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## **Explanatory notes on the Verordening inzake de onafhankelijkheid van Accountants bij assurance-opdrachten (ViO<sup>1</sup>)<sup>2</sup>**

Nederlandse  
Beroepsorganisatie  
van Accountants

The logo for the Nederlandse Beroepsorganisatie van Accountants (NBA) consists of a thick horizontal black bar above the letters "NBA" in a bold, sans-serif font.

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<sup>1</sup> Code of Ethics for Professional Accountants, a regulation with respect to independence.

<sup>2</sup> This version contains linguistic amendments regarding the explanatory notes proposed to the general meeting of December 16, 2013. The explanatory notes supervise the ViO, effective on January 1 2014.

## Explanation

### General

#### *Introduction*

The Wet op het accountantsberoep<sup>3</sup> has been effective since 1 January 2013. Article 19, second paragraph, introduction and part a of the Wab commits the general meeting of the Nederlandse Beroepsorganisatie van Accountants<sup>4</sup> to establish a regulation regarding rules on professional conduct for a sound performance of the activities of professional accountants. To that end, this regulation, with the title 'Verordening inzake de onafhankelijkheid van accountants bij assurance-opdrachten (ViO)' and the 'Verordening Gedrags- en beroepsregels accountants (VGBA)<sup>5</sup>', will be presented to the members in order to be established. (drafts published on [www.NBA.nl](http://www.NBA.nl) [16 October 2013])

This regulation aims to secure an independent performance of assurance engagements. The public and in particular the users of an assurance engagement regard an independent performance a precondition to the quality of the performance. That perception legitimizes the rules in this field. This regulation lays down rules for professional accountants (directly or indirectly) involved that are tailored to their role and responsibilities in order to influence an independent performance of an assurance engagement (article 3).

Due to the importance attributed to independence rules for professional accountants, these rules are recorded in a regulation. This also provides the members with the opportunity to declare themselves openly concerning the independence rules in the general meeting. This regulation substitutes:

- Nadere voorschriften onafhankelijkheid openbaar accountant (AAs<sup>6</sup>), the detailed rules independence external auditor, established on December 19, 2006;
- Nadere voorschriften onafhankelijkheid openbaar accountant (RAs<sup>7</sup>), the detailed rules independence external auditor, established on December 14, 2006, most recently amended at decree of August 22, 2007;
- Nadere voorschriften onafhankelijkheid intern accountant the detailed rules independence internal auditor – assurance engagements (AAs), established on December 16, 2009;
- Nadere voorschriften onafhankelijkheid intern accountant, the detailed rules independence internal auditor – assurance engagements (RAs), established on December 16, 2009;
- Nadere voorschriften onafhankelijkheid overheidsaccountant, the detailed rules independence governmental auditor – assurance engagements (AAs), established on December 16, 2009; or
- Nadere voorschriften onafhankelijkheid overheidsaccountant, the detailed rules independence governmental auditor – assurance engagements (RAs), established on December 16, 2009.

This regulation is mainly formulated in accordance with the 'Aanwijzingen voor de regelgeving'<sup>8</sup> – a means for the establishment for qualitatively sound law- and regulation. This is beneficial to the understanding and readability of the rules. By applying the 'Aanwijzingen voor de regelgeving', this regulation contains only requirements. This summary-by-article disclosure has included examples of possible safeguard. Because of the accessibility it has been decided to include examples of possible threats in one or more of the NBA practice notes.

The Code of Ethics for Professional Accountants (CoE) of the International Ethics Standards Board for Accountants of the International Federation of Accountants (IFAC) and thereby the international convergence, has been the starting point in the establishment of this regulation. The articles may disagree with the CoE where needed or desired given the Dutch situation. For the purpose of international engagements, because of the membership of the IFAC and based on appointments made in the merger document between NOvAA<sup>9</sup> and NIVRA<sup>10</sup>, it is usually stated that the applicable independence requirements are at least equivalent to the CoE.

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<sup>3</sup> Wab, *Auditors Profession Act*.

<sup>4</sup> NBA, Dutch Professional Body of Accountants

<sup>5</sup> VGBA, Code of Ethics for Professional Accountants. Regulation with respect to Rules of Professional Conduct.

<sup>6</sup> Administratieconsulent, AA-qualification. All professional accountants licensed in the Netherlands

<sup>7</sup> Registeraccountants, Chartered Accountants. All professional accountants licensed in the Netherlands

<sup>8</sup> Directions for the regulation

<sup>9</sup> *Nederlandse Orde van Accountants-Administratieconsulenten. Dutch Order of Accountants*

The European propositions for the reformation of the professional accountants market, on which has been negotiated since early 2012, also contain several requirements that see to the independence of professional accountants and the audit organizations. As soon as it is known what ultimate regulation results from this, it needs to be regarded to what extent this influences the tenor of the provisions in the regulation in question.

#### *Why independent?*

In the assurance report professional accountants display their opinion in the form of a conclusion or an opinion on an assurance object. The conclusion or opinion is intended to enhance the degree of confidence of the user that his decisions regarding the assurance report are based on reliable information.

A statement that is intended for everyone who would like to take cognizance of this and who is not restricted in the distribution should, therefore, be issued by an independent professional accountant. This concerns independence of mind and in appearance. Independence of mind enables the professional accountant to form an objective opinion and thereby exercise professional judgment without compromising the relations with the responsible party. This also immediately reflects the effect on the quality. A professional accountant who complies with all the requirements, but who has not been sufficiently objective or has not sufficiently exercised professional judgment in his considerations does not meet the quality demands of the NV COS<sup>11</sup> and the related requirements with respect to quality systems.

Independence in appearance ensures that users do not question the professional accountant's independence that might kindle doubts about the opinion or the conclusion of the professional accountant. Especially in a time where confidence in the audit profession has been discredited due to reports on poor quality when performing engagements, independence in appearance is a precondition to regaining confidence.

In short, users cannot doubt independence of mind or in appearance. This applies to a small or medium-sized entity where, for example, a new banker or a new supplier should be able to rely on the conclusion or the opinion of the professional accountant as well as to a public interest entity (PIE).

#### *Regulation's premise*

This regulation applies to all professional accountants licensed in the Netherlands (AAs and RAs), where the member groups to which the professional accountant belongs is not a determining factor. Similar to VGBA, this regulation is premised on the basis that the nature of the activities determine what rules apply and that this is not primarily determined by the member group of which a professional accountant is a member. The way an independent performance of an assurance engagement is interpreted depends on the environment and circumstances where an assurance engagement is performed.

This regulation does not draw a distinction based on the nature of the assurance engagement. This contravenes to the CoE where a separate regime, Section 291, applies to assurance engagements other than an audit or review engagement of historical information. The regime for audit and review engagements of historical information, Section 290 of the CoE, has been chosen as a premise, regardless of the nature of the assurance engagement. Additionally, in this regulation audit engagements of the financial statement or similar information will no longer be subjected to more stringent rules than review engagements of historical information and related assurance engagements, such as was the case with parts in the independence requirements that were effective till the effective date of this regulation. Conditionally, there are less stringent requirements, though, with respect to independence in case of an assurance engagement for a specified group of users rather than in case of an assurance engagement for group of users that is not specified.

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<sup>10</sup> *Nederlands instituut voor Registeraccountants*, Dutch Institute for Chartered Accountants

<sup>11</sup> Detailed rules on audits and reviews of financial statements and other assurance and related services engagements.

This regulation provides for some more rigorous requirements concerning an assurance engagement for a public interest entity as referred to in article 1 of the Wet toezicht Accountantorganisaties<sup>12</sup>. These requirements are in the field of long-term involvement, work relations and provision of non-assurance services at a responsible entity. Its justification lies within the broad range of stakeholders who tend to have a public interest entity as a result of its size or function that she fulfils to the public.

Not all listed entities qualify as a public interest entity with respect to the Wta. For example, enterprises that are only listed outside the European Economic Area (the EEA includes all countries of the European Union, completed with Liechtenstein, Norway and Iceland). Nevertheless, with regard to these enterprises, the result of an assurance engagement performed here is relevant to a broad range of stakeholders. Therefore, it is reasonable that assurance engagements for such listed enterprises are subjected to the same requirements as those for an assurance engagement at a public interest entity. Additionally, this is in accordance with the CoE. There is an exception regarding article 16 where an amendment to the Wab accepted by the House of Representatives has been implemented pertaining to the provision of non-assurance services with a statutory audit. This amendment solely applies to PIEs. Listed entities that do not qualify as PIEs are mostly listed abroad and should, if applicable, meet the local demands.

#### 1.1.1 *Structure regulation and norm addressee*

This regulation consists of a general part (Chapter 2) and some special parts (Chapters 3 till 13). These special parts should be read in conjunction with the general part.

The general part contains the principal rules, of which articles 3 and 4 constitute the key provisions. The key provisions describe the framework for an independent performance of the assurance engagement.

In the special parts, specific circumstances are mentioned that lead to a threat to an independent performance of an assurance engagement in any case (see the disclosure to article 6). This is about different kinds of relations with the responsible party or related party.

The engagement partner should ensure the independent performance of an assurance engagement. The conceptual framework within which he should interpret this obligation has been included and elaborated on in article 6.

The ViO also indicates that other professional accountants who influence the independent performance of an assurance engagement have a responsibility. They are also accountable for their behavior and that of their personal relations. These include, for example, a manager in the team, but also the partner of a firm or the person determining the day-to-day policies (policy maker) who can influence the team. A 'random' professional accountant cannot reasonably be expected to monitor more than his own relations and those of people within his control for possible threats to the independent performance of an assurance engagement. The special chapters mention several specific relations of these professional accountants or their close personal relations that are a threat to the independent performance of an assurance engagement. Based on article 3, fourth and fifth paragraph, the professional accountant supervises safeguards are applied in order to secure the independent performance that such relations will not be maintained.

Finally, this elaborates on article 3, fourth paragraph, with regard to chapters 3 and 4. These chapters relate to the provision of non-assurance services at the responsible party of an assurance engagement with a non-assurance service. Certain non-assurance services are regarded as a threat to the independent performance of the assurance engagement. Premise of the articles in question is that the non-assurance service giving rise to a threat is also provided by the audit unit or network firm. Individual professional accountants are not mentioned for that purpose. However, a professional accountant who is involved in a non-assurance service that is a threat to the independent performance of an assurance engagement, maintains a relation as referred to in article 3, fourth paragraph.

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<sup>12</sup> Wta, *Audit Firms Supervision Act*.

### Principles and limits

The ViO is premised on a regulation based on principles. The professional accountant makes an assessment of what an objective, reasonable and well-informed third party considers acceptable in the given situation and circumstances. This assessment, together with the question if the professional accountant is independent of mind, will determine whether he can perform the engagement, and, if so, what safeguards are necessary. The principles are applied because not every threat can be anticipated and dealt with in the ViO. The principles are not prompted to seek the limits of the ViO.

In addition to principles, the regulation is also familiar with situations where a line is drawn (a safeguard or an interdiction) regarding the margin of appreciation of the professional accountant. This concerns situations where it is clear, beforehand, that an objective, reasonable and well-informed third party will come to the conclusion that:

- it is necessary to apply a safeguard, whether or not specific; or
- independence is threatened in such a way that no safeguards are possible to secure the independence.

### *Assurance engagement in behalf of specified group of users*

In case of a limitation in the use and distribution of the assurance engagement, some further specified deviations to the regulation are permitted (also see the disclosure to article 3, seventh paragraph and article 8).

### *Relation to the Wta*

Statutory audits with regard to the Wta fall into the scope of the Wta and the Besluit Toezicht Accountantorganisaties (Bta)<sup>13</sup>. This regulation contains several additional provisions with regard to the Wta and the Bta. If this regulation should be in conflict with the Wta or the Bta, the Wta or the Bta naturally prevails.

### *Engagement quality control review by means of a safeguard*

A couple of times in this regulation, the engagement quality control review is regarded a safeguard in order to secure the independent performance in case of a threat. In such a situation the engagement quality control review is only effective when the quality control reviewer, in accordance with regulation in this area, pays specific attention to the risks due to a threat and determines that the assurance engagement was performed independently. The extent of the investigation depends on the complexity of the assurance engagement and the risk the report would be incorrect under the given circumstances.

### Material interest

Chapters 5 (Fees), 8 (Financial interests) and 9 (Business relations) contain the definition material interest. A fee, financial interest or business relation is material if the relation gives rise to an unacceptable risk that economic interests influence the opinion or the conclusion of the professional accountant regarding the assurance object or its accountability.

A comparative assessment should be from made the perception of a well-informed third party.

In addition to quantitative aspects, qualitative aspects could also lead to a material interest. A recently engaged business relation, for example. This may not represent much expressed in money, but could be very important strategically. In that case, the business relation will then be regarded as material.

## **Summary by article**

### **Chapter 1 - Definitions**

#### *Audit unit:*

The concept audit unit is a new concept. In this regulation, the audit unit will generally be used a collective definition that comprises the audit firm, the audit organization and the audit department. Internal and governmental auditors are linked to an audit department, public accountants to an audit

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<sup>13</sup> Bta, *Audit Firms Supervision Order*

organization or audit firm. If another concept rather than audit unit is used, the circumstance leads to a threat to a specific group of professional accountants.<sup>14</sup>

*Assurance object:*

The subject matter mentioned in the definition and the related information can take many forms such as (not restrictive):

- a financial performance or conditions (such as historical or prospective financial information, financial results and cash flows) where the information regarding the subject matter can consist of the processing, valuation, performance and disclosure as these are reflected in the financial statements; or
- b not-financial performance or conditions (such as the entity's performances) where the information regarding the subject matter can consist of the main indicators for efficiency and effectiveness.

*Threat*

Threat to the independent performance of an assurance engagement include:

- a a self-interest threat: this threat is the result of a financial or another interest of, for example, a member of the assurance team or the audit unit;
- b a self-review threat: this threat arises when the professional accountant reviews his own work, the work on behalf of the audit unit or the result thereof;
- c an advocacy threat: this threat arises when the audit unit defends a judgment in such a way that the professional accountant's objectivity is compromised;
- d a confidentiality threat: this threat arises when there is a close relation between a member of the assurance team and (representatives of) the responsible party or if a member of the assurance team has too much sympathy for the interests of someone else; and
- e an intimidation threat: this threat arises when a member of the assurance team or the audit unit is obstructed in acting objectively due to factual or alleged threats.

The nature and size of a threat are determined by the relative importance of these threats individually.

Whether a risk is acceptable or not also depends on how an objective, reasonable and well-informed third party as referred to in article 5 regards this risk, in addition to the question if the professional accountant is independent in appearance. Circumstances that would have a third party conclude that they do not factually influence the independent performance of the assurance engagement, are an acceptable risk or even no risk at all.

*The engagement partner:*

The engagement partner is the professional accountant being ultimately responsible for the performance of an assurance engagement. He coordinates the activities of the assurance team and those of professionals in other disciplines involved in the assurance engagement. On the basis of the outcome of the activities performed by the assurance team, he formulates a conclusion and informs the users of this conclusion by the signing of the assurance report. If the assurance work relates to the statutory audit of the financial statement, the external auditor is regarded as the engagement partner.

*Key assurance partner:*

Examples of important matters include:

- matters related to large subsidiaries or departments of the responsible entity in relation to the consolidation; or
- matters about important risk factors that are connected to the assurance work with respect to the responsible party.

*Close personal relations*

A relation qualifies as a close personal relation when there is intensive personal contact. A family member is always regarded a close personal relation because of the way it reflects on the public. For example, friends, neighbors and acquaintances can also qualify as close personal relations. Threats on account of self-interest and confidentiality may be more substantial with respect to a good friend of a professional accountant who he sees on a weekly basis than with respect to a close relative a professional might only see once a year at a birthday party.

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<sup>14</sup> Performs audits and reviews of financial statements and other assurance and related services engagements.

### *Responsible party*

The responsible party is the party responsible for the subject matter or the information regarding the subject matter. Within an entity, this responsibility is mostly assigned to one or, where appropriate, more persons. Article 3 requires the assurance engagement being performed independently of the responsible person and the responsible entity. Where a threat may arise in this regulation with respect to both parties' independence, there is a responsible party.

In case of an audit of the financial statement performed by a public accountant, the individual members of the board, for example, can be regarded as the responsible person, and the enterprise to which the financial statement relates as the responsible entity. In case of an audit of, for example, a division report performed by an internal auditor, the division director would be the responsible person and the division would be the responsible entity. Only when the accountability document is distributed outside the entity, the employer of the internal auditor is the responsible entity.

### *Contingent Fee*

A fee is contingent when this is based on predetermined conditions and depends on the outcome of the activities performed. With whom these conditions have been agreed is not relevant. Examples of where the fee depends on the outcome are fees where:

- the amount depends on the period in which the work was performed;
- a higher fee is received in case of an unmodified opinion rather than in case of an opinion other than unmodified.

If an objective is not met, a contingent fee should also entail agreeing to a reduction of the contingent fee that was already agreed in addition to agreeing to a higher fee. Moreover, an enrolling fee or commission are also regarded as a contingent fee.

A contingent fee does not include the situation when the fee is altered because the professional accountant performs more or less activities than was agreed in the original engagement. This does not include a fee based on hours times rate either.

Fees on the basis of the working relation are not included in the definition contingent fees.

## **Chapter 2 – General Provisions**

### **Article 2**

The NBA's rules on professional conduct include the VGBA and nadere voorschriften controle- en overige standaarden<sup>15</sup> based thereupon.

There are situations where a professional accountant is asked to perform an assurance engagement in accordance with assurance standards of a specifically different jurisdiction or of an international standard-setting organization. This regulation does not apply to such assurance engagements. Standards with respect to independence that are established by the country or organization in question apply to such an engagement.

This regulation applies to assurance engagements where the professional accountant has complied with the NV COS in addition to the standards of a specifically different jurisdiction or of an international organization and this is explicitly indicated in his assurance report.

Professional accountants are people who are registered in the record of the NBA (the NBA can only issue rules for her members). If this professional accountant performs an assurance engagement under foreign law, the VGBA still applies to him and he should, for the purpose of the VGBA, be objective when performing an assurance engagement. However, the regulation in question does not apply to him. He is expected to apply the independence rules that prevail in the country where he performs his activities, though. This way he interprets public interest based on local circumstances.

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<sup>15</sup> NV COS.

### **Article 3**

#### *First paragraph*

The public should be able to rely on an assurance engagement being performed independently. The professional accountant who signs the assurance report is ultimately responsible for the performance of the assurance report and ensures the independent performance of that assurance engagement. The conceptual framework within which he should interpret this obligation, is described and explained in article 6.

Threats to the independent performance of an assurance engagement do not solely arise from relations of the assurance team with the responsible party. Professional accountants outside the assurance team can also influence the extent of the independent performance of an assurance engagement due to their own act or omission or of that of people in their personal environs. For example, the professional accountant who is the director of the audit unit or a partner of an audit firm. Moreover, relations the audit unit or network firm maintains with the responsible party may threaten an independent performance of the assurance engagement. When securing the independent performance of the assurance engagement, the engagement partner also considers relations of such persons and entities.

#### *Second paragraph*

This article regulates the independent performance of an assurance engagement. This requirement relates to the independence of mind and in appearance.

Independence of mind entails the following: the mentality that enables expressing a conclusion without being influenced insofar that the professional accountant's professional judgment is compromised.

Independence in appearance entails the following: the absence of facts and circumstances that are of such importance that an objective, reasonable and well-informed third party will conclude – considering all facts, circumstances and possible safeguards applied – that an independent performance of an assurance engagement is being threatened. If the professional accountant functions from a power relation there does not need to be a harmful effect on independence in appearance provided that the professional accountant has applied all necessary safeguards in order to ensure an independent performance of an assurance engagement.

#### *Third paragraph*

The third paragraph regulates when independence is required. The assurance engagement can relate to both a period (for example, a financial statement) and to a specific point in time (for example, an assurance report with a balance sheet format). In case of an ongoing assurance engagement, the assurance period ends after one of the parties involved withdraws from the engagement or when the last assurance report is issued.

In case of, for example, advisory procedures that were performed prior to the period to which the assurance object relates, it might be, depending on the circumstances, that these are a threat to the independent performance of the assurance engagement.

#### *Fourth paragraph*

Every professional accountant related to the audit unit or to network firm can be a threat to an independent performance of an assurance engagement due to possible own relations with the responsible party or a related party, for example in case of financial interests or business, work or personal relations. This obviously also applies to the engagement partner.

#### *Fifth paragraph*

If close personal relations, for example family members, close relatives or non-familiar relations of the professional accountant also maintain relations with the responsible party, an independent performance of an assurance engagement may be compromised. Therefore, the responsibility of every professional accountant is to monitor his own personal environment against possible threats to an independent performance of an assurance engagement. The engagement partner also has this responsibility with regard to relations of his own close personal relations.

### *Sixth and seventh paragraph*

The sixth paragraph regulates the performance of an assurance engagement is independent of someone or something in case of an assurance engagement for a group of users that is not specified. The seventh paragraph relates to assurance engagements for a specified group of users.

If an assurance engagement is not performed independently with respect to the subject matter or the responsible person, the user of the assurance report cannot sufficiently rely on its quality. If the latter also applies when an assurance engagement is not also performed independently of the responsible entity, depends on the objective of the user.

The engagement partner confers with the users of the assurance report from outside the responsible entity or related party beforehand if he is not-independent of the entity and is asked to perform an assurance engagement anyway.

If he decides to perform the engagement based on this conference, the specified group of users from outside the responsible entity will have to agree to this. This is only possible if the group of external users is concrete in such a way that the external users are individually approachable to the engaging party, the responsible party, the engagement partner, and the audit unit. In case of an ongoing assurance engagement(s) or assurance engagements that highly correspond to one another in size and objective, the professional accountant determines whether the circumstances require that the consent of the specified group of users should be renewed and whether it is necessary to remind the specified group of users of the existent consent.

Conference and consent with users from within the responsible entity or her related third parties is not necessary because these users expect the role of the internal auditor to be known or recorded in an audit charter. This applies to governmental auditors and users within the realm, the provinces or the municipalities.

In case of a group of further specified users that is represented by one person, it is important that the engagement partner is satisfied that the representative has informed this group or is authorized to represent them.

If the assurance report is published based on the Wet openbaarheid van bestuur (Freedom of Information Act), this is not regarded as an assurance engagement for a group of users that is not specified for the application of article.

### **Article 4**

The act states that a governmental auditor can perform an assurance engagement in a number of cases. An example is the city and county legislation that dictates that a professional accountant appointed by the municipality can audit the financial statement of the municipality.

In that case the ViO requires that the assurance engagement is performed independently of the assurance object and the responsible person.

For the application of this article there are no requirements concerning the assurance report in the ViO as indicated in article 3 paragraph 7.

If a governmental auditor performs an engagement that is not arranged by law, the provisions of article 3 paragraph 6 till 8 apply. This enables the governmental auditor to operate for both a specified and non-specified group of users.

### **Article 5**

#### *Part a*

The professional accountant is expected to exercise professional judgment when considering whether the performance of an assurance engagement is threatened. This is also requested when he considers whether a safeguard is needed or whether a necessary safeguard is possible in the given circumstances, and, if so, if a sufficient safeguard is on hand. The professional accountant involves all circumstances of which he knows or should know in his considerations in order to come to logical,

realistic and well-founded conclusions. The professional accountant wonders whether his own opinion will be shared by someone else with 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 able 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. Through the definition objective, reasonable and well-informed third party, there is a link to article 25a, first paragraph of the Wta. Consequently, every professional accountant will have to ask himself every time, in addition to the question how he values his independence of mind, how an objective, reasonable and well-informed party regards a certain situation. This does not only include the qualification of a circumstance (whether or not a threat to the independent performance of an assurance engagement), but, for example, also whether the safeguard that was possibly applied is sufficient. Here, every professional accountant should be aware of the contents and meaning of the fundamental principle objectivity with which he should comply based on the VGBA, and the principle of independence resulting thereof for assurance engagements, for both the facts and appearances.

Every professional accountant should also be aware of the public impact of an individual client or employer and consider what effects this has on the way the definition of independence is interpreted. A well-informed third party will probably consider public relevance of the responsible entity in its judgment whether a certain circumstance will lead to a threat to the independence.

Therefore, it is foreseeable that when identifying and reviewing circumstances, an engagement partner comes to the conclusion that the circumstances oblige him to apply more stringent safeguards with respect to an entity with substantial public relevance than would be the case with an entity lacking this relevance.

The requirements in chapters 4 till 13 that do not focus on PIEs count as a minimum.

It could happen that the professional accountant comes to the conclusion that the well-informed third party expects that he bases the independence with respect to the responsible entity on the regulation that applies to PIEs.

The ViO provides for such a situation for listed entities that do not qualify as a PIE.

#### *Part b*

Every professional accountant involves the circumstance of which he knows or should know in his professional judgment. The engagement partner uses the course of behavior and the procedures the audit unit is supposed to have based on, for example, the Wta, the Bta and the Verordening Accountantsorganisaties<sup>16</sup>, Nadere voorschriften accountantskantoren ter zake van assurance-opdrachten<sup>17</sup>. Although a joint effort of the engagement partner and the audit unit is necessary to ensure an independent performance of an assurance engagement, they have an unshared responsibility. The policy of the audit unit does not relieve the engagement partner of his responsibility with respect to independence and vice versa.

### **Article 6**

#### *First paragraph*

In order to ensure the independent performance of an assurance engagement, the engagement partner applies a conceptual framework. This conceptual framework obliges the engagement partner to identify and review circumstances that could be a threat to the independent performance of the assurance engagement. This identifying and reviewing process is an ongoing process. Circumstances that would result in the third party, as referred to in article 5, concluding that they do not factually influence an independent performance are not considered a threat.

An independent performance of an assurance engagement can be threatened in several ways due to self-interest, self-review, advocacy, confidentiality or intimidation. When investigating possible threats, the engagement partner takes the following into account:

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<sup>16</sup> VAO, Regulation Audit organizations

<sup>17</sup> NVAK-ass.. Detailed rules for audit firms regarding assurance engagements.

- a the several people who, as well as himself, can influence the assurance engagement in question;  
and
- b all existing and potential threats that might compromise an independent performance from a stakeholder's point of view. These include, for example:
  - the services provided to the responsible party before and the relations with the responsible entity prior to his appointment as the engagement partner with that party;
  - the services provided to the responsible party during the performance of an assurance engagement as well as agreed-upon services to be provided and the maintenance of (future) relations with the responsible party.

The nature and size of a threat to an independent performance are determined by the relative importance of each of these threats individually. This takes into account the specific circumstances that apply to the assurance engagement in question. The more precisely the engagement partner can establish the nature and size of possible threats, the better he is able to determine to what extent these threats eventually compromise the independent performance. When reviewing each threat, the engagement partner should take into account that several kinds of threats may play a role in certain circumstances. Consequently, the margin of discretion is limited because of the specific requirements of the regulation and could therefore never lead to overriding prohibitions.

#### *Second and third paragraph*

Chapters 3 till 13 of this regulation include concrete prohibitions and precepts for specifically described circumstances. Certain circumstances are always such a threat that it is justified in that situation to prohibit the professional accountant to perform the assurance engagement as a whole or to allow its performance only if a specific safeguard, mentioned in this regulation, has been applied. These prohibitions are implemented because it is expected that there are no safeguards at all that could eliminate such threats under the given circumstances. In these cases, a clear prohibition is in order. Some other circumstances are also considered a threat from the very start, but the performance of an assurance engagement is allowed in principle, provided that appropriate safeguards are applied where the choice of the safeguard is left to the engagement partner himself.

It is not the case that omitting sufficient safeguard cause the engagement to be discontinued, for that matter. Sometimes, the circumstances can be influenced in such a way that a is no longer exists. For example, when an the engagement partner holds a financial interest which constitutes a threat to the independent performance, there are no safeguards possible that ensure the independent performance while the professional accountant sustains the interest. When the professional accountant sells the interest prior to the period during which he should be independent, the circumstances change in such a way the engagement can be continued.

#### *Fourth paragraph*

If a certain circumstance has not been specified in these chapters, this does not mean that there is no threat "at all" to an independent performance of an assurance engagement. In every concrete case, the engagement partner should be alert to threats and apply safeguards to eliminate an identified threat, this also includes circumstances that are not specified in this regulation.

When the engagement partner establishes that there is a threat, he cannot perform an assurance engagement just like that and he immediately applies safeguards, if possible. A safeguard is a sufficient guarantee when it results in the independent performance no longer being factually threatened and, consequently, the assurance engagement can be performed independently. In order to objectify this, the engagement partner bases his opinion on the assumed perspective of the objective, reasonable and well-informed third party with respect to the intended safeguard. To be sufficient, every safeguard or combination of safeguards applied should be suitable and appropriate given the specific circumstance.

If the engagement partner concludes that no sufficient safeguards can be applied to eliminate a threat, he decides not to accept an assurance engagement nor to continue with it.

## Article 7

Article 7 can be compared to the IESBA final pronouncement “*Changes to the Code of Ethics for Professional Accountants Related to Provisions Addressing a Breach of a Requirement of the Code*”, published in March 2013.

The influence of already existing threats to the independent performance of an assurance engagement that had not been identified before during the continuous process as described in article 6, also depends on:

- the nature and duration of the threat;
- whether there is, for the purpose of the assurance engagement, one or more threats against which no sufficient safeguard is applied;
- whether the threat is related to a member of the assurance team and the role this member has within the assurance team.

For example, when there is a negligible direct financial interest that is held by a partner of the audit firm and it can be made acceptable that this did not influence the assurance engagement, the independence for the period that has passed is ensured. It goes without saying that the partner should dispose of the financial interest.

If it is impossible to apply the safeguards as stated in article 7, paragraph a and b, this means that the engagement partner should terminate the assurance engagement.

The required approval for the safeguards proposed by the engaging party or those charged with governance should not be regarded as a shift of responsibilities with respect to the decision if and under what terms an assurance engagement can be continued. This remains the responsibility of the engagement partner.

In certain entities, management personnel can be members of those charged with governance, for example executive members within a managerial body of an entity in the private or public sector or an owner-manager.

For the audit organization, non-timely identification of a threat can qualify as a violation as referred to in article 24, first paragraph of the Bta.

## Article 8

If an assurance engagement is related to an assurance report that is intended for a specified group of users, the connected scope and effect are less extreme than would be the case with an assurance engagement that is related to an assurance report that is intended for public use. Additionally, because the intended users are known, the engagement partner or audit unit has the possibility to communicate the purpose and restrictions of the assurance report with this group beforehand as well as the independence rules he has applied and have them explicitly confirm they agree to it.

The users' knowledge concerning the nature and scope of the engagement as well as the possibility to communicate with the users beforehand renders the chance of a threat to the independence in appearance with respect to these engagements smaller. That is why it is conditionally allowed to apply an allayed regime with the identification and review of threats with respect to an assurance engagement within a public interest entity. This allayed regime means that the deviant and complementary provisions that apply to a public interest entity do not apply to this assurance engagement. More concretely, this regards articles:

Article	Subject
Article 21 and 22	Provision of non-assurance services at a PIE where no Statutory audit is Performed
Article 29	Long-term Involvement in Services to a Responsible Party
Article 41	Former Colleague Working at the Responsible Entity

It goes without saying that, when applying the allayed regime of article 8, the other articles of the ViO apply to this assurance engagement where the assurance engagement is approached as an assurance engagement with an organization that is not qualified as a public interest entity.

## Article 9

The diagram below displays the extraterritorial operation.

		Related party of the responsible party	
		The Netherlands	Aboard
Network Audit unit	The Netherlands	✓	✓
	Abroad	✓	✗

The ViO also applies when reviewing relations of a Dutch part of the network that works for a related party abroad.

Eventually the ViO (indirectly) applies when a foreign part of the network in the Netherlands works for a Dutch related party or the responsible entity.

When reviewing the relations of a foreign part of the network for the purpose of a foreign related party, the professional accountant applies the **ViO** or more stringent regulation.

## Article 10

Not only relations with the responsible entity can result in a threat to the independent performance, relations with third party related to the responsible entity can also lead to a threat. The engagement partner should take this into consideration when applying the conceptual framework.

Internationally, different definitions of a related party apply with respect to audit regulation. In the CoE, the definition relates to the parent company, the subsidiaries and the associated companies. The EU regulation departs from significant influence or factually policy-making influence. This regulation uses the same assumptions as the EU regulation. This way, circumstances and threats with regard to related third parties in principle do not oversee the responsible entity's subsidiaries.

## Article 11

An audit firm should arrange guarantees in the organizational structure based on the Wta, the Bta, the VAO or NVAK-ass. in order to safeguard the independent performance.

For the internal or governmental auditor involved in an assurance engagement, the managerial structure of the employer or government institution plays an important part in applying safeguards against threats to an independent performance of an assurance engagement.

Possible safeguards in the managerial structure include:

- the audit department where the auditor is employed reports directly to the board of directors of the employer or top management of the government institution;

- involving the audit committee in the establishment of the work plan of the audit department where the internal or governmental auditor is employed or to which he is related as well as having them taking cognizance of the findings of the internal or governmental auditor;
- having the internal or governmental auditor and the public accountant inform the audit committee about their cooperation;
- informing the audit committee on the assurance engagements performed by the audit department and the concurrence of other services; or
- being present at meetings of the audit committee and the financial committee of municipalities and provinces, if appropriate.

The internal or governmental auditor who is ultimately responsible for an assurance engagement carefully checks whether the employer's management has the correct infrastructure in order to ensure an independent performance.

When analyzing the infrastructure, the following matters may come up:

- the involvement of an independent supervisory board when providing an audit engagement of the (internal) financial statement to the audit department where the internal or governmental auditor is employed or to which he is related;
- the involvement of an independent supervisory board when providing an assurance engagement regarding the present safeguards of risk management and internal control to the audit department where the internal or governmental auditor is employed or to which he is related;
- the involvement of an independent supervisory board when providing an engagement for other services to the audit department where the internal or governmental auditor is employed or to which he is related;
- the audit department supervises and communicates the concurrence of an assurance engagement and other services provided by the audit department where the internal or governmental auditor is employed or to which he is related as well as the frequency with which this takes place;
- adequately and professionally trained staff; or an internal procedure that procures an objective decision with respect to providing engagements for other services to the internal or governmental auditor who is charged with the audit of the financial statement.

## **Article 12**

By the outcome of his analysis of identified and reviewed threats to an independent performance and by documenting the safeguards applied, the professional accountant can fall back on this in a later stage and, if necessary, give account to third parties. This article reflects the minimal requirements with respect to documentation. The professional accountant is open to record other considerations with regard to independence if he thinks this is important to a possible account to third parties or thinks this may be helpful in any way.

## **Article 13**

This article indicates what provisions in this regulation that concern an assurance engagement with a public interest entity correspondingly apply to an assurance engagement at a listed entity that does not qualify as a public interest entity.

The definition of PIE does not relate to listed entities that are not listed at a regulated stock market in the EER. This includes a Dutch trading partnership listed at a stock market in Moscow. Under the CoE the same provisions apply to all listed entities.

It seems socially inexplicable that the independence requirements of the professional accountant differ while the interests are comparable. That is why the indicated listed entities referred to in the ViO are equated with PIEs.

## **Article 14**

When there is a merger between the responsible party and another enterprise, the responsible party acquires an enterprise or the responsible party is acquired by another enterprise, the engagement partner determines whether circumstances have occurred as a result of the merger or acquisition that may lead to a threat to the independent performance of the assurance engagement.

Mergers and acquisitions are the joining of individual enterprises in one economic entity. The definition merger mostly relates to legal or tax aspects of the way the acquisition has been brought about (merger of shares, merger of companies or legal merger). In order to apply this regulation, a merger should be regarded as a merger or junction of interests.

Mergers and junctions of interests can have different manifestations that are motivated by legal, tax or other considerations. Examples of manifestations are transactions of shares, assets/liabilities transactions or legal mergers. The transaction can be realized by share offerings, by payment in cash or a combination of the two, or by founding a new entity.

It depends on the nature of the relation that leads to a threat as well as the period of a merger or acquisition whether it is reasonably possible to terminate the relation before the effective date of the merger. This may be the case if the assurance engagement is in an advanced stage and another professional accountant is not able to assume the engagement before the merger is executed.

To quantify the definition “as soon as possible” for the purpose of mergers and acquisitions, this regulation links to the allotted term of six months stated in the Code of Ethics.

### Article 15

In extraordinary cases it may be important to the public to continue with an assurance engagement, even if this regulation is overridden. This, for example, may be the case when the responsible party cannot meet her legal reporting requirement or is not capable to conclude necessary funding due to not-continuing the assurance engagement. It is predictable that an objective, reasonable and well-informed third party at that moment would also conclude that continuing the engagement is better than terminating the engagement.

In those cases, the professional accountant may continue the engagement under strict conditions. In the case of a statutory audit, reference should be made to the Autoriteit Financiële Markten<sup>18</sup> as well as an agreement with the AFM. In other cases, this is the NBA. The professional accountant is expected to perform the engagement independently.

In order to qualify as a grand public interest, a circumstance should have arisen without interference of the audit unit, the engagement partner and the responsible party. The engagement partner should also be attentive to circumstances that may lead to a grand public interest if this is not addressed timely.

### Chapter 3 – Concurrence of Statutory audit and other Services at a PIE

The link between chapter 3 and chapter 4 is reflected in the diagram below. If a responsible entity performs both a statutory audit and another assurance engagement at a PIE, chapter 3 applies.

**Sphere of action chapter 3 and 4  
Provision of non-assurance services**

		Nature Assurance engagement	
		Legal Audit	Other
Assurance engagement at	Public interest entity	<b>3</b>	<b>4</b>
	Not public interest entity	<b>4</b>	<b>4</b>

<sup>18</sup> AFM, Netherlands Authority for the Financial Markets

## Article 16

### *First paragraph*

Article 24b of the Wta applies to the audit organization. Formally, this is the legal entity which is registered as holder of a PIE permit at the AFM. This regulation departs from the notion of a larger scope. The public cannot be expected to see the legal difference between the audit organization and parts of her network. That is why the regulation includes that parts of the network of the audit organization are not allowed to perform activities other than audit services at a public interest entity, evidently taking into account the provision with respect to international operation. It is emphasized that this article does not apply to assurance engagements at listed entities that are not qualified as public interest entities.

### *Second paragraph*

The second paragraph indicates what the definition associated entity entails. In addition to the definition associated entity, the ViO is also familiar with the definition related party. The definition associated entity applies to article 16. In all other cases the definition related party applies.

For the purpose of group understanding and the definition control, the ViO is attuned to the Civil Code Book 2 title 9.

### *Third paragraph*

To qualify as an audit service it is important that a professional service is performed for the purpose of the public or the supervisory task of the supervisory board. It is not relevant who provides the engagement. The management of an enterprise may provide the engagement. The professional accountant should be satisfied that the external user or the supervisory board need the accountant's investigation and that the internal rules at the organization with respect to providing engagements are observed.

As part b of the second paragraph of this article indicates, information with which the responsible party gives account should be verified. This means that the professional accountant uses procedures including:

- making enquiries;
- performing analytic procedures;
- recalculating, comparing or other accuracy tests;
- on-site observation;
- verification procedures;
- obtaining confirmation from third parties.

Furthermore, it is important that there are applicable arrangements the professional accountant can use for verification. Arrangements are applicable if the characteristics display relevance, completeness, confidentiality, neutrality and understandability.

Only if the specific procedures agreed upon as referred to in Standard 4400 meet the stated conditions in article 16, they qualify as a permitted audit service. The report of factual findings cannot contain any advice or suggestions.

## **Chapter 4 - Provision of non-assurance services at a PIE where no Statutory Audit is Performed or at an Entity that is a non-PIE<sup>19</sup>**

### **Articles 17 till 22**

Traditionally, audit units provide a wide range of non-assurance services to responsible entities owing to their expertise. However, this form of services can threaten the independent performance of the assurance engagement at the responsible entity due to the risk of self-review, self-interest, and advocacy.

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<sup>19</sup> According to the def of a PIE, in the Wta, only listed entities that are founded in the Netherlands qualify as a PIE.)

Consultation between the engagement partner and the responsible entity is an important part of the assurance process in order to come to a technically adequate accountability document. This includes subject like:

- the applicable conventions;
- the applicable reporting standards;
- the applicable disclosure requirements;
- the appropriateness of the internal controls and methods applied by the responsible entity;
- questions and advice of technical nature; and
- suggesting correcting entries.

These are a normal part of the assurance process and generally do not lead to a threat to the independent performance of an assurance engagement. Before the audit unit accepts a non-assurance service for a responsible entity, there is a review whether providing the non-assurance service results in a threat. Every threat to the independent performance of the assurance engagement of which the professional accountant knows or should know that results from the provision of non-assurance services is considered in the professional judgment. If a threat cannot be eliminated by a safeguard, the provision of non-assurance services cannot take place. The aforementioned applies, mutatis mutandis, to the situation where the performance of an assurance engagement is considered for an entity when a non-assurance service has already been performed.

A non-assurance service comprises every service that does not qualify as an assurance engagement. Examples of non-assurance services are:

- administrative services;
- design and implementation of a financial information system;
- services in the field of measurements;
- services in the field of internal audit;
- legal services;
- mediation with recruitment of higher management for a responsible entity;
- interim management;
- corporate finance services;
- temporarily putting staff at disposal.

Whether a non-assurance service cannot be performed in combination with an assurance service depends on the outcome of the application of articles 17 till 22.

The explanatory notes of these articles elaborate on the principal rules in effect. There is an elaboration in an NBA practice note based on examples.

#### **Article 17**

When someone performs a statutory audit in addition to another assurance engagement at a PIE, the rules that apply to the statutory audit apply when determining whether a provision with a non-assurance service is allowed.

#### **Article 18**

The professional accountant taking decisions on behalf of or participating in the decision-making process of the responsible entity creates self-interest and self-review threat. Additionally, there is the confidentiality risk because the audit unit is associated excessively with the judgments and interests of the responsible entity's management.

Management of an entity carries out many activities with the purpose of directing the entity in such a way that the interest of the stakeholders are satisfied. It is not possible to specify every responsibility that is management's. In any case, these responsibilities include taking important decisions regarding the purchase, the strategic exertion and the control of personal, financial, physical and immaterial resources.

These tasks generally do not comprise routine and negligible actions. That also applies to giving advice and recommendations to the director or the board for the purpose of their discharge.

Below are a few examples of services that, under article 18, lead to a prohibition on performing an assurance engagement:

- services in the field of a part of the internal control that is material to the assurance object and where management tasks are performed.
- services related to an information system that is material to the assurance object while management tasks are not performed by the responsible entity.

## Article 19

Whether a non-assurance service is material to the assurance object depends on the facts and circumstances. Whether the assurance service relates to a material part of the assurance object is not utterly relevant.

When determining whether there is material influence, the engagement partner takes the effect in consideration (quantitative or qualitative) that the non-assurance service has or could have on the assurance object. The non-assurance service is material when the results of a non-assurance service can have such an impact on the assurance object that could reasonably be expected to influence the decisions users take based on the assurance object.

Therefore, the nature and size of the service are factors when determining whether there is material influence. For example, entering one invoice is less likely to qualify as material than entering all invoices that are related to a part of the assurance object.

The outcome of the non-assurance service in itself is not determining either. Imagine the audit unit performs a measurement of a property in addition to an assurance engagement. Even if the outcome of the measurement indicates that impairment of the property is not needed, this outcome would have been material if the measurement and disclosure regarding this property is part of the assurance object.

Examples of possible safeguards are:

- consultation with the independence officer who is charged with the independence issues within the audit unit;
- separating tasks and responsibilities between the assurance engagement and the non-assurance service;
- consultation with a professional accountant outside the own audit unit or obtaining advice within the professional body;
- having a professional accountant who is not involved in the assurance engagement or other service in question review the assurance activities performed for the responsible party.

## Article 20

### *First paragraph*

Some services can contain subjective or non-routine elements. In case of a subjective or non-routine activity it is likely that when this is performed by more than one party, the results can differ materially. This will be the case when the service provider himself has to choose between available acceptable alternatives when performing the non-assurance service.

An example of a non-subjective or routine activity is calculating the linear depreciation expense of material assets based on the depreciation scheme approved by management. If an impairment calculation should be established for the same material assets, a subjective character arises.

It could happen that the effectiveness of advice depends on the processing in the assurance object. If the assurance team doubts whether the effective treatment for the advice is in accordance with the reporting framework applicable to the assurance object, this could lead to a major threat to the independence.

Advocacy is, according to the responsible entity, defending the responsible party against other parties, forming or propagating judgments which leads to such identification with the interests of the responsible entity or seems to lead to identification with the interests of the responsible entity that there is an unacceptable risk that the opinion or conclusion concerning the assurance object is or will be affected.

Examples of advocacy include acting as a lawyer for the responsible party, dealing in shares of the responsible party and recruiting personnel for the responsible party.

Below are a few examples of services that lead to a prohibition on performing an assurance engagement under article 20.

- Non-routine or administrative services with a material influence on the assurance object.
- Subjective measurement with material influence on the assurance object with an entity that is not a PIE.
- Legal aid during fiscal legal proceedings where the amounts involved in the proceedings have a material effect on the assurance object.
- Legal service in case of a dispute where the amounts involved have a material effect on the assurance object.
- A fiscal advice where the team doubts its application in the assurance object where the advice is material to the assurance object.
- A corporate finance advice where the team doubts its application in the assurance object where the advice is material to the assurance object.
- Services in the field of corporate finance consisting of furthering the trading of shares of the responsible entity or trading shares of the responsible entity on one's own account, or stand surety for this.

An explanation of the aforementioned:

- In case of a non-routine administrative service with respect to the assurance object (the first example in the table above) this will always have a material effect on the assurance object.
- With respect to the last example the following applies: When a professional accountant promotes the interests of the responsible entity for corporate finance services by interfering with the investment of shares this will always be qualitatively material considering the interest for the entity.

### *Second paragraph*

Article 20, first paragraph does not apply to assurance engagements for a specified group of users, provided that the terms indicated in article 3 paragraph 7 regarding the approval of these users and the assurance report are satisfied. In that case, as stated in article 19, at least one safeguard will be required with the provision of non-assurance services that have a material effect on the assurance object.

### **Article 21**

Because of the public interest of a PIE, providing a non-assurance service in combination with an assurance engagement at a public interest entity is prohibited if the non-assurance service is material to the assurance object. The definition of material influence is disclosed in article 19.

Below are a few examples of services that under article 21 lead to a prohibition on performing an assurance engagement:

- Administrative services at a related party of a PIE with material effect;
- Measurement that is material to the assurance object at a PIE;
- Services in the field of the internal audit at a PIE with regard to a part that is material to the assurance object;
- Services with respect to an information system at PIE that is material to the assurance object;
- Services in the field of recruitment and selection for a position PIE that is material to the assurance object.

### **Article 22**

The board is responsible for establishing the assurance object and fairly reflecting this in accordance with the applicable requirements. If the audit unit provides administrative services to a public interest entity with respect to the assurance object, there is a self-review threat against which there are no safeguards.

Consultation between the engagement partner and the responsible entity is an important part of the assurance process. Discussing subjects such as the applicable conventions, the appropriateness of controls, technical questions and proposing correcting entries is a normal part of the assurance

process and generally does not lead to a threat to the independent performance of an assurance engagement.

## Chapter 5 - Fees

Benefits based on employment are not included in this chapter. These are included in chapter 13.

### Article 23

A contingent fee for an assurance engagement leads to a self-interest threat. This self-interest could, for example, arise because a professional accountant considers the possible results of the activities he performs or the opinion he forms for the contingent fee.

Even though the professional accountant can assure that such a fee does not comprise his independence, appearances are against him with respect to third parties.

This has resulted in the regulation stating that such a threat cannot be eliminated by a safeguard.

The professional accountant's opinion can also be subjected to pressure if he thinks that this may influence his contingent fees for a non-assurance service. That is why there are limitations regarding contingent fees for engagements that influence the assurance object or that are material.

### Article 24

If the total fee received from a responsible party is quantitatively or qualitatively material to the audit firm, the network or the engagement partner, this leads to self-interest threats (for the revenue dependency of this single responsible party) and intimidation threats (taking care of possible losses of the responsible party). This threat also arises if the total of fees is an important performance indicator of parts of the audit firm or network. Another part of an audit firm or the network, to which these fees are an important performance indicator (hereinafter: other part) could include different parts of the audit firm or the network, dependent on the organizational structure. This includes for example an office of the audit firm, a branch or a regional unit.

Whether there is a threat and what the size of this threat could be depends on several factors.

In case of the audit firm, network or other part the following factors are possibly of influence:

- the size of the audit firm, network or other part;
- whether this is an enterprise that has existed for a while or that was recently founded;
- whether someone is employed at a local, national or international level;
- the general business climate in the business markets where someone operates.

In case of the engagement partner related to the audit firm other factors play a role:

- the size of his clientele;
- whether the professional accountant has recently been appointed as partner;
- the extent in which the partner's compensation depends on these fees.

Examples of possible safeguards are:

- having a professional accountant to whom the threat in question does not apply perform an engagement quality control review;
- limiting the dependence of the client by, for example, agreeing to a longer duration of contracts which reduces dependence in the short run;
- consultation of the professional body or other professional accountants with respect to important decisions for the purpose of performing the engagement.

### Article 25

#### *First and second paragraph*

The financial year in the first paragraph refers to the financial year of the audit firm.

In the Code of Ethics the 15% limit solely applies to public interest entities. The threat, however, occurs to the same extent with respect to fees that are received, for example, for services provided to

a small or medium-sized entity and would probably rather occur at an SME than at firms that are audited by a public interest entity considering its smaller total revenue.

Therefore, in this regulation this quantification of 15% and applying mandatory safeguards is applicable to all sorts of responsible parties.

With respect to this threat, the 15% limit is an upper limit of the interpretation of the definition material interest. As stated in article 24, the engagement partner also checks whether there is a self-interest threat or intimidation threat in case of smaller proportions.

Additionally, the international regulation consists of the choice between two specifically prescribed safeguards, namely an engagement quality review prior to the issuance of the assurance report (pre-issuance review) or an engagement quality review after issuance of the assurance report (post-issuance review).

The post-issuance review would primarily play part if, after issuance of the report, other circumstances show that turnover in the second year exceeds the 15% limit. However, if after issuance of the assurance report it becomes clear that the 15% limit has been exceeded, there is no factual threat to the independence in the time of issuing the assurance report (after all, the exceeding was not known at the time).

Consequently, article 25 paragraph 2 of this regulation only prescribes pre-issuance review as a specific safeguard.

This specific safeguard should be applied to every assurance report that is issued in the second year. As long as the 15% limit is also exceeded in the consecutive years, the specific safeguard remains in effect.

It is expected that the received fees from a responsible party and its related third parties are primarily material in relation to the total revenue of the fees received by the audit firm during the start-up phase of audit firm.

#### *Third paragraph*

It is possible the 15% limit is not exceeded by the audit firm itself, but that it does lead to such an exceeding for the Dutch part of the network. Consequently, the proportion of the receipt of the responsible party and the related third parties versus the total receipt should be reviewed at the level of this part of the network.

### **Article 26**

Self-interest and intimidation threats can arise when there are accounts receivable with respect to the responsible party, in particular if an important part of the accounts receivable had not been satisfied before the assurance report was issued. Examples of possible safeguards are:

- engaging an independent quality reviewer;
- having a professional accountant who has not been involved in the assurance engagement or another service to the responsible entity review the situation;
- obtaining advice from the professional body.

Fees that are overdue could be characterized by a funding of the kind referred to in chapter 9.3, for example, when arrangements have been made concerning an instalment, interest payment or when collateral or standing surety has been agreed.

## **Chapter 6 – Gifts and Hospitality**

### **Article 27**

As a matter of principle, providing gifts or personal hospitality (personal expression) does not fit in a relation between a professional accountant (auditor) and the responsible party (auditee). Therefore, the premise is that gifts or hospitality that are not business-related should not take place. The arrangement also applies to members of the assurance team, the audit unit, network firm and a director or an internal officer charged with governance. An internal officer charged with governance

could be the internal members of the supervisory board or an equivalent body of an audit firm. External members of the supervisory board or a Public Interest Committee are not included in the definition internal officer charged with governance but are regarded as external officers charged with governance.

At the same time, a prohibition of gifts and hospitality as a whole is not reasonable. Most of the time, a bouquet of flowers or other presents in case of a birth, wedding or stay in hospital is not a threat to the independent performance of the engagement provided these gestures are reasonable. Also, attending a dinner or a party on the occasion of a jubilee of a responsible party to which more than one relation is invited, or a dinner after completion of the audit, as long as this does not take place in a five-star restaurant, is no threat to the independence of mind and in appearance.

The approach this regulation supports is the following:

- gifts and personal hospitality should be avoided where possible;
- gifts and personal hospitality gestures smaller than €100 may be accepted, unless there are clear indications these are provided with the intention to influence the recipient;
- the engagement partner should inform an appointed person within the audit unit on the gift, why the gift is appropriate and possible safeguards he has applied. If the organization has not appointed anyone, he will make a statement with the policymaker of the audit unit;
- the engagement partner makes sure that he and those charged with governance have agreed how frequent and in what manner gifts and hospitality larger than €100 are communicated. As soon as a gift or hospitality is obtained, the professional accountant settles on the matter with those charged with governance as agreed.

This regulation does not arrange if and how the audit unit should monitor or document the notifications. If there is a reason for this, this will be taken care of in the VAO or an equivalent thereof that focuses on the audit unit. Until implementation in the regulation in question, it is acceptable that the notification is settled with respect to this article.

It is not the intention of this article to have a member of the assurance team scrutinizing whether a gift or hospitality is valued under €100. When obtaining the gift, the member in question will verify if it and suchlike does not reasonably cross a line, and refuses the gift or hospitality when this is of greater value. It should be clear to the responsible party that providing gifts or personal hospitality might discomfort the members of the assurance team and that they will not appreciate the gesture.

When it is provided by the professional accountant to the responsible party, this limit will gain an absolute character because at that moment it is evident how much was spent on the gift or hospitality.

It is always essential to check the underlying principle for the gift or the personal hospitality, regardless of its value, and how accepting or providing this reflects on the public considering the underlying principle. The circumstances play a vital role: why is something offered or provided, at what time is something offered or provided, is it random or has there been a gift or personal hospitality to or from the same relation before (so there is a pattern) and are there also other members of the assurance team or the audit unit who have received gifts or personal hospitality from the same relation.

According to the definition, personal hospitality does not solely relate to business practices. In case of a business expression you can think of providing a lunch, providing hotel accommodation if it is not possible to sleep at home or, paying for travelling expenses. Bear in mind that a business expression can create a threat if this is executed in a non-businesslike manner. This could be the case when a business lunch takes place in a three-star restaurant or when a luxurious hotel has deliberately been booked for one's accommodation. Offering a conference or a similar gathering to the responsible party also qualifies as a business expression, provided the business aspect prevails.

A dinner on the occasion of the completion of the audit is not supposed to be a business matter. This means that spending over € 100 should be accounted for. Obviously, both parties could opt for bearing their own expenses.

Gifts for an internal or governmental auditor that are provided by the employer, such as a Christmas box are not included in this article if the requirements of article 3 paragraph 7 are observed.

When the audit unit invites representatives of the responsible entity for an event such as a golf clinic, sailing event or soccer game, this is part of the provisions of personal hospitality.

The €100 threshold applies to one gift or expression of hospitality. This clearly does not mean that its frequency can be disregarded. The engagement partner exercises professional skepticism as described in article 5 in order to assess whether the frequency with which such gifts or expressions are received or provided lead to a threat to the independence.

## **Chapter 7 – Long-term involvement in services to the responsible party**

### **Article 28**

A threat to the independent performance due to confidentiality and self-interest can arise when a member of the assurance team has been involved in services to the same responsible party for a long time. The chance of such a threat increases when the period during which the professional accountant maintains relations with the client progresses.

Elements that could play a part include:

- how long a team member has been involved in services to the responsible entity;
- the role a team member plays with the services;
- the nature of the assurance engagement;
- the changes within management of the responsible entity;
- the nature or complexity of the accounting and reporting issues.

T

he engagement partner annually assesses the possible threats to the senior members in his team. Whether a member of the assurance team should be regarded as senior member does not depend on seniority in years, but seniority in capacity and experience. Think of, for example, key assurance partners, senior managers and senior staff.

Examples of safeguards are:

- an engagement quality review prior to the issuance of the assurance report, performed by a professional accountant who is not involved in the performance of the assurance engagement;
- the engagement partner or the senior member resigning from the assurance team after which at least a sufficient cooling-off period should be observed before he might possibly be involved in an assurance engagement for the responsible party;
- applying phased rotation when there are several senior team members who have been involved for a long time. A newly joined senior team member can review the work of the senior team members who have not yet rotated;
- in case of an internal or governmental auditor, the audit department can establish a rotation scheme which avoids long-term involvement in the same part of the responsible entity.

As a term for a sufficient cooling-off period, a period of at least two years is considered acceptable, in accordance with article 29 of this regulation.

Paragraph 2 of this article indicates that after a consecutive period of seven years there is the possibility that there is actually no unacceptable risk of confidentiality or self-interest, justifiably underpinned with annual documentation. This underpins that there is no threat to the independence, so safeguards need not be applied. The aforementioned elements could play a part with the justification in question.

Such documentation should be approved by an officer appointed by the audit unit. This officer appointed by the audit unit who should approve the justified documentation could be a compliance officer or a representative in case of a small audit unit. Both the documentation and its approval should be included in the file.

### **Article 29**

A person who was involved in an assurance engagement for a public interest entity or a related party in the capacity of key assurance partner for seven consecutive years, should cease the activities related to that assurance engagement. He cannot interfere with any assurance engagement for the responsible party for two years, from the moment he stopped working, and that also excludes a role other than key assurance partner. The prohibition on involvement in any assurance engagement in

whatever position is more stringent than international regulation which indicates that involvement solely as key assurance partner is not allowed.

The degree of confidence that leads to the threat is linked to the person and not to his position within the assurance team. That is why this regulation states that when the key assurance partner observes the cooling-off period of two years, he cannot play any part in assurance engagements at the responsible party or related party.

It can happen that a member of the assurance team had already been involved in an assurance engagement before a responsible party qualified as a public interest entity. The terms referred to in article 29 relate to the total duration of involvement in the assurance engagement which are the years prior to the moment the responsible party becomes a public interest entity also count (article 29, third paragraph).

If a key assurance partner has been involved in the assurance engagement for more than 7 years and the responsible party qualifies for the first time as a public interest entity that very year, the key assurance partner can complete the current assurance engagement at that time and finishes his involvement after completion of this current engagement. In order to improve the practical applicability it is allowed to complete the year subjected to assurance. The regulation does not distinguish between the number of years the professional has already been involved. For example, if a professional accountant has been involved in the audit of the financial statement a small- or medium-sized entity for nine years and this entity becomes a public interest entity in year ten, the professional accountant can complete year 10 even if that means he has been involved in the services to the enterprise for more than 7 years. Evidently, the requirement in article 28 to apply safeguards with respect to the long-term involvement needs to be observed.

The external auditor who was responsible for the statutory audits at a public interest entity that were performed during the prior seven consecutive year should rotate based on article 24a of the Wta.

When a responsible entity merges with another entity, a conceptual framework should indicate whether there is such a new entity that the preceding years of service cannot reasonably be included in the 7-year term. Important factors are the composition of management, those charged with governance and persons with significant influence on the assurance object and already chosen judgments in the assurance objects remaining effective.

## **Chapter 8 – Financial Interests**

### **Article 30**

#### *First paragraph*

The definitions direct financial interest and material indirect financial interest are indicated with the term financial interest for the sake of this chapter's legibility.

Financial interests can be held directly or through an intermediary. Whether a financial interest should be regarded as a direct or indirect financial interest depends on the question if the beneficiary can have policy-making influence on the investment or if he has the possibility to influence investment decisions. In that case, there is a direct financial interest and if not, an interest is regarded as an indirect financial interest.

Examples of financial interest include:

- direct or indirect participation in the capital of the responsible entity;
- holding or marketing the responsible entity's securities, regardless of the size;
- holding a financial interest in a joint venture with the responsible entity or with an owner, director or other person within higher management of the responsible entity;
- accepting benefit pension plans or other allowances from the responsible entity.

Agreements to hold a financial interest (for example contracts to obtain a financial interest) or derivative instruments that are directly linked to this financial interest (for example, stock options, futures, debentures, etc.) should be treated similarly to an already existing financial interest.

Whether a indirect financial interest is material to at least one of the parties depends on the specific circumstances of the parties. These include, for example, an individual's capital or to what extent the financial interest enables the holder to influence the entity in which the interest is held.

#### *Second and third paragraph*

A financial product or service the responsible entity offers her clients for the purpose of normal business can also have the characteristics of a financial interest. Examples include an endowment mortgage that has been negotiated with a bank or a pension policy that has been agreed with an insurance company.

In principle, such a financial product or service is reviewed for the acquisition of goods and services (chapter 9) unless they are part of the risk-bearing capital (the equity and subordinated debts and other subordinated components of equity, like a loan certificate with the (Rabo-)bank) of the responsible entity.

There is a normal business when the product or service can be acquired by third parties under similar conditions, when the responsible entity has the required permits to provide these products or services and is organized to do so.

### **Article 31**

#### *First and second paragraph*

Holding a financial interest can lead to a self-interest, confidentiality and intimidation threat. Having shares for example render the professional accountant having an interest in the results of his audit. This includes the situation that a possible sustainable impairment may influence the market price of shares. The assumed threat is such that this cannot be controlled with safeguards in certain situations, for example when the engagement partner has shares himself. That is why this article identifies a few situations where holding such a financial interest is not allowed.

The Code of Ethics states that a financial interest held by a partner from the same location as the professional accountant's creates an unacceptable threat to the independence.

The regulation departs from the premise that the threat does not solely arise due to financial interests held by partners from the same location, but also due to partners from the audit firm or network firm. Normally, there is more cooperation than solely at location level. This includes branches, team compositions across firms and specialization across firms. These forms of composition render the threat active if partners who do not work at the same location hold a financial interest.

The engagement partner can use the courses of action, procedures and systems the audit unit applies when complying with this chapter, as stated in the disclosure with respect to article 5, part b. This does not relieve him of his responsibility to secure the independent performance of the assurance engagement.

#### *Third paragraph*

A pension plan includes an enterprise pension fund or a pension scheme on own account.

#### *Fourth paragraph*

Obtaining a financial interest can be part of the terms of employment for governmental auditors. Although the governmental auditor does not need to be independent of the responsible entity, and therefore a financial interest does not need to be a problem, the threat may be of such a nature that it is necessary the professional accountant informs his most important user, the audit committee or similar body, on his financial interests. Share options that have been communicated to the audit committee or a similar body on account of the compensation policy are not included in this provision.

#### *Fifth paragraph*

The fifth paragraph is included in order to prevent employees of audit units being unable to invest in investment funds. Investment funds often qualify as financial products of a financial institution where the investor participates in the equity of the investment fund. Because of this structure, these funds in the Netherlands also need a mandatory audit. The influence of the investors in the field of investing is

limited in such a way that this justifies an exception to the prohibition for a partner, director or internal officers charged with governance who are not a member of the assurance team. Holding such a financial interest does lead to an independence threat where a safeguard is prescribed.

An example of a safeguard is the annual confirmation by the partner, director or internal officer charged with governance of the fact that he has not been in contact with the assurance team with respect to his financial interest in the responsible entity.

Internal regulators comprise, for example, the internal members of the supervisory board or a similar body of an audit firm. External members of the supervisory board or a Public Interest Committee are not included in the definition internal officer charged with governance but are regarded as external officers charged with governance.

### **Article 32**

Obtaining a financial interest as a result of a working relation could include share options that are made available to the staff.

### **Article 33**

It could happen that people obtain a financial interest that is not permitted due to circumstances that are reasonably outside the control of the one involved, for example because of an inheritance. When necessary, the one obtaining the financial interest disposes of this as soon as possible. The circumstances also determine how quickly this can be done. For example, a situation where one would need consent of the family involved for transferring an inheritance when selling obtained shares, or that it is agreed that the shares bequeath property to the other heirs but the formal settlement is delayed.

## **Chapter 9 – Business Relations**

### **Article 34**

Collective business interests are relations where there is a collective commercial or financial interest between the persons, entities or bodies referred to in this article. It goes without saying that the engagement partner is a member of the assurance team. The definition collective business interest does not include:

- the assurance engagement and engagements to other services;
- the employment contract, including the agreements concerning secondary terms of employment for the internal and governmental auditor;
- an employment contract similar to an agreement between the internal and governmental auditor and the employer.

The following are a few examples of collective business interests that, if they are material to at least one of the parties, can create a self-interest, advocacy, or intimidation threat.

Examples:

- agreements to combine one or more services or products of the audit firm with one or more services or products of the responsible party and market these collectively;
- agreements concerning distribution and marketing where the audit firm operates as distributor or provider of services of the responsible party and vice versa.

Paragraph 1 of this article identifies a few situations that state that the business interest has such an influence on the person involved, for example because the financial welfare of that person with whom there is a business interest directly influences the personal welfare, which renders the independent performance impossible to safeguard.

Example of a possible safeguard when there is an interest as referred to in the second paragraph is curtailing the business relation, for example by limiting the level of the transactions.

Additionally, it is possible to reverse the circumstance by removing the team member in question from the assurance team.

Agreements to enter into such relations are treated the same way as already existing relations.

In case of engagements for a restricted user group, the engagement partner does not need to be independent of the entity. The provisions with respect to the business interests with the responsible entity therefore do not apply to an internal or governmental auditor who performs an engagement for a specified group of users (for example for the management of the entity where the governmental auditor is employed). A business relation with an entity does, however, create such a specific circumstance that regardless of the fact that such a situation does not need to be prohibited, it is important to inform the supervisory body or a representative on the relevant business relations. With whom and how this takes place also depends on the agreements made within the organization. Factually this is regarded as a threat that requires a specific safeguard.

### **Article 35**

Examples of goods and services are insurance and bank services, office equipment, software, and commercial vehicles. If these transactions take place in an objective and business manner, like between independent parties, they normally do not create a threat to an independent performance (for example, the purchase of goods that are offered under normal conditions and are available for all other and similar consumers of the responsible entity under the same conditions).

When there is no transaction that has come about in an objective and business way, such a transaction at least seems to be prompted by the idea to influence the relation with the professional accountant. That is why such a transaction is regarded as not-permitted.

However, the engagement partner carefully considers if even an objective and business transaction between these parties can reach such a size or duration that this leads to a threat to an independent performance because the transaction causes an dependence of mind or in appearance.

With respect to the international regulation one has decided to apply an added safeguard when the responsible entity provides services. This safeguard determines that receiving a professional service cannot be a condition to providing the assurance engagement. When such a condition is made, this greatly devalues the professional character of the relation between the entity and the professional accountant and a self-interest threat occurs.

### **Article 36**

If a loan, guarantee or other form of debenture is provided by a bank or comparable institution, a threat to the independence of the assurance engagement may arise if the audit unit performs an assurance engagement at this bank or comparable institution. As long as the loan, guarantee or other form of debenture comes about under terms that are in accordance with the market or terms pertaining to industrial law that have been documented for the internal or governmental auditor it is possible to apply safeguards to reduce the threat to an acceptable level.

However, the engagement partner carefully considers whether even an objective and business transaction between these parties can reach such a size or duration that this leads to a threat to an independent performance because the transaction causes dependence of mind or in appearance.

#### *Third paragraph*

Lending money to the responsible party is not part of the normal business of the people and the entities referred to in this paragraph. Consequently, such a loan, even if this has come about under business conditions, leads to a threat against which no safeguards are possible when the loan is material to one of the parties involved.

#### *Fourth paragraph*

Example of a safeguard is having a professional accountant to whom the threat in question does not apply perform an engagement quality review. This could be a professional accountant from a part of the network who has not received the loan or a professional accountant outside the audit unit.

Internal or governmental auditors are allowed to receive loans, guarantees or other forms of debentures from the employer, if these provisions by the employer fit within the regular employment's benefits, and the conditions under which this occurs equal the conditions that apply to all personnel.

### **Article 37**

If the responsible entity or the audit unit decide to make an interrelation public as part of marketing or a commercial, there is an association between these parties. This association is the result of the fact that this communication will only occur if the purpose is regarded important or provides value added business. As a result of this association, the threat to the independent performance of the assurance engagement becomes too substantial to accept the assurance engagement or to continue unless the relation is clearly insignificant.

Examples of association are sponsoring by means of shirt advertising or installing bill boards at events or appearing in a marketing campaign of the responsible entity.

If the association is insignificant, it is not prohibited. This includes, for example, providing shirts to a youth soccer or hockey team. Conversely, shirt advertising for a professional soccer team is regarded as a prohibited association under the terms of the regulation in addition to performing an assurance engagement.

Giving a discount on services without any reciprocation is not included in the definition of association. Giving a discount could be the case with respect to a charitable institution. One should not, in any way – other than described in the regulation – communicate to third parties that this kind of support is provided to the charitable institution.

Sponsoring does not always go hand in hand with association, but could also entail providing entrance tickets to an event, specific venues and similar gestures. One should avoid that using these facilities lead to association. An audit unit may clearly indicate where guests have to check in, but massive bill boards focusing on all people present are not allowed. If the audit unit invites assurance clients to an event, this is an expression of hospitality and chapter 6 applies.

## **Chapter 10 – Working relations with a responsible entity**

### **Article 38**

Threats due to confidentiality and intimidation can arise when people involved in the audit unit start working for the responsible entity or hold a (other) position at the responsible entity. When someone switches to a client in the business world, he might let this transition influence his actions and opinions in the build-up. Additionally, the switch may lead to an undesired degree of confidentiality between the assurance team and an officer of the responsible entity who is important to the assurance object. The role of the person with respect to the assurance team and whether the person is still involved in the audit unit have an effect on the threat.

For example, threats always arise when the (former) member of the assurance team, a (former) partner of the audit firm or a (former) employee of the audit department takes up his duties as a director, person charged with governance or another position where he can significantly influence the assurance object.

### **Article 39 and 40**

In the situations described in articles 39 and 40, threats may arise due to confidentiality and intimidation. Generally, these threats are less severe than the situations described in article 38. Therefore, in these situations it is possible to guarantee independence by means of a further specified safeguard.

Examples of a possible safeguard if there is a working relation as referred to in articles 39 and 40 are:

- adjusting the approach of the assurance engagement and/or the working program;
- making sure that people with sufficient authority are included in the team in order to resist the possible influence of the person working for the responsible party;
- having a professional accountant review the work of the team member who is leaving or who has left.

#### **Article 41**

If a professional accountant is key assurance partner and switches to the responsible entity, he creates a threat to the independent performance of the assurance engagement if he does not comply with the conditions referred to in this article. This also applies to the chief executive officer and comparable officers of the audit firm or network firm. Given the important role a key assurance partner plays within the assurance team, there are no safeguards that can ensure the independent performance of the assurance engagement in such a situation. A cooling-off period of 24 months with respect to this subject is not new in the independence rules. For example, this coincides with the term referred to in article 4.3.1. of the Nadere voorschriften onafhankelijkheid openbaar accountant (AAs) en de Nadere voorschriften onafhankelijkheid openbaar accountant (RAs);

Additionally, a self-interest threat arises if a professional accountant knows or suspects he will start working for the responsible entity during the performance of the assurance engagement. In that case, article 40 applies.

If the switch as referred to in this article is made by a professional accountant and he does not comply with the stated cooling-off period, this creates a position that threatens the independence as referred to in article 3, fourth paragraph.

#### **Article 42**

Threats due to self-interest, self-review and confidentiality arise when a member of the assurance team who has recently worked for the responsible entity performs activities related to parts of the assurance objects while he did the administrative work when he still worked for the responsible entity. The person in question was allowed to work for the responsible entity during the cooling-off period of two years, though. It is essential that he did not work in the position that creates a threat during two years.

The length of the cooling-off period is in accordance with the cooling-off period as prescribed for external rotation. The international regulation does not quantify the cooling-off period. For the advancement of the clarity and applicability, a concrete term in the regulation under consideration needs to be prescribed.

#### **Article 43**

Articles 38 till 41 describe a situation where a certain individual leaves or has left the audit unit. However, it is also possible that an individual remains at the audit unit, but has an additional job at the responsible entity.

If a person as reflected in this article has a job as a director, person charged with governance, or manager, he creates a threat to the independent performance of the assurance engagement. This also applies to other positions from where this person can significantly influence the assurance object. Given the important role such an individual plays on behalf of the audit unit, there are no safeguards that can ensure the independent performance of the assurance engagement in such a situation.

Situations where acting as a cash or other property manager include:

- managing an inheritance;
- acting as an executor;
- acting as administrator in a situation of debt counsellor.

### **Chapter 11 – Close personal relations**

#### **Article 44**

Close personal relations between the engagement partner or a member of the assurance team and someone who holds office on the committee or somewhere else within the responsible entity could lead to a self-interest, confidentiality or intimidation threat. When identifying circumstances the factors will be considered:

- the position of the close personal relation at the responsible entity;
- the role of the member of the assurance team within the assurance team;
- the exact nature of the relation.

Example of a possible safeguard when there is a close personal relation as referred to in paragraph 2 is separating responsibilities within the assurance team in such a way that the member with the personal relation should not engage in activities that are the responsibility of the personal relation.

Additionally, it is possible to reverse the circumstance by removing the team member in question from the assurance team.

## **Chapter 12 – Legal proceedings against the responsible party**

### **Article 45**

Actual or imminent legal proceedings could, according to international regulation, lead to a threat depending on the circumstances against which safeguards should be applied and in some situations the threat is of such a nature that the engagement cannot be continued. Disciplinary proceedings against the engagement partner or a member of the assurance team are also included in the term legal proceedings for the application of this chapter.

In the regulation, the first paragraph starts from the idea that actual or imminent legal proceedings always lead to a threat against which at least one safeguard should be applied.

Additionally, the second paragraph reflects concrete circumstances against which no safeguard is possible. These situations are amplified below.

If the engagement partner, a member of the assurance team or the audit unit is involved in legal proceedings with the responsible entity, the threats due to self-interest and intimidation are such that such a person can no longer be involved in the engagement, also because of the emotions that are coupled with a law suit.

Legal proceedings or possible legal proceedings that are instituted by or on behalf of the client could relate to an opinion or conclusion provided by the engagement partner of the audit unit. The threat to the independence of the professional accountant or the audit unit who knows that the client will dispute his opinion is such that no safeguard is possible. When in case of legal proceedings expertise and due care or complying with the other fundamental principles are disputed by the client in another way, terminating the engagement could be inevitable.

Article 15 sets out that in extraordinary cases it could be in the public interest to continue an assurance engagement, even if this departs from this regulation. It goes without saying that this also applies to article 45. This could, for example, be the case when terminating the assurance engagement renders the responsible party unable to comply with her legal reporting duties or unable to conclude necessary funding. It is expected that at that moment an objective, reasonable, and well-informed third party would conclude it is better to continue the engagement than to cancel it.

In those cases, the professional accountant can continue the engagement under stringent conditions. In case of a statutory audit, a statement should be made to and coordinated with the AFM. In other cases, this is the NBA. Then the professional accountant is expected to perform the engagement independently.

An example of a possible safeguard when there is a threat as referred to in the first paragraph 1 is having a professional accountant who is not involved in the legal proceedings perform an engagement quality review.

## **Chapter 13 – Performance-based review and compensation**

A performance-based fee the audit unit or network firm receives is not included in this chapter. These are included in chapter 5.

### **Article 46**

#### *First paragraph*

If the review or the compensation of a member of the assurance team is based on a commercial performance at the responsible party, there is a self-interest risk. Selling non-assurance services to

the responsible party is at least regarded a commercial performance. Internal agreements concerning budget realization and margin realization are also included in the term commercial performance. Compensation based on commercial performances as referred to in this article is not included in the profit sharing agreements between partners and general profit sharing agreements for employees.

A review or compensation is negligible when this amount does not have an effect on the behavior of the member of the assurance team. This way, the NBA executes the action plan which indicates that providing a compensation and a review should be characterized by the quality of the activities performed.

#### *Second paragraph*

An engagement partner could receive a performance-based review or compensation from the audit unit or employer for his work. If this is related to the outcome of his opinion regarding an assurance engagement, this creates such a self-interest threat that this performance-based review or compensation is prohibited. For this purpose, bonuses are also regarded as performance-based compensation.

## **Chapter 14 – Repeal of Arrangements**

### **Article 47**

With the coming into force of this regulation, the Nadere voorschriften onafhankelijkheid voor intern, openbaar en overheidsaccountants will be repealed.

## **Chapter 15 – Transitional and final provisions**

### **Article 48**

A new arrangement solely applies to that what happens after coming into force, but also to that which already exists at the moment of implementation, such as existing assurance engagements (immediate effect). Because immediate effect of this regulation on current assurance engagements could have an unreasonably damaging effect on parts, transitional rights have been included for these engagements with respect to those parts. This mainly concerns a few relations that are subjected to more stringent rules under this regulation or that are new with respect to the Nadere voorschriften onafhankelijkheid voor intern, openbaar en overheidsaccountants applicable to the taking effect of this regulation. Although the Nadere voorschriften onafhankelijkheid voor intern, openbaar en overheidsaccountants are withdrawn with the taking effect of this regulation, however, they remain effective for the circumstances mentioned in article 48 and the conditions stated therein. The transitional rights have mostly been chosen to be applied if a certain threat has arisen from agreements that have been made before December 17, 2013. This is the day after the general meeting during which this regulation was established. The justification lies in the fact that members from the moment they have established the regulation, are expected to be familiar with circumstances under which an assurance engagement cannot be performed after the coming into force of this regulation or only after applying (certain) safeguards.

#### *First paragraph*

If the responsible entity made an agreement before December 17, 2013 with respect to supplying a service as referred to in the parts a or b or entering into a business relation as referred to in part c, the professional accountant should test whether there is a threat to the independence based on the NVO on independence until December 31, 2015 at the latest. Should the regulation still be effective after December 31, 2015, from then on one should determine, on the basis of the ViO, whether there is a threat. An arrangement means an oral or written agreement. In order to use the transitional provision the professional accountant should be able to indicate that there was an agreement before December 17, 2013 and that this was sufficiently specific and authentic. The transitional provision of paragraph 1 oversees the agreement mentioned and entered into before December 17, 2013. During the transitional period it is possible to enter into new assurance engagements even if there is no compliance with the requirements stated in the ViO, provided that this is also possible under the independence rules that applied before December 17, 2013.

### *Second paragraph*

For financial interests, arrangements concerning performance-based review or compensation as well as fees as referred to in parts a till c the transitional right provides the opportunity to bring these in conformity with the requirements of the ViO in a year's time. Until then, the provisions of the NVO remain applicable.

The transitional provision of paragraph 2 oversees the circumstance mentioned which applied before December 17, 2013. During the transitional period it is not possible to enter into new assurance engagements if there is no compliance with the requirements stated in the ViO, provided that this is also possible under the independence rules that applied before December 17, 2013.

### *Third paragraph*

Article 28 of the ViO does not apply to assurance engagements entered into before December 17, 2013. These assurance engagements can be completed, even if the ViO states that this long-term involvement leads to a threat. The transitional provision also provides the opportunity to review an assurance engagement, entered into before December 17, 2013, under the NVO to determine whether there is a threat to the independence, provided that this assurance engagement is completed before January 1, 2015. Completion means that the assurance report has to be issued before January 1, 2015.

### *Fourth paragraph*

Article 28 of the ViO does not apply to assurance engagements entered into before December 17, 2013. These assurance engagements can be completed, even if the ViO states that this long-term involvement leads to a threat. The transitional provision also provides the opportunity to review an assurance engagement, entered into before December 17, 2013, under the NVO to determine whether there is a threat to the independence, provided that this assurance engagement is completed before January 1, 2016. Completion means that the assurance report has to be issued before January 1, 2016.

### *Fifth paragraph*

In case of long-term involvement in an assurance engagement that is included in the transitional provision because of the third or fourth paragraph, the provisions with respect to the NVO remain applicable. If the NVO do not specifically elaborate on the circumstance sketched in article 28 or 29, the professional accountant determines whether there is a threat based on the conceptual framework of the NVO.

### *Sixth and seventh paragraph*

Paragraph 6 indicates how the transitional provisions compute in case of a tacit renewal of an engagement. When, for example, an annual audit of a financial statement is renewed tacitly every year, the transitional provision applies to the annual audit 2013. In this case, this can be completed regardless of when this completion takes place.

This also applies, unabridged, to paragraph 17, on the understanding that, for example, in case of an annual audit of a financial statement, the audit of 2013 and 2014 are included in the transitional provision. These broader transitional provisions have been chosen because article 29 discusses an obligatory circulation and article 28 also provides other safeguards.

### *Eighth paragraph*

The transitional provision of paragraph 8 oversees the employment contract concluded before December 17, 2013 or legal proceedings instituted before December 17, 2013. In that case, the NVO remain applicable until the employment contract or legal proceedings are settled. During the transitional period it is possible to enter into new assurance engagements even if there is no compliance with the requirements stated in the ViO, provided that this is also possible under the independence rules that were applicable prior to December 17, 2013.

### *Tenth paragraph*

This provision results in “other activities” with respect to article 24b of the Wta, which were already asked to be performed prior to the taking effect of the Wab, to be completed till two years after the taking effect of the Wab. This means that when a statutory audit is also performed, this “other activities” should have ended before January 1, 2015.

### **Article 49**

Article 49 provides the possibility that the detailed rules include more detailed independence rules (article 19, third paragraph, Wab). The board will hear the general meeting concerning possible draft detailed rules (article 49). Possible detailed rules need the approval of the Secretary of Treasury, for as far they relate to performing statutory audits (article 34, first paragraph, part b, Wab).

### **Article 50**

This regulation could also be referred to with the abbreviation ViO (article 50).

### **Article 51**

This regulation also needs the approval of the Secretary (article 34, Wab) after the establishment by the general meeting mid December 2013 and prior to publication in the Staatscourant. Based on article 23 of the Wab, a regulation of the NBA does not take effect any sooner than the day after issuance of the Staatscourant in which this is published. In order to prevent that the regulation can only take effect after January 1, 2014 if this should not be published before January 1, 2014, retroactive action will be applied (article 51).

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