

AMERICAN ACADEMY OF ACTUARIES

Council on Professionalism

APPLICATION OF PROFESSIONAL STANDARDS IN
INTERNATIONAL PRACTICE

Concepts on Professionalism

Discussion Paper

Prepared by

Committee on International Issues

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PREFACE

This discussion paper was developed by the Committee on International Issues of the American Academy of Actuaries for discretionary use by actuaries. Its purpose is to assist actuaries in applying professional standards of conduct, practice, and qualification when practicing internationally. This paper was not promulgated by the Actuarial Standards Board and is not binding upon any actuary. No affirmative obligation is intended to be imposed on any actuary by this paper, nor should such an obligation be inferred from any of the ideas expressed or suggestions made herein.

In considering and addressing the interests of the various parties who use their work products, actuaries should be guided by the Code of Professional Conduct. To the extent any conflict exists or could be implied between this paper and the Code of Professional Conduct, the Code should prevail.

Members are encouraged to share their comments on this paper with the Committee on International Issues to facilitate improvement in any future releases on this topic. Comments can be submitted to paper@actuary.org.



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The Committee on International Issues presents these ideas with the expectation that they will be both useful and thought-provoking and will enhance members' consideration of the professionalism aspects of international practice. Ultimately, it is the Code of Professional Conduct that governs members' responsibilities in this area. However, the ideas and suggestions offered in this paper are intended to assist actuaries in applying the Code of Professional Conduct to their individual situations. The committee believes that expanded discussion of the concepts and suggestions offered in this paper will benefit the profession.

COMMITTEE ON INTERNATIONAL ISSUES

Curtis E. Huntington, *Chairperson*

Vincent Amoroso

Robert A. Anker

Leroy A. Boison, Jr.

Sam Gutterman

David G. Hartman

W. James MacGinnitie

Daniel J. McCarthy

BACKGROUND

The industries to which actuaries provide professional services are becoming increasingly global. Financial service companies in the United States are venturing more frequently into foreign markets, making it necessary for the actuaries who provide professional services to them to practice not only under laws and professional standards applicable to their work in the U.S., but also under comparable requirements in other countries. Further, the evolution of multinational companies with offices and employees both here and abroad has created a need for actuaries whose work in the employee benefits area not only complies with the complex statutory requirements imposed by U.S. employee benefits laws, but also satisfies applicable laws and professional standards in the other countries in which their multinational principals operate.

Actuaries practicing internationally can encounter situations in which it is unclear what standards should be followed or even in which no local professional standards appear to exist. Increasingly, actuaries are seeking guidance on how to apply professional standards in the context of international practice. Further, there has been at least one instance in the recent past where an actuary practicing internationally was found by the local actuarial association to have breached applicable local standards. Accordingly, it was thought by the leadership of the American Academy of Actuaries (Academy) that members would find a discussion of

how to apply professional standards in the context of international practice to be helpful. Accordingly, the Academy's Council on Professionalism asked the Committee on International Issues (committee) to prepare a discussion paper for broad dissemination to the membership. The purpose of the paper would not be to impose mandatory requirements on actuaries, but to identify issues, enhance sensitivities, and assist actuaries in applying professional standards when practicing in an international setting.

This paper, therefore, is intended to be broadly shared among the membership of the Academy and its sister organizations. In preparing this discussion paper, the committee recognized that there is a range of opinion within the profession concerning the application of professional standards in various situations involving international practice. However, the committee believes that members can benefit from reading and considering the concepts and suggestions contained in this paper. The committee is not advocating any mandatory practices beyond those required by the Code of Professional Conduct.

By sharing the thoughts of several experienced actuaries, the committee encourages all actuaries who practice internationally to give appropriate consideration to how to maintain a high level of professionalism whenever they do so. Ultimately, however, each actuary must decide how to appropriately fulfill professional responsibilities in this area.

Defining “International Practice”

Before an actuary can decide which jurisdiction’s professional standards apply to a particular assignment, the actuary determines whether the work is truly “international” in nature, *i.e.*, whether the actuary is providing professional services across national borders.

Actuaries around the world typically take one of two approaches in determining whether their work on a particular assignment constitutes international practice. Some actuaries believe they engage in international practice only when their work calls for them to be physically present in a foreign jurisdiction. Others look to the *intended destination of the work product*. (The latter approach underlies the U.S.-Canada cross-border discipline agreement, discussed in greater depth below.)

The intended destination of the work product is a factual matter determined by a variety of facts and circumstances, such as:

- The domicile of the actuary’s principal (*i.e.*, client or employer);
- The domicile(s) of the intended user(s) of the work product (*e.g.*, the principal or regulators);
- The location where the work was physically delivered;
- The location where the work was intended to be used;
- The jurisdiction whose laws and standards the actuary referred to in completing the work product; and
- The stated purpose of the work product.

In some instances, actuaries include in the work product a statement specifically

identifying the intended purpose of the work product, the location where the work product is intended to be used, and the jurisdiction whose laws and standards the actuary followed. Such statements can be particularly helpful to determine whether the actuary has engaged in international practice and to identify the professional standards with which the actuary should comply. However, if the facts and circumstances surrounding the development of the work product are not consistent with the actuary’s statement (for example, if a U.S. actuary develops a work product for use and delivery in Canada, the actuary’s principal is Canadian, and Canadian regulators are expected to rely upon the work, but the actuary states that the work was prepared exclusively for use in the United States), the accuracy of the actuary’s statement may be questioned.

It can be particularly difficult to determine the intended destination of the work product when it is produced for a multinational corporation operating in several jurisdictions. The actuary may find it necessary to adapt such work products to comply with the requirements of each jurisdiction to the extent those requirements are inconsistent with each other.

Alternatively, the actuary may wish to clearly identify the jurisdiction whose laws and professional standards the actuary intends to follow in completing the assignment and to disclose the extent to which the work product can be appropriately relied upon in other venues.

For the past several decades, it has been possible for principals and others to make paper copies of actuaries’ work products and

ship them into other countries. However, the development of electronic communications systems (for example, e-mail) has made it particularly easy and inexpensive to transmit actuaries' work products across borders. An actuary who transmits a work product electronically can find it being forwarded into countries where the actuary never intended to practice. For this reason, actuaries may find it prudent to place

contractual limits on the use and distribution of their work to protect themselves from inadvertently practicing abroad. Actuaries may also wish to include in the work product itself an explicit statement identifying the jurisdiction(s) for which the work product is intended for use and indicating whether and to what extent the work product can appropriately be used in other venues.

The Code of Professional Conduct and International Practice

The Code of Professional Conduct (Code) is the highest binding authority imposed upon members by the Academy, and members must comply with it or be subject to the profession's counseling and discipline process.

The Code was most recently amended effective January 1, 2001. The amendments were intended, among other things, to clarify that the Code's scope is not limited to U.S. practice. Rather, the Code is designed to apply wherever the actuary practices, whether exclusively in the United States or elsewhere in the world.

As discussed below, the Code requires, among other things, compliance with:

- Codes of professional conduct adopted by "recognized actuarial organizations" (*e.g.*, organizations that are full members of the International Actuarial Association [IAA]);
- Applicable local laws, regulations, and court decisions;
- Applicable actuarial standards of practice promulgated by recognized actuarial organizations; and
- Applicable qualification requirements promulgated by recognized actuarial organizations.

The IAA's accreditation requirements have created some uniformity among the profession's codes of professional conduct around the world because, to be a full member of the IAA, an actuarial organization must have adopted a code of professional conduct that "includes the

common principles of the code adopted by the Groupe Consultatif des Associations d'Actuaires des Pays des Communautés Européenne." The Groupe Consultatif code is very similar to the Academy's Code and, consequently, the Academy's Code is similar to the codes of other organizations that belong to the IAA.

However, in rare instances, an actuary may practice in a country where the code of the local actuarial organization appears to conflict with the Academy's Code. In such situations, actuaries typically take the first step of carefully analyzing the foreign code and the Academy's Code to confirm that they truly conflict. If it is possible to harmonize them, the actuary can comply with both. If the two codes truly conflict, however, actuaries typically find it prudent to comply with whichever code has the more rigorous requirements.

In some instances, a local code will simply differ in its requirements from the Academy's Code. In such cases, actuaries typically take one of several approaches. Some actuaries apply professional judgment and comply with the code that appears to make the most sense under the circumstances. Other actuaries comply with the local code on the theory that the obligation to comply with that code is specifically imposed by the Academy Code and, therefore, compliance with the local code amounts to compliance with the Academy Code. Other actuaries prefer to comply with the specific requirements of the Academy Code, reasoning that membership in the Academy imposes upon the actuary a

duty to comply with the Academy Code that takes precedence over local requirements.

When an Academy member is faced with an apparent conflict between the requirements of a local code and the Academy's Code, the Actuarial Board for Counseling and Discipline (ABCD) can be a helpful source of confidential guidance to help resolve the conflict. When the actuary has resolved the conflict, the actuary will typically find it prudent to disclose, in the work product itself or in some other communication to the actuary's principal, which code the actuary decided to follow.

One aspect of the Code that is particularly relevant to international practice is the Code's requirement to secure translations of local codes of conduct as necessary. Lack of understanding of the language of the country in which the actuary practices is not an excuse for failure to comply with the requirements of the local code.

Another important aspect of the Code for purposes of international practice is

Precept 2's requirement that actuaries perform professional services only when they are qualified to do so by virtue of basic education, experience, and continuing education, and to comply with any local qualification requirements. In most countries, the local actuarial organizations have not promulgated published qualification requirements comparable to the *Qualification Standards for Prescribed Statements of Actuarial Opinion* adopted by the Academy. However, as the Code observes, the absence of such published standards does not relieve the actuary of the broad responsibility imposed by Precept 2 of the Code to practice only when qualified to do so. It can be particularly challenging to become qualified to practice in a foreign jurisdiction, and the actuary may find it necessary to obtain additional basic education (either by examination, work study, or university education), experience, or continuing education to comply fully with this requirement.

Compliance with Local Law

The Code requires actuaries to comply with the law in any jurisdiction in which they practice. Again, the Code requires actuaries to obtain translations of local laws as necessary. As with local codes of professional conduct, failure to understand local laws does not excuse an actuary's failure to comply.

Local laws typically address several issues that can be relevant to actuaries' international practice. First are laws governing immigration, temporary entry, and eligibility to work in a country. Many countries (including the United States) have laws that limit the right of foreign nationals to provide professional services within their borders. Actuaries should comply with those laws and should not simply presume the right to enter a country and perform professional services there. (The North American actuarial profession has filed an application to add actuaries to the list of professions eligible for facilitated cross-border temporary entry under the North American Free Trade Agreement. As of the writing of this discussion paper, the application was still pending.)

Second, many jurisdictions have licensing requirements or other restrictions on the right of any professional to perform professional services. For example, some countries require any foreign professional practicing within their borders to have a local partner. In other countries, professionals must be licensed by the government to practice at all or to perform certain professional functions. For example, in the United States, contributions to defined benefit pension plans that qualify for

preferred tax treatment under the Employee Retirement Income Security Act (ERISA) can only be certified by an enrolled actuary who has been licensed by the federal government. Again, actuaries should not perform professional services without first meeting local licensing requirements.

Third, actuaries are required to comply with local laws governing the substance of their work. Just as ERISA governs pension practice and state laws govern insurance practice in the United States, laws in foreign jurisdictions where actuaries practice will govern the actuaries' work. The Code recognizes the importance of compliance with law wherever an actuary practices, and requires the actuary to obtain translations of local laws as appropriate. The actuary may also find it prudent to retain local legal counsel to address any questions arising out of local laws.

Fourth, nearly every jurisdiction has laws and regulations governing the operation of businesses. Laws addressing personnel matters, taxes, commercial issues (*e.g.*, contracts, banking, incorporation), and environmental concerns typically exist, and may vary considerably between jurisdictions. For this reason, actuaries may find it prudent to obtain guidance from local legal counsel when practicing internationally, and to disclose reliance on local counsel's advice in their work product or another appropriate communication to their principal.

Although not necessarily codified in law, local business customs and practices have developed in most jurisdictions, and lack of familiarity with them may put the foreign actuary at a significant disadvantage.

Consequently, it is also usually prudent to become familiar with and conform to local business customs. It may also be beneficial for the actuary to become a member of any local actuarial organization, both as a means

to become familiar with local customs and to gain more ready access to the local organization's professional standards of conduct, practice, and qualification.

Compliance with Local Actuarial Standards of Practice

Precept 3 of the Code requires the actuary to comply with any actuarial standards of practice promulgated by a recognized actuarial organization in the jurisdiction where the actuary performs professional services. The IAA requires its member associations to either have or commit to establishing a process for adopting recommended actuarial standards of practice. Consequently, there is an increasing likelihood that actuarial standards of practice will exist in foreign jurisdictions where U.S. actuaries practice.

However, where no such local actuarial standards of practice exist, it may be helpful to reference the standards of other countries. Although actuarial standards of practice typically are nation-specific (*i.e.*, written with reference to the laws and professional practices of the jurisdiction in which they were developed), they can often be adapted to support practice elsewhere. Academy members have access to the actuarial standards of practice (ASOPs) promulgated by the Actuarial Standards Board, and may find it helpful to use the ASOPs in jurisdictions where no applicable actuarial standards of practice have been adopted, adjusting the ASOPs as necessary to accommodate the laws and business practices of those jurisdictions.

Before using the ASOPs in foreign jurisdictions, however, Academy members may also wish to consider using actuarial standards of practice promulgated in other countries (for example, standards from Canada or the United Kingdom) if it appears

that those standards would be better suited for use in particular jurisdictions. As an example, depending on the assignment, Academy members practicing in the Caribbean might choose to use the actuarial standards of practice promulgated by the Institute of Actuaries, considering them better suited to local practice than the ASOPs. Other Academy members might prefer to use the ASOPs because they are more familiar and comfortable with the ASOPs' requirements.

In some instances, actuarial standards of practice promulgated in various countries might take conflicting approaches. Thus, for example, one set of standards might require cash flow testing in a situation where another set would permit the actuary to exercise professional judgment in determining whether to conduct cash flow testing or not. In such a case, actuaries typically would apply professional judgment in deciding which standard to use, taking into account generally accepted practice in the host country. The actuary also would usually find it prudent to explicitly disclose in the actuarial work product or other appropriate communication to the principal which actuarial standards of practice the actuary selected and how the actuary complied with them.

If the actuary is working under international accounting standards promulgated by the International Accounting Standards Board (IASB), there may be another set of actuarial standards of practice for the actuary to consider. The IAA is currently working on a series of

international actuarial standards of practice that are intended for actuaries to use in conjunction with the IASB's international accounting standards. Again, when using the IAA's standards, the actuary is usually

prudent to disclose that use in the actuarial work product or other appropriate communication.

Cross-Border Discipline

Article IX of the Academy's bylaws provides that, when Academy members practice in Canada, complaints and questions concerning their practice are referred to the Canadian Institute of Actuaries (CIA) for investigation. The Academy (as well as its U.S.-based sister organizations) has entered into a cross-border discipline agreement with the CIA that provides, in essence, that if an Academy member is accused of breaching Canadian professional standards of conduct, practice, or qualification when practicing in Canada, the CIA will investigate the matter and, if the CIA finds that the Academy member has committed such a breach warranting discipline, the CIA will so notify the Academy. The Academy then determines whether the breach found by the CIA constitutes a material breach of the Academy's Code and, if so, what disciplinary action (if any) to take. If the Academy member has also joined the CIA, the CIA determines independently whether and how to discipline the member.

Academy members practicing elsewhere in the world who are accused of breaching local professional standards are subject to investigation by the ABCD and discipline by the Academy. As in Canada, Academy members may also be independently investigated and disciplined by the foreign country's actuarial association if they have joined that association. In such a situation, the actuary is subject not only to discipline, but also to investigation by both the foreign actuarial organization and the Academy and ABCD.

Actuarial associations around the world

are considering whether to enter into cross-border discipline agreements similar to the agreement between the U.S.-based organizations and the CIA. As more of these agreements are executed, there should be fewer situations in which actuaries are subject to investigation by multiple actuarial organizations.