

MALTA INSTITUTE OF TAXATION

CODE OF CONDUCT AND ETHICS

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CODE OF CONDUCT AND ETHICS

The following rules are to be followed by members of the Institute to ensure a high level of conduct in the exercise of their profession. The rules also provide a code of professional ethics with a view to preserving the good name of the Institute and of its members, and to ensure professional conduct that is beyond reproach.

These rules have been approved by the members in General Meeting. The commentaries have been added by the Council and will be kept updated from time to time.

(1) General Obligations

Members are, in the interest of the profession, the Institute and the members themselves, in duty bound to maintain high professional and ethical standards in their conduct, including inter-member relations. It is imperative that members maintain high standards of integrity and fair dealing in the rendering of their services. In this context:

- (a) In the conduct of their duties, members are to comply with the applicable provisions of any regulation, code or standard issued by any competent authority.
- (b) Members are to do their utmost to ensure that their services are not carried out or rendered in a manner which would serve the purpose of illicit or illegal activities or purposes, in Malta or abroad, or in any way be detrimental to the interest of Malta, the Institute or the profession.
- (c) Before accepting an engagement, members are to ensure that there are no factors or other circumstances which may reflect badly upon themselves, the Institute or their profession. In particular, members must take steps to find out such facts about a client's circumstances as may reasonably be expected to be relevant to enable them to act properly.

Commentary

Members, like all professionals, exercise their activity primarily to earn a living for themselves and their families. They are however required always to bear in mind the three principal obligations, as summarised above, which their place in Maltese society imposes upon them and which, as members of the Institute, they are presumed to have accepted as binding.

Members of the Institute are subject to the rules of the Institute and to the authority of the Council. The Council represents and crystallises the collective wishes of the members regarding the way in which the exercise of the tax profession in Malta is to be conducted, and it therefore expects and requires all members to grant their full co-operation and to submit themselves to the rules of the Institute, including this Code of Conduct and Ethics.

Members will wish to ascertain that apart from matters of strict legality, client's activities will not be such as to bring themselves, their profession, the Institute or Malta into disrepute. Thus, while it is fairly clear that such activities as money laundering fall under this prohibition, it should be noted that national and international directives on such matters as the crises which from time to time have affected various parts of the world, should also be followed. In respect of such issues, members are bound: (a) to follow these directives, (b) to

make appropriate reports to the authorities as are compatible with the obligations of secrecy imposed upon them by law, and (c) to seek the guidance of the council of the Institute as necessary.

(2) Professional Independence

When providing services, members must maintain professional independence and must also nurture an objective approach in their attitude of mind. Members are to act towards their clients and their affairs in the utmost good faith.

Commentary

Given their status, it is not open to members to carry out their activities freely: full cognisance must be given to their functions and this requires that members must be able to maintain a certain degree of independence from clients. Essentially this means that the financial awards arising to a member from any one of his clients, including a group, should not be such as to render a decision to sever relations too great a financial sacrifice.

It is therefore recommended that members should so try to arrange their affairs that not more than twenty per cent (20%) of their receipts on revenue account during any year are accounted for by services rendered to one client, including a group.

It is appreciated that while members are building up their practice adherence to this rule may not be possible. This goal must however be aimed at, and it is suggested that if after five years this position has not been achieved, a member should reconsider the situation and should consult the Council of the Institute regarding the future.

The twenty percent rule laid above does not apply to members who are in the process of running down their practice.

The concept of objectivity flows to a great degree from that of independence. Once a member acts in an independent capacity, he will also be able to pursue the affairs of his clients with due objectivity. Members are obliged to further the interests of their clients to the best of their abilities, and irrespective of what sacrifices they may be called upon to make; but a member has his own obligations, and he must at all times be guided accordingly in his relations with the client, even the most remunerative ones. Such objectivity can only be achieved if steps are taken to ascertain financial independence from any and all of the clients.

Adequate professional indemnity insurance cover is considered to be part of a member's arrangements to achieve professional independence. The situation in this respect in Malta is still fluid, but common sense arrangements are recommended as a minimum. When standards in this matter are established by due authority, members will be required to adhere thereto strictly.

(3) Competence

In accepting an engagement, a member must ensure that he is professionally competent to carry out the work which such acceptance may entail and that his staff is adequately experienced in the functions which will be delegated to them in the course of their duties. If the necessary resources are not available, the member must obtain such advice and

assistance as would enable him to carry out his functions and duties in a proper and professional manner.

Commentary

Tax work requires a blend of many skills and small, including particularly single person organisations, may find it difficult to carry out the full range of functions competently and in the best interests of clients.

Co-operation among members is therefore advisable, and no member should feel awkward in seeking expert advice or assistance from another member when he does not enjoy the benefit of such expertise. Such a course of action should not be looked upon as an admission of lack of competence on the part of the member who seeks advice; rather it should be considered as a positive attitude towards the profession, as well as proof of a broad-minded approach. Members would do well to ponder on the possible repercussions to their practice that may ensue from the giving of incorrect advice as a result of refusing to seek expert help where such help is called for.

Where a member obtains the advice of another on a consultancy basis on behalf of a client, the second member, or any firm which he or his consultancy organisation is associated, should not, without the consent of the first member, accept from that client within three years of completion of the consultancy assignment, any work which was, at the time the consultancy was first retained in relation to that client's affairs, being carried out by the first member.

The same considerations apply where a member introduces one of his clients to another for the purposes of consultancy.

(4) Continuing Education

Members are required to up-date and renovate on a continuing basis the technical knowledge and expertise which they must command for the proper exercise of their profession. Members are responsible for ensuring that the same principle is applied to their employees. Members are expected to follow any directives which may be issued by the Council or by any competent authority regarding continuing education.

Commentary

Details regarding requirements for continuing education are elaborated from time to time. Members are however encouraged to follow the Institute's publications and to attend at its seminars and other meetings.

The Council of the Institute is also available and willing to give general advice to members, especially where the rules comprised in this Code are involved. The Council does not however, accept responsibility for any advice which may be given by any individual member thereof.

(5) Confidentiality

Strict rules of confidentiality must be adhered to by members and any information acquired in the course of their duties must not be turned to their own advantage or to the advantage of a third party.

Commentary

This rule covers two important aspects of a member's obligations:

- (a) a general rule of confidentiality regarding client's affairs, and
- (b) a rule to the effect that knowledge which comes to him in the course of dealing with client's affairs cannot be made use of to further his own interests or the interests of a third party.

Maltese law in general lays down strict rules regarding confidentiality about a client's affairs. It may be appropriate to note that the law binds not only principals, but also all third parties falling under jurisdiction of the law of Malta, as well as executives and employees. Confidentiality is extended by law to prevent any person bound by secrecy from producing or divulging to any court, tribunal, board, committee of enquiry or other authority any document, information or other matter coming to his notice, or being in his possession or control for any reason whatsoever, and which he is required to treat as secret and confidential under the law.

A member and his employees may however disclose the above information where the consent of the client has been obtained in writing or where there is a clear legal obligation to do so.

In case a member, or any of his employees, is required by a tribunal to disclose information which, in his opinion, appears to run counter to this rule, the tribunal should be requested to minute formally its directive. Thereafter, legal advice should be sought before proceeding further. Reference should also be made to the Institute. It is appreciated that in the course of his work a member may find himself faced with conflicts between loyalty to his principals on the one hand, and his duties as a member of a profession or as a citizen on the other. When faced with such conflict, a member should make disclosure only with proper authority or consent or where there is a professional obligation, a right, a legal requirement or a public duty to do so.

Where a member is in doubt as to whether he has a right or duty he should, if appropriate, initially discuss the matter fully with the Institute. If that is not appropriate, or if he fails to resolve his problem, he should take legal advice.

As regards the second branch of the rule, a member could, if he were so minded, turn to his own advantage or to the advantage of a third party, information acquired in the course of the exercise of his profession. Members should not only refrain from misuse of such information but should also refrain from acting in such a manner as might make it appear that they have misused the information.

These two rules remain binding on members and their employees not only during the continuance of the member's engagement to act for any client, but also indefinitely thereafter.

(6) Prompt Execution

A member who provides service to a client must act promptly in accordance with his instructions and in the spirit of his engagement with client, unless he has been given discretion as to timing, in which case such discretion is to be used in an alert and sensible way. Moreover, a member should account to a client periodically or at intervals as may have been agreed with client regarding services being rendered.

Commentary

In taxation matters it is often a case of “time is of the essence”, brooking no delay. Members must bear in mind that delays in executing their principals’ instructions may leave them open to action for damages.

Prompt execution involves also prompt information. Channels of communication should be kept open between members and their clients. Clients must be kept updated on the progress of work which has been entrusted to a member. Details regarding such matters may be contained in the engagement or services agreement, but members will be particularly careful regarding the safeguarding of confidentiality in conveying information and other messages to their clients through employees.

(7) Statements

When a member releases any written statement or expresses an opinion in the course of his duties, he must ensure that such statement or expression is not misleading about any fact, opinion or opportunity to which it refers.

Commentary

It does not appear that any particular comments are required to be made on this rule beyond what is already contained in the commentaries on the other rules.

(8) Fairness

A member should refrain from making misleading or deceptive representations or practices. In particular, a member should not treat a client’s interest as subordinate to his own or take unfair advantage of a client who has placed reliance or trust in him.

Commentary

The principles laid down in this rule are subsidiary to those set out in other rules which are fully commented upon. It should, in particular, be noted that reference is again made to conflicts of interest between a member and his clients: conflicts which must never be resolved in favour of the practitioner.

The rule regarding acting in good faith is mandatory upon members and may not be viewed as one being only for guidance. A member must act towards his client in the utmost good faith, and he must advise dissatisfied clients what remedies are available to obtain redress.

(9) Professional Clearance

If a member resigns or is removed from office, the new practitioner taking over must request the prospective client's permission to communicate with the former adviser. Should such permission be declined, the new practitioner is in duty bound to refuse the appointment. On the other hand, if such permission is granted, the former adviser should be requested to provide all the information available to enable the new practitioner to decide whether or not to accept the appointment. When the former adviser receives such a request from a new practitioner, he should request permission in writing from his former client to discuss his affairs freely with the practitioner from whom the request has been received. If the request is not granted, this fact should be reported to the new adviser who should not accept the appointment. If permission is granted by client, the former adviser is bound to disclose all information required by the new practitioner to enable him to decide whether to accept the engagement.

Commentary

The rule as set out is comprehensive and needs few comments on its substance.

It will be observed, however, that it lays the basic groundwork for the smooth transfer of clients from one member to another. Clients are perfectly free to change their advisers, and both the 'old' and the 'new' advisers are bound to help them do so and to co-operate between them to ascertain that the transfer is not being made to avoid the proper scrutiny and control of client's tax affairs. Co-operation is an obligation and can be demanded as of right both by the client and the incoming adviser. Failure to comply within a reasonable time will be viewed by the Institute as a serious breach of this Code.

Before passing information to the new adviser, the former adviser must have received permission from the client to do so, and confirmation about such communication will not amount to breach of confidentiality.

A member invited to undertake work additional to that already being carried out by another, who will still continue with his existing duties, should as a matter of courtesy, notify the other member of the work being undertaken. This notification should not be given if the client advances a valid reason against it. The member undertaking the additional work has the right to expect of the continuing adviser full co-operation in carrying out his assignment.

(10) Conflict of Interest

Members must be vigilant to identify potential conflicts of interest and in the case of such a conflict arising between the interests of two or more clients, the member is obliged to give a full and free explanation to those involved. In such an eventuality, the member must disengage from one or both positions. As a matter of principle, a member should not accept any appointment which gives rise, or could give rise to a conflict of interest. Furthermore, when a member has a material interest in the subject matter of a possible transaction, he must not advise or exercise discretion in relation to that subject matter unless he has disclosed that material interest to the client and has taken steps to ensure that the material interest does not adversely affect the interests of the client.

Commentary

This rule deals with at least two possible aspects of conflicts of interest, namely (a) when there is such a conflict between two clients, and (b) where the interests of the member may clash with the interests of one or more clients. In the latter context, the expression 'member' must be taken to include the member, any linked company, directors and other principal officers, even when the latter may be acting in their personal capacity.

Conflicts of interest between clients should not be extended to mean interest in the same field. For example, building contractors are all interested in basically the same field, but no conflict of interest should arise. On the other hand, if two contractors are competing for the same contract, a potential conflict of interest may arise, as sooner or later the member will be asked to help or give advice to competing clients.

(11) Safekeeping

A member is obliged to keep safe any property, documents, books and records belonging to his clients and containing any confidential information and is to be responsible for same during the time in which these are in his possession or control. Where a member considers that he has a legal right of lien over such property, documents, books or records, such right should only be exercised after obtaining legal advice.

Commentary

Clients' documents must be kept safely locked up and only available to the member and his principal employees.

Clients' monies should be paid without delay into a separate bank account, which may be either a general account or an account in the name of a specific client but which shall in all cases include in its title the word 'client'. Any such account is referred to herein as 'a client account'.

Whenever a client account is opened appropriate notice of the nature of the account should be given in clear terms to the bank at which the account is to be opened. If this is done no question will arise of set-off by the bank against the member's other accounts or of sequestration of the amounts held in the client account.

Where a member receives a draft which includes both clients' monies and other monies he should cause the same to be credited in the client account. Once the monies have been received into the account, the member may withdraw from that account such part of the sum received as can properly be transferred to his own funds.

No monies other than clients' monies should be paid into a client account.

Drawings on a client account may be made only:

- (a) To meet payments due from a client for professional work done for that client provided that:

- i. the client has been informed in writing, and has not disagreed, that money held or received for him will be so applied; and
- ii. a bill has been served.

(b) To cover disbursements made on a client's behalf.

(c) To, or on the instructions of a client.

Interest on client monies is to be dealt with as follows: -

- (a) In the absence of express agreement to the contrary any interest received on a client's monies should be accounted for to the client. If monies belonging to more than one client are held in the same client bank account, any interest arising thereon should be apportioned as appropriate among the clients concerned.
- (b) Where a member receives monies of a client for retention and it is reasonable to anticipate that the monies can profitably be deposited at interest, the member shall so deposit them in a designated client deposit account in respect of which notice shall be given as provided above. It may be appropriate to charge a fee for this service or where the amounts are small to obtain from clients their general authority to deposit monies held for them in client accounts and to take the benefit of any interest for the practice.

Every member should at all times maintain records so as to show clearly the money received, held or paid on account of clients, and the details of any other money dealt with through a client account, clearly distinguishing the money of each client from the money of any other client and from his own money.

A right of lien can exist only where all four of the following circumstances apply:

- (a) the property retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client;
- (b) the property must have come into the possession of the member by proper means;
- (c) work must have been done by the member and a fee note must have been served;
- (d) the fees for which the lien is exercised must be outstanding in respect of the respective property and not in respect of other unrelated matters.

(12) Records

A member must keep proper and full records in relation to all his professional activities.

Commentary

This rule is connected with the immediately preceding one relating to safekeeping.

The obligations laid down in this rule applies to a member: -

- (a) in his functions relating to clients; and
- (b) in respect of clients.

As regards a member's functions on behalf of his clients, the member must keep sensible records and documents as will enable him to answer any lawful queries made by the authorities, and to account to and satisfy clients.

Where particular documents and records are not owned by the member they generally belong to the client. In order to determine to whom documents and records belong it may be necessary to consider:

- (a) the arrangements between member and his client;
- (b) the capacity in which member acts in relation to his client; and
- (c) the purpose for which the documents and records exist and have been prepared.

The rule is that if an agent brings into existence certain documents whilst servicing a principal, they are the principal's documents and the principal can claim that the agent should hand them over. Some areas of a member's activities involve acting as agent for the client. In such cases the contract is between a principal (the client) and his agent (the member) and the above rule applies.

Whilst documents belong to the client when they are prepared by a member acting as agent, this is not usually so where the member acts as principal.

In such cases the member's working papers belong to him unless the engagement letter or contract between the client and the member requires otherwise. The contract between a member and client may set out expressly the agreed position regarding the ownership of documents and records on which he will work or which are created in the course of that work. The contract may also determine ownership by implication. The ownership of documents and records will therefore vary according to the terms, expressed or implied, of the contract. Where those terms are such that one party owns the documents and records, the nature of the documents and records is irrelevant and it is not necessary to look further.

Letters received by a member from a client belong to him. So also, his copy of any letter written to a client is made solely for his own purposes and also belongs to him. A member's notes of questions and answers between him and the client likewise belong to him.

Ownership of copies of communications between a member and third parties depends on the relationship between him and the client. Where the member is an agent, the copies belong to the client. On the other hand, where the member is acting as principal, it is probable that it could be held that the copies belong to him. This would include documents which are not the end product of the work, for example:

- (a) documents confirming or otherwise the balance of an account between a third party and the client, such as those in respect of bank balances; and
- (b) other documents which the member has obtained solely for his own use in carrying out his duties as principal, these would normally include correspondence between the member and the client's lawyers.

(13) Advertising

Advertising by members for their services should always be low-key. Promotional material must in no way, explicitly or implicitly, belittle the services offered by other members. Furthermore, promotional material must also seek to promote and enhance the Institute's and its members' image as professionals of repute and integrity.

Commentary

A member must not seek to obtain unfair competitive advantage through official contacts with departments or other authorities. A member should not obtain or seek work in an unprofessional or unethical manner. A member may seek publicity for his services and achievements, but in doing so should have regard to the standards set out above and common sense. In addition to meeting the requirements of the above standards, members should ensure that promotional material is in good taste both as to content and presentation.

(14) Fees

A member may charge such fees as he considers appropriate for the work and services undertaken to be performed. Such fees must not be unfair in their incidence or unreasonable in their amount, having regard to all relevant circumstances. A member must not seek to compare the fees he charges with those charged by other practitioners, whether members or not, and whether in an implicit or explicit manner. Moreover, when quoting fees, a member must not adopt misleading statements which may in any way be interpreted as inducing possible clients to assume that fees will be lower than those eventually charged.

Commentary

Each member is free, within the general principles laid down by this rule, to construct his own fee structure in accordance with his own policy, but each client should be clearly and fully advised on what his liability will be.

Whilst reiterating its intention not to in any way interfere in the fee structure to be adopted by each member, the Institute feels it should urge members not to charge what could be seen to be excessive fees for what may be a relatively straightforward job. The Institute draws the attention of all members to the real possibility of outpricing oneself.

A member is entitled to change his fee structure from time to time. This gives rise to no problems regarding new clients, but adequate notice should be given to already existing clients to enable them to make alternative arrangements if they should so desire.

Subject to what is stated herein, a member is entitled to charge for his services such fees as he may consider appropriate in connection with the work undertaken. That is to say, subject to what herein set out and to the rules of common sense, fees may be determined according to normal market standards and exigencies.

The fact that a practitioner may charge a lower fee than another for undertaking the same or similar work is acceptable provided care is taken to ensure that the client is not misled:

- (a) as to the precise range of services that a quoted fee is intended to cover, and
- (b) as to the likely level of future fees for any work undertaken for the client.

If, in the course of an investigation into allegations of unsatisfactory work, there is evidence of work having been obtained or retained through quoting a fee that is not economic in terms of the time needed and the seniority of staff necessary to perform that work at a satisfactory professional standard, that factor is likely to be taken into account in considering a member's compliance with the rules of this Code.

Fees should normally be determined by reference to:

- (a) the skill and knowledge required for the type of work involved;
- (b) the seniority of the persons necessarily engaged on the work;
- (c) the time necessarily occupied by each person engaged on the work;
- (d) the nature of the responsibility which the work entails.

For much of the work involved it would therefore be appropriate to set charges on the basis of appropriate rates per hour or per day for the time spent by each person engaged on it. It is for each member to decide upon such rates, and these will vary according to the nature of the service given.

Reference is made above to the seniority of the persons necessarily engaged on the work and the time necessarily put by each person. The word 'necessarily' is important. Moreover the work should be planned and controlled in such a way that time is not spent unnecessarily on detailed work which could be replaced by the use of more suitable methods.

The forgoing relate to fees distinct from reimbursement of expenses. Out-of-pocket expenses, attributable directly to the work done for a particular client would normally be charged to that client in addition to the professional fees. A small mark-up or service charged is also acceptable.

If, at any time, a competent authority sets a scale of fees and charges, this must obviously be scrupulously adhered to.

(15) Force Majeure

If any circumstances arise which, in the opinion of a member, makes it impossible or impracticable for him to comply with any obligation imposed by or under these Rules, such member must immediately inform the Institute of the facts and reasons thereof. In these circumstances, the member may be required by the Institute to take steps as, in its discretion, it considers to be required or appropriate.

Commentary

Contracts exist to be adhered to, but insisting on the fulfilment of every obligation assumed thereunder despite third party happenings totally outside the control of the contracting parties may not make such sense financially, economically or otherwise. Force Majeure may therefore be claimed in these circumstances, usually suspending the obligation until the lawful impediment is removed, whereupon the obligations again become operative.

What may be deemed to be covered by Force Majeure will vary from one case to another, but the following is taken from an actual international commercial contract:

“The following shall constitute Force Majeure: act of war, invasion, blockade, hostilities, embargo or other enemy action, revolution, rebellion, terrorist attacks, civil commotion, riots, insurrections, earthquake, flood, fire, storm, epidemics, and any other natural physical disaster, labour disturbances, strikes or other causes, whether similar or dissimilar to the foregoing, reasonably beyond the control of either party: provided however, that inability to obtain equipment, supplies or finance shall not constitute Force Majeure unless the cause thereof is itself Force Majeure”.

Force Majeure arises under these rules solely in connection with the application of the rules themselves. Even so, relations between members and their clients may end up before the Institute to adjudicate and members may desire to put forward Force Majeure in extenuation of what clients complain of.

In both cases, the Institute will obviously give due weight to possible Force Majeure, but members are advised that the burden of proving Force Majeure lies on them in each and every case, and that in each case the Institute will have to be convinced that Force Majeure really exists beyond all reasonable doubts.

(16) Members in Employment

These rules also apply, *mutatis mutandis*, to members who are in employment, full regard being had to the circumstances of each case and the nature of employment.

Commentary

Members who are in employment may fall under three categories: -

- (a) employed with other members;
- (b) employed in private commercial or industrial undertakings;
- (c) employed in the public service.

This Code of Conduct and Ethics may not always be applicable, or even relevant, in such cases. These members should, however, without in any way infringing upon the rules which are binding upon them in terms of their contract and conditions of service, apply the underlying principles of this Code as best as they can in the context in which they work.

(17) Disciplinary Procedures

A member will be subject to such disciplinary procedures and other rules which the Council of the Institute may decide to introduce from time to time. The current disciplinary procedures are set out in the Schedule hereto.

MALTA INSTITUTE OF TAXATION

DISCIPLINARY PROCEDURE

Any complaint against or allegation of misconduct on the part of a member coming to the attention of the Malta Institute of Taxation (MIT) shall in the first instance be referred to the Ethics and Disciplinary Committee and will be dealt with in terms of the MIT's statute.

If the Ethics and Disciplinary Committee (EDC) find prima facie reasons for proceeding with the case, it shall advise the member against whom a complaint or allegation has been made accordingly, and the said member shall have the right to make submissions thereon to the EDC.

The EDC may require a member:-

- i. to attend before it and to give oral evidence and answer questions, and
- ii. to produce all documents, information or other material relevant to the complaint or allegations before it.

The complainant and the member will have the opportunity of making oral and written submissions before the EDC.

On concluding an investigation, the EDC shall have the power to decide about a complaint and, in the case of proven misconduct, may impose disciplinary penalties and sanctions which it may deem fit in the circumstances, and in accordance with the MIT's statute.

If in the opinion of the EDC following the investigation of a complaint, there is no evidence of misconduct, the Secretary shall inform the parties accordingly in writing.

Any party aggrieved by a decision of the EDC may, within 10 working days of the service of such finding or order, give written notice of appeal to the MIT Council, which notice shall be covered by a deposit of €125.

The appellant shall file a statement with the MIT Council within 20 working days from giving notice of appeal: -

- (a) setting out the decision of the EDC being appealed;
- (b) the grounds of appeal;
- (c) the remedy sought from the Council.

The MIT Council shall conduct the hearing in such manner as it considers most suitable for the disposal of the appeal proceedings. An appeal shall reach a decision by way of re-hearing on documents, except where leave is given to present such fresh evidence.

Following the hearing of the appeal, the MIT Council shall reach a decision on the case and will be entitled to confirm, vary or reverse the decision appealed against. The Council shall forthwith notify the appellant in writing of its decision and of any order made by it, together with the reasons thereof.

The decision of the MIT Council shall be final.

Nothing herein contained shall prevent an appeal to the Council from being withdrawn before it delivers a final decision.

No person shall participate in any disciplinary procedure against a member if such person has an interest in the matter or circumstances leading to the procedure.