role of an engaged consultant. It would be socially inexplicable that these professional accountant would respond differently to, for example, behaving without integrity by the client for the purpose of accepting clients or engagements. In addition, professional accountant often fulfil different part-time roles (part-time public accountant and internal auditor, or as financial professional, professional accountant in business). The principles in this regulation do not draw a distinction to member groups.

Through the application of the Directions for the regulation this regulation only contains requirements and no examples. A logical consequence is that these regulations contain the requirements regarding the fundamental principles as well as the conceptual framework (part A of the Code of Ethics) and a few requirements from the parts B and C of the Code of Ethics (parts B and C are intended for the application of part A). In principle, the examples (from parts B and C of the Code of Ethics) will be included in the NBA-practice notes.

The introductory considerations express that the professional accountant, by complying with the rules for professional conduct, acts in the public interest also indicated with the social interest. In this respect, compare article 100.1, first till third sentence, of the Code of Ethics.

Key provision of this regulation is that the professional accountant complies with a set of five fundamental principles in order to exercise his responsibility as a professional accountant to act in the public interest. This regulation provides the professional accountant with a conceptual framework that requires to identify and assess circumstances that could be a threat to the compliance with the fundamental principles. It may also prescribe a course of action for an identified threat. In case of a threat to the fundamental principles, applying the conceptual framework will lead to the conclusion that the professional accountant should apply a safeguard that ensures his compliance with the

¹ Verordening Gedragscode, Code of Conduct

fundamental principles. It is explicitly pointed out that, although this regulation uses the singular form here, this does not mean that only one safeguard will suffice at any time. It could happen that more than one safeguards are necessary to ensure compliance with the fundamental principles. In that case, more safeguard need to be applied that, collectively, will be sufficient. In some situations no safeguard will suffice other than the professional accountant withdrawing from the situation by refusing or terminating his professional service or relation.

Where there is a “reasonable safeguard to be applied” in the regulation, this refers to a safeguard with which the professional accountant attempts to influence the acts of someone else. Whether he succeeds to exact certain behavior from that other person obviously also depends on that other person. Therefore, in those situations a commitment for the professional accountant will be reasonably sufficient. When determining what defines a reasonable safeguard, the professional accountant wonders what an objective, reasonable and well-informed third party would expect him to do (see article 20). With respect to certain situations, instead of a reasonable safeguard to be applied, a more specific safeguard is prescribed, even though the practices of someone else are under discussion. Examples are a safeguard aimed at terminating behaving without integrity by others (article 7, first paragraph), a safeguard aimed at dispelling the impropriety, incompleteness or misrepresentation of information, or making a statement that discloses the impropriety, incompleteness or misrepresentation (article 9, first paragraph). If the professional accountant fails to apply that safeguard, he is expected to disassociate himself from the situation.

Where applying a safeguard is not explicitly prescribed per article, but using the conceptual framework forces someone to apply a safeguard (article 21) and in the situation, as referred to in article 22, a “sufficient” safeguard needs be applied. In each of the aforementioned cases, the professional accountant operates with determination and does not wait any longer than necessary to apply a safeguard. For further information as to what sufficient implies, references are made to the disclosure to article 21, first paragraph.

Obviously, the professional accountant can consult the professional body or the relevant officer charged with governance in case he judges the application of this regulation or detailed rules based thereupon, and in particular complying with the fundamental principles, leads to a disproportionate result or a result that is not in the public interest (also compare article 100.11 of the Code of Ethics).

Summary by Article

Article 1

Article 1 contains a number of definitions used in this regulation. Some of which are disclosed.

Professional accountant

Article 1 of the Wab defines ‘professional accountant’ as a ‘Chartered Accountant or Accountant-administratieconsulent (AA-qualification)’.

Threat

A threat to complying with the fundamental principles can arise in many different ways. There is a set of five ways below:

- a a threat as a result of self-interest: this is the threat that arises from a financial or other interest;
- b threats as a result of self-review: this is the threat that arises when the professional accountant reviews his own work, his work in the name of the audit unit or the result thereof;
- c a threat as a result of advocacy: this is a threat that arises when the professional accountant identifies himself too much with the interest of the organization where he provides a professional service, as a result of which the professional accountant loses his objectivity;
- d threats as a result of confidentiality: this is the threat that arises when the professional accountant develops a bond that is close with the organization where he provides a professional service, or when a professional accountant nourishes too much sympathy for the interests of another person as a result of which he loses his objectivity; and
- e a threat as a result of intimidation: this is the threat that arises when the professional accountant is kept from acting objectively due to actual or alleged pressure.

Whether a risk is acceptable or not also depends on, in addition to the assessment of the risk by the professional accountant himself, from what angle an objective, reasonable and well-informed third party looks at the issue as referred to in article 20. Circumstances are an acceptable risk or even no

risk at all when a third party would conclude they do not affect any compliance with the fundamental principles.

Professional service

Procedures for which professional competence as a professional accountant is utilized involve performing audit engagements, review engagements and other assurance engagements, related services and other activities in the field of financial reporting, accounting organization, business economics and taxes. The professional accountant is expected to practice his profession when providing a professional service.

The concept of professional service should be interpreted in a broad sense. This means it also includes activities a professional accountant could perform as a service for the benefit of someone other than an employer or a client, or activities for the benefit of himself. And activities the professional accountant performs free of charge for the benefit of a third party are, when professional competence is applied when performing these activities, regarded as a professional service for the application of this regulation. Another example is a tax return for himself.

Article 2

A characteristic of the auditing profession is the acceptance of the responsibility to act in the public interest. Therefore, the professional accountant's responsibility does not merely consist of fulfilling the needs of an individual client or employer. This article summarizes the fundamental principles with which a professional accountant should comply in order to exercise his responsibility to act in the public interest. The fundamental principles have been processed in the regulation and will be disclosed hereafter.

Article 3

This article determines the scope of the regulation. The chosen scope of article 3 attunes to article 42 of the Wab. This was chosen for the purpose of consistence which gives grip to the engagement for the law that the NBA does not take care of matters that are not strictly necessary for the objective this regulation wants to achieve and that the regulation does not needlessly limit the market process (article 19, paragraph 4).

Every time a professional accountant performs activities using professional competence of which the professional has at his disposal, or should have at his disposal – so every time a professional accountant provides a professional service – he is expected to practice his profession and should comply with the fundamental principles. This does not take into account whether he provides the professional service for the purpose of business practices or private practices; obviously, the interpretation of the professional service depends of the kind of professional service the professional accountant performs.

The fundamental principle “professional behavior” applies a broader scope than the other fundamental principles. Professional behavior extends over a professional accountant's behavior in addition to performing a professional service, so outside practicing his profession, where a professional accountant should be aware he does not discredit the auditing profession. Behaviors regard both the professional accountant's action (active) and omission (passive).

Complying with the fundamental principles and enforcing these in the form of disciplinary proceedings aims at practicing the profession, but is not limited to practicing the profession in the restricted sense. The condition for disciplinary enforcement is that the behavior should be related to practicing the auditing profession. When providing a professional service, this obviously applies. For disciplinary enforcement of behavior outside the professional service, this behavior should affect the practice of the profession (reflect on the profession).

Examples of behaviors that are essentially regarded as conflicting with the rules on professional conduct include involvement in laundering or a tax fraud by the professional accountant, because such behaviors damage the professional accountant's reputation, or professional accountants in general. On the other hand, a serious traffic violation, albeit a pecuniary offense, is not a behavior that would be considered as conflicting with this regulation. After all, it is not plausible that a traffic violation would discredit the auditing profession. It is explicitly pointed out that these examples do not aim to provide a qualification whether a behavior can be regarded as a professional service or not.

Articles 4 and 5

These articles elaborate on the fundamental principle professional behavior.

Article 4

Article 3 of the Wab also determines that the NBA takes care of the professional honor (eer van de stand). Based on article 19 of the Wab, the general meeting can establish a regulation in order to fulfill that task. This regulation, and in particular article 4, provides that task. The article attempts to prevent that the professional accountant discredits 'professional honor' (according to the Wab) both within practicing his profession and outside practicing his profession.

In order to prevent the professional accountant discrediting the auditing profession, he complies with the applicable law and regulation in broad terms. The article stresses that a professional accountant could also prejudice the profession by omission (passive behavior).

Article 5

The position the professional accountant occupies within the organization where he works or to which he is related, might inspire confidence with third parties with regard to the functioning of this organization. This is the reason the international professional bodies for the auditing profession attach value to professional accountants contributing to ethical behavior by the organization (for example, see article 300.5 of the Code of Ethics). This is specified in article 5 by a concrete requirement. It is important this requirement in the VGBA focuses on every professional accountant working for or related to an organization, regardless of the nature of his activities.

This article is related to those situations when the organization where the professional accountant works or to which he is related does not comply with law or regulation. This may be the case because of an action or omission by the organization's board or management, or other employees. It is professional to take action when the professional accountant suspects matters are not in accordance with the rules within his organization. Given the professional accountant's responsibility to act in the public interest, he is expected to do so. The professional accountant's course of action in case of suspicion of not complying with law and regulation is to be included in the fundamental principle professional behavior. Because non-compliance with law and regulation is not necessarily a matter of integrity, there is a separate article to act in case of dishonest behavior by the organization (article 8).

An organization where a professional accountant works does not only refer to the accountant in business's employer, but also an audit firm or an audit organization. "Related to an organization" refers to the situation where a professional accountant is related to an organization as a partner/(joint) proprietor, respectively a professional accountant (temporarily) working as an official at an organization, such as a self-employed person as interim controller or a professional accountant who is a treasurer at a club or a foundation as a sideline.

The organization where the professional accountant works or to which he is related should not solely be judged legally or be restricted to the formal employer or legal entity to which the professional accountant is related. For this purpose, a professional accountant also considers the organizations that are related to the aforementioned legal entity, for example because they operate under the same name or are closely related, which might give an outsider the impression that this is one and the same organization.

If the professional accountant suspects his organization does not comply with law and regulation he investigates the matter more closely in as far as this is necessary and in as far as his position and competence enable him to do so. If the professional accountant actually thinks that there is no compliance with law nor regulation, he takes steps in order to terminate this behavior and persists to rectify the consequences.

When determining what contains a reasonable safeguard, a professional accountant wonders what a reasonable and well-informed third party would expect of him (see article 20). This also depends on his position within his organization. In a lower position it may be sufficient to have an observant conversation with the manager while a professional accountant in a higher position (hierarchical or due to seniority) may be expected to inform an internal officer charged with governance (such as a

compliance officer or the supervisory board) and/or an external officer charged with governance. Obviously, the specific situation determines what safeguard will suffice.

Considering the actions of others as well as the influence of the professional accountant also depend on his position within the organization, this article deals with a commitment for the professional accountant (reasonable safeguard to be applied).

If more professional accountants work for the organization, it may be sensible the professional accountant consults with one or more of those professional accountants about his assessment and the reasonable safeguard to be applied. If this is not possible, for example because the professional accountant in question does not have a colleague within the organization, the professional accountant may contact the one of the intermediaries approached by the NBA, the office of the NBA or a specialized attorney.

In extraordinary cases, article 5 may result in the professional accountant having to terminate his relation with the organization. It is unwise to take such a decision lightly. Therefore, it is strenuously recommended to seek legal assistance in such a situation before the relation is actually terminated.

Articles 6 till 10

In these articles the fundamental principle integrity is elaborated. Where the VGC required the professional accountant to avoid a certain situation (proactive) till the effective date of this regulation, this regulation applies requirements more reactive of nature, with respect to integrity (also with professional behavior in article 5). Except the fact that this leads to more concrete requirements, a reactive nature is more obvious because this includes situations where the actions of others create a threat. A professional accountant can only take action when he has become aware of the situation in question.

Article 6

Acting honestly and straightforward entails that a professional accountant is honest and does not stretch the truth.

Article 7

The professional accountant may be associated with acting without integrity by others such as a client or the organization where the professional accountant works or to which he is related. When assessing the circumstances and the threat, as well applying one – or, if needed, more – safeguard, the professional accountant also considers the expected opinion of an objective, reasonable and well-informed third party (see article 20). An example of a situation that applies to this article is a conversation where the professional accountant is present and there is a misstatement of fact. Examples of a safeguard are adjusting a conversation in order to generate an accurate statement of fact of requesting to modify the misstatement of fact.

The second paragraph of article 7 indicates that a professional accountant disassociates himself if no safeguard is possible to terminate this dishonest behavior. This means that those involved become aware of the fact that the professional accountant disassociates himself from certain behaviors. For example, by contacting the parties in question where the professional accountant distances himself from the statement of fact made by third parties, of which he makes a statement. To prevent the professional accountant damaging the fundamental principle confidentiality, it could be sensible to obtain legal advice before determining what action is appropriate.

Article 8

A professional accountant can be expected, given his responsibility to act in the public interest, to take action when he suspects that the organization where he works or to which he is related does not act honestly and straightforward. An example of acting without integrity is a misstatement of facts or events. The professional accountant is expected in the situation at hand is disclosed in article 5. For a disclosure to the definition 'organization where the professional accountant works or to which he is related', also see article 5. In case the professional accountant himself is involved in, or is related to, acting without integrity by his organization, article 7 applies.

Article 9

If a professional accountant is involved or associated with reports or other data that are materially incorrect, incomplete or misleading, article 9, first paragraph, part a, requires to apply a safeguard aimed at mitigating that incorrectness, incompleteness or misrepresentation, if possible. This situation might arise when there is an inaccuracy in the financial statement or representation in a forecast that is too positive. When assessing a threat and applying a safeguard, a professional accountant considers the expected opinion of an objective, reasonable and well-informed third party (see article 20). A safeguard as referred to in the first paragraph, part a, is described in article 2:362, sixth paragraph of the Civil Code. This concerns the situation where an enterprise identifies a fundamental mistake in the financial statement after publication and how this enterprise should deal with such a matter. If the client and perhaps the professional accountant comply with article 2:362, sixth paragraph of the Civil Code, the professional accountant is expected to have complied with article 9, first paragraph, part a. Pursuant to RJ 150², in case of material yet non-fundamental errors, rectification in the following financial statement will suffice, for the purpose of part a of the first paragraph. In case IFRS is applied under Book 2 of the Civil Code, one can act correspondingly.

An example of a safeguard as referred to in the first paragraph, part b, is the professional accountant providing an audit report with a qualified opinion or an adverse opinion.

The second paragraph indicates that a professional accountant disassociates himself if he does not apply a safeguard aimed at mitigating the inaccuracy, incompleteness or misrepresentation of the information and cannot add a statement to that information. The professional accountant disassociates himself by distancing himself from the information provided. When appropriate, the professional accountant can suffice with an oral notification to the intended users of that information and a relating note included in the file is adequate. This might be the case when incorrect information has been provided to an identifiable group of users such as a bank. In other cases it may be necessary to issue a press release or to place an advertisement. To prevent the professional accountant damaging the fundamental principle confidentiality, it may be sensible to obtain legal advice prior to determining what action is appropriate.

Article 10

This article relates to the situation where someone else has incorrectly represented the professional accountant's involvement in the information provided by someone else. Examples of an incorrect version include a wrongful representation of unmodified auditor's report with a report, and distributing a financial statement that suggests that the professional accountant has compiled this without him being involved. When assessing the threat and applying one or, if necessary, more safeguards, the professional accountant also considers the expected opinion of an objective, reasonable and well-informed third party (see article 20).

Examples of a reasonable safeguard to be applied include:

- requesting the person who has caused the incorrect representation, to amend the situation;
- informing the parties that have received information about his actual involvement;
- making a statement of the incorrect representation of the involvement to an appropriate officer or body within the employer;
- considering the use of media when the information is widely distributed.

Here, the professional accountant may consider obtaining legal advice regarding, for example, his confidentiality, accountability aspects, possible legal rights and obligations, and the severity of the safeguard to be applied regarding the principle 'reasonable safeguard to be applied'.

Article 11

Article 11 elaborates on the fundamental principle objectivity. To comply with the fundamental principle objectivity the professional accountant avoids any situation where his professional judgment may be biased. Bias may, for example, arise due to a prejudice, conflict of interests, or another cause.

When it turns out the professional accountant cannot comply with the fundamental principle objectivity due to a threat, he will not provide the professional service in question.

² *Richtlijnen voor de Jaarverslaggeving*, Dutch GAAP

The professional accountant who represents a particular interest applies, based on article 21, safeguards to ensure his objectivity is not threatened. An example of representing a particular interest is assisting an entrepreneur in settling a divorce or in the acquisition or sale of an enterprise. In this respect, a safeguard to be applied could be the disclosure of his involvement to all parties and convincing himself that all other parties are being assisted by one or more experts.

Independence is an aspect of objectivity and is required when performing assurance engagements, like the applicable VGC till the effective date of this regulation. For the sake of completeness, it is observed that this requirement is implemented and processed in the Regulation expected to be effective from 1 January 2014 with respect to independence of professional accountants in case of assurance engagements (design published on www.nba.nl [16 October 2013]).

Still, impartiality and independence are not the preconditions for interpreting objectivity. However, this is not the case by definition. An accountant in business could represent the justified interests of the entity where he works, which does not necessarily qualify as impartiality. Also, a professional accountant who performs a compilation engagements is not automatically independent.

Articles 12 till 15

These articles elaborate on the fundamental principle professional competence and due care. The professional accountant maintains his professional knowledge, insights and skills at the level required to adequately perform a professional service. This means the level of quality required for that service and based on the current developments in practice, law and regulation and techniques. Maintaining professional competence means that the professional accountant should have a continuous consciousness and understanding of technical, professional and business developments if and in as far as these are important when he practices his profession. The professional accountant acts carefully and in accordance with the applicable law and regulation. The professional accountant is expected to adopt an attitude of professional skepticism. Rules regarding permanent education, audit procedures and quality systems provide an interpretation of the fundamental principle professional competence and due care.

The principle professional competence and due care also includes the term 'proper foundation', used in the regulation in the past. This means that the professional accountant only makes statements regarding the outcome of his work in as far as his professional competence and the procedures he performed provide a proper foundation for this outcome.

Article 13, second paragraph, states that the professional accountant should perform a professional service carefully and timely. Obviously, the interpretation of this depends on the kind of professional service the professional accountant performs. A professional accountant who performs an audit is expected to do something else than a professional accountant who gives advice or who performs a compilation engagement.

When it turns out the professional cannot comply with the fundamental principle professional competence and due care due to a threat, he decides not to provide professional service in question.

Article 14 includes the professional accountant is responsible for the fact that the person under his professional authority disposes of the required training needed to provide a specific professional service (both in theory and in practice).

Through pointing out the inherent limitations that are related to a professional service in article 15, the professional accountant prevents that his opinion is interpreted as a factual statement.

Articles 16 till 19

These articles elaborate on the fundamental principle confidentiality.

If a professional accountant obtains data or information of which he knows the confidential character or should reasonably be expected to know, he has a duty of confidentiality unless the situations described in article 16 apply. Thus the duty of confidentiality is not absolute, because in certain cases confidential information can or should be provided to third parties or this should be made public. That is why the definition confidentiality is used in the regulation.

It is important the professional accountant is attentive to considering the fundamental principle confidentiality regarding the data or information obtained during the practice of his profession in every environment he finds himself, regardless whether this is private or professional. The principle of confidentiality will obviously remain existent after the professional accountant has terminated his relation with the client or the organization where he works or to which he is related. This does not mean that the professional accountant cannot apply his previously obtained knowledge and experience in a new business environment, though.

The professional accountant who considers to provide confidential data or information based on article 16, parts b till e, should be aware of his responsibility to act in the public interest (article 17, first paragraph). Article 20 of this regulation plays a part in this consideration. In the situation where the professional accountant decides not to provide confidential information he should record the considerations that lie at the bottom of this decision.

In general the professional accountant can or should breach his duty of confidentiality if he performs his work in association with others and those other people should take note of the confidential information to make a worthwhile contribution to that work. Therefore, article 19 includes that the professional accountant ensures those people comply with the duties of confidence.

Providing confidential data and information does not include the situation where a professional accountant 'who has left', who was also responsible for the file and consequently already familiar with the confidential information, gets access from the professional accountant that is currently responsible or from the audit firm.

The professional accountant who is responsible for the performance of a statutory audit as referred to in article 1, first paragraph, part f, of the Wta³, this is the 'external auditor', the Wta and the Bta⁴ are important with respect to confidentiality. Article 26 of the Wta and articles 38a and 38b of the Bta contain rules concerning confidentiality that solely apply to the external auditor.

Article 16, parts a and b

Examples of situations in the Dutch context where the circumstances result in the professional accountant being obliged or permitted to disclose confidential information and data after all are:

- a disclosures claimed by law (for example, the Wta, the Wet ter voorkoming van witwassen en de financiering van terrorisme or the Compatibiliteitswet);
- b disclosure allowed by law and with which the organization where he provides, or provided, a professional service has agreed;
- c disclosure of confidential data to the persons appointed by the Ondernemingskamer (Enterprising Section) in an inquiry as referred to in title 8, department 2 of Book 2 of the Civil Code;
- d disclosure to committees of inquiries operating in public and to the Algemene Rekenkamer (General Accounting Office);
- e disclosure in the situation where the professional accountant has been summoned as a witness in legal proceedings;
- f disclosure to legal bodies or to officers charged with governance and bodies of disciplinary jurisdiction established by law.

Additionally the professional accountant may be obliged or permitted to provide confidential data or information. Such obligations and permissions have been included in the Nadere voorschriften controle- en overige standaarden (NV COS⁵) that qualify as legal requirements. Also compare article 38a, first paragraph, of the Bta:

'indien dit redelijkerwijs noodzakelijk is voor de naleving van het ingevolge de wet bepaalde of van de verordeningen en nadere voorschriften die krachtens artikel 19, tweede lid, aanhef en onderdelen a en b, van de Wet op het accountantsberoep zijn vastgesteld en geschiedt:

- 1 *aan een deskundige die door de externe accountant is betrokken bij de uitvoering van een wettelijke controle;*

³ Wet Toezicht Accountantsorganisaties, Audit Firms Supervision Act

⁴ Besluit Toezicht Accountantsorganisaties, Decree Audit Firms Supervision

⁵ Detailed rules on audits and reviews of financial statements and other assurance and related services engagements.

- 2 *aan personen binnen de accountantsorganisatie waarbinnen de externe accountant werkzaam is of waaraan hij is verbonden dan wel binnen het netwerk waartoe de accountantsorganisatie behoort, die op enigerlei wijze betrokken zijn bij een wettelijke controle waarvoor de externe accountant verantwoordelijk is;*
- 3 *aan een groepsaccountant of een buitenlandse accountant die verantwoordelijkheid draagt voor het afgeven van een accountantsverklaring bij de jaarrekening die mede de geconsolideerde jaarrekening van een groep ondernemingen of instellingen bevat waarin de gegevens van een controlecliënt van de externe accountant worden opgenomen;*
- 4 *aan een registeraccountant, een Accountant-Administratieconsulent of een buitenlandse accountant indien deze in het kader van een assurance-opdracht gebruik maakt van de werkzaamheden van de externe accountant;*
- 5 *aan een registeraccountant, een Accountant-Administratieconsulent of buitenlandse accountant van wiens werkzaamheden de externe accountant in het kader van een wettelijke controle gebruik maakt;*
- 6 *aan een registeraccountant, een Accountant-Administratieconsulent of een buitenlandse accountant ten behoeve van diens beoordeling van de aanvaardbaarheid van een controleopdracht;*
- 7 *aan een persoon aan wie advies wordt gevraagd als bedoeld in artikel 17, eerste lid;*
- 8 *aan de persoon, bedoeld in artikel 19, tweede lid, of artikel 23, eerste lid;*
- 9 *aan de persoon die is betrokken bij de uitvoering van een periodiek intern kwaliteitsonderzoek van afgeronde opdrachten tot het verrichten van een wettelijke controle;*
- 10 *aan de beroepsorganisatie;'*

[if this is reasonably necessary to comply with what is determined by law or with the regulations and detailed rules that have been established based on article 19, second paragraph, introduction and parts a and b of the Wet op het accountantsberoep⁶ and takes place:

- 1 *with respect to an expert who has been involved in the performance of a statutory audit due the professional accountant;*
- 2 *with respect to people within the audit organization where the external auditor works or to which he is related or within the network of which the audit organization is part, that are, in any way, involved in a statutory audit for which the external is responsible;*
- 3 *with respect to a group accountant or a foreign accountant who is ultimately responsible for issuing an accountant's report with the financial statement that also contains the consolidated financial statement of a group of enterprises or institutions in which the data of an audit client of the external auditor are included;*
- 4 *with respect to a chartered accountant, an accountant consultant (AA-qualification) or a foreign accountant if they use the work of an external auditor in case of an assurance engagement;*
- 5 *with respect to a chartered accountant, an accountant consultant (AA-qualification) or a foreign accountant whose work the external auditor uses for a statutory audit;*
- 6 *with respect to a chartered accountant, an accountant consultant (AA-qualification) or a foreign accountant for his assessment of the acceptability of an audit engagement;*
- 7 *with respect to a person who is consulted as referred to in article 17, first paragraph;*
- 8 *with respect to the person, as referred to in article 19, second paragraph, or article 23, first paragraph;*
- 9 *with respect to the person who is involved in the performance of a periodical internal quality research of completed engagements to performing a statutory audit;*
- 10 *with respect to the professional body;']*

Article 16, part e

The Code of Ethics (210.13) states that providing information to the succeeding professional accountant by the existing professional accountant also depends on the client's consent. This restriction is not included in this regulation, which is in accordance with the VGC that is applicable. Therefore, the current professional accountant cannot make an appeal to his duty of confidentiality in the Netherlands.

⁶ Accountants Act

Articles 20 and 21

These articles reflect the conceptual framework which provides structure for the professional accountant when complying with the fundamental principles and acting in the public interest (chapter 2).

Article 20

The professional accountant is expected to exercise professional judgment when he checks whether he complies with the fundamental principles. He is also asked to do so when he considers whether a safeguard is necessary, or whether a necessary safeguard is possible in the circumstances, and, if so, if a sufficient safeguard is available. The professional accountant includes all circumstances of which he knows or should know in his consideration to come to logical, realistic and well-founded decisions and conclusions. The professional accountant asks himself whether his own opinion will be shared by someone else who disposes of objective and reasonable judgment and who is familiar with all relevant facts and circumstances. By using an 'objective, reasonable and well-informed third party' as a touchstone, the professional accountant is enabled to act in the public interest: the responsibility of a professional accountant does not solely consist of fulfilling the needs of an individual client or employer. The definition objective, reasonable and well-informed third party is connected to article 25a, first paragraph, of the Wta, (Audit Firms Supervision Act).

In addition to how the professional accountant assesses a certain situation, he should always ask himself how an objective, reasonable and well-informed third party regards a certain situation. This does not only include the qualification of a circumstance (whether or not a threat to complying with the fundamental principles), but also the question if the safeguard that was possibly applied is sufficient.

Part of the circumstances of which the professional accountant knows or should know is information concerning acting or omitting of those who perform procedures under his authority for a professional service or the person from whom he requests advice or support, in as far as this acting or omitting influences the performance of the professional service. It is supposable that the intended acting or omitting is a threat to the professional accountant complying with a fundamental principle. Article 14 and 19 indicate that, in certain cases, the professional accountant has a direct duty to maintain. Article 20 includes the generic basis for the conceptual framework where the professional accountant, in case of the aforementioned acting and omitting, will frequently use the quality control system of the organization where he works or to which he is related.

Article 21, first paragraph

In order to ensure the professional accountant complies with the fundamental principles referred to in article 2, the professional accountant applies a conceptual framework. This conceptual framework compels the professional accountant to identify and review circumstances that may be a threat to compliance with the fundamental principles. The process of identifying and reviewing is an ongoing process. Circumstances of which an objective, reasonable and well-informed third party as referred in article 20 would conclude that these would in fact not influence compliance with the fundamental principles, are an acceptable risk or even no risk at all to and are not considered a threat. Also see the explanation of the definition of the threat.

When the professional accountant establishes there is a threat, he cannot simply perform a professional service and he applies a sufficient safeguard, when possible. If a single safeguard is not sufficient to reduce the risk that the professional accountant does not comply with the fundamental principles to an acceptable level, more safeguards are applied that, together, have the desired effect. A safeguard is sufficient if it ensures that compliance with the fundamental principles is, in fact, no longer influenced and, thus, the professional accountant is convinced he complies with the fundamental principles. To objectify this, the professional accountant bases his opinion on the assumed vision of the objective, reasonable and well-informed third party. In order to be sufficient, every safeguard or combination of safeguards taken should be appropriate and suitable and should be applied with determination, given the circumstance. It could also happen that a threat cannot be eliminated by a safeguard. The second paragraph of this article deals with this matter.

In the Regulation, expected to be effective from 1 January 2014, regarding the Verordening inzake de onafhankelijkheid van accountants bij assurance-opdrachten (ViO) (independence of professional accountants with respect to assurance engagements) (design published on www.nba.nl [16 October

2013]) the same conceptual framework with regard to parts has been completed by prescribing a specific safeguard for certain situations. These articles relate to situations where the NBA has concluded that there is a continuing threat and a certain safeguard is necessary to ensure the independent performance of an assurance engagement. The professional accountant's own review cannot overrule a prescribed safeguard. It can happen that one or more safeguards are needed in addition to those already applied. An additional safeguard may be needed if there is another circumstance that has been identified as a threat and the safeguard applied does not eliminate this other threat.

Article 21, second paragraph

This regulation indicates in what way the professional accountant should act if a threat cannot be eliminated by one or more safeguards. That situation could occur when there is a threat that is of such a nature and size that an extreme safeguard is needed to eliminate this threat, but that such a safeguard is not available in a concrete situation. It could also be that case that no safeguard at all is capable of ensuring compliance with the fundamental principles. In both cases, first of all, the specific professional service will be declined or terminated and, second of all, the relation with the client or the employer could be terminated. Cancellation of a client relation or an employment is automatically an ultimatum remedium and only needs to be applied if an objective, reasonable and well-informed third party would also come to the conclusion there is no other possibility to solve a conflict with the rules on professional conduct.

The Verordening inzake de onafhankelijkheid van accountants bij assurance-opdrachten (ViO), expected to be effective from 1 January 2014, (design published on www.NBA.nl [16 October 2013]) identifies some circumstances that are a threat against which no safeguard is considered sufficient. In those cases, the regulation explicitly prohibits the performance of an assurance engagement. The professional accountant's own judgment can never overrule an explicit prohibition.

Article 21, third paragraph

Finally, this article includes a documentation requirement regarding the threat the professional has identified and that has been eliminated by a safeguard. A professional accountant makes a record if there is a professional service to be performed under the circumstance that there is a threat, obviously strictly on the terms that the safeguard results in compliance with the fundamental principles (first paragraph). So there is no documentation requirement when the judgment indicates there is no threat. Making a record is not required if a threat results in a professional service being declined or terminated or the organization where he performs, or performed, a professional service is terminated (second paragraph). However, sometimes it can be sensible to document even when this is not required. The documentation requirement with respect to a threat that has been eliminated by a safeguard essentially means that the professional accountant documents his findings in such a way that he can refer to these later in time and, if necessary, he can give account to third parties.

Article 22

What defines a sufficient safeguard depends on the case in question. The professional accountant should at least apply the appropriate safeguard that is within his reach as soon as possible, or, if necessary, he should apply safeguards to alleviate the conflict or, if that is not possible, to remedy the consequences. A safeguard could be that the professional accountant brings the identified conflict to the attention of those affected.

The documentation requirement from article 21, third paragraph, correspondingly applies if one or, if needed, more safeguards are applied as referred to in article 21, first paragraph. This concerns the situation that a professional accountant can continue the professional service under the terms that he should apply a safeguard that results in the professional accountant complying with the fundamental principles. Sometimes it may be sensible to document even when this is not required.

Article 23

This article sees to the repeal of the VGC for Administrative Consultants (AA-qualification) and the VGC for Chartered Accountants simultaneously with the taking effect of the regulation at hand.

Article 24

This article takes care of more detailed rules on professional conduct being recorded in the more detailed rules on professional conduct, such as rules with respect to permanent education, audit procedures and quality systems as an elaboration on the fundamental principle professional competence and due care (article 19, third paragraph, Wab). The board will consult the members on draft detailed rules in the general meeting. Possible detailed rules require, in as far as they are related to performing statutory audits, the approval of the Secretary of Treasury (article 34, first paragraph, part b, Wab).

Article 25

The detailed rules in this article are existing detailed rules that have their basis in the VGC effective until the taking effect of this regulation. By calling a new basis into being for these detailed rules, being a basis in the regulation in question, they will not be terminated when the VGC is withdrawn.

Article 26

This article reflects the official title of the regulation, the title that can be referred to by abbreviation.

Article 27

This article has recorded the effective date. This regulation requires, in as far as it relates to performing statutory audits, the approval of the Secretary of Treasury (article 34, first paragraph, part b, Wab) after the enactment by the general meeting and prior to publication in the Staatscourant. Based on article 23 of the Wab, a regulation of the NBA is not effective before the day after publication of the Staatscourant in which it is published. In order to prevent that the regulation takes effect after 1 January 2014 when this was unexpectedly not published before 1 January 2014, retrospective action applies.

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