

Our Ref: IESBAED/HB/cma

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Private & Confidential

Mr K Siong
Deputy Director
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Dear Mr Siong,

Re: IESBA Exposure Draft: 'Responding to a Suspected Illegal Act'

The Chartered Accountants Regulatory Board (CARB) is a body established by the Institute of Chartered Accountants in Ireland (the Institute) to regulate its members in accordance with the provisions of the Institute's Bye-Laws independently openly and in the public interest.

The Ethics Committee of CARB is pleased to respond to the above named Exposure Draft.

CARB is committed to ensuring members of the Institute comply with all relevant standards, laws and regulations. However, having carefully considered the Exposure Draft the Ethics Committee has a number of concerns which are addressed in our initial comments below.

Initial Comments

1. CARB is committed to the principles based approach adopted in the IFAC Code of Ethics (the Code). The Code does not have legal status and consequently cannot provide accountants with the legal protection necessary if they were to 'whistleblow'. We do not believe that the Code of Ethics is the correct vehicle for placing accountants under an obligation whilst offering them no protection. We believe that it is more appropriate for IESBA to issue guidance for accountants where they have a legal obligation to report. Whistle blowing obligations should properly be the preserve of statute.
2. Where a statutory obligation to report suspected illegal acts exists it applies to a wide group of people, not just professional accountants. To place an obligation over and above the legal obligations could have a number of serious, unintended consequences. For example, many of the services provided by professional accountants are not reserved to them but could be carried out by persons who are not members of an accountancy body or who are members of the legal profession. In the face of additional non-statutory reporting obligations, such as those proposed, clients could decide to transfer their business to these individuals or firms.
3. The introduction of reporting obligations in the Code could inhibit members of management and audit committees from holding a free and open dialogue with their auditor where there is a possibility their auditor may report a matter when they are not legally obliged to do so.

4. CARB is committed to acting in the public interest. In the Exposure Draft IESBA have stated that a professional accountant would be required to report matters in the public interest. Whilst recognising that it is not practicable to provide a precise definition of the public interest we are concerned at the very considerable scope for different interpretations the current proposals provide. We believe it is essential that greater clarity is provided by, for example, setting out that the intention is that only very serious/major matters fall within the scope of the proposals and by providing guidance on the type of matters which, due to their nature, are likely to give rise to a report.
5. Where the Code does continue to address the reporting of suspected illegal acts other than those where there is a statutory obligation, the Code should make clear that in egregious cases of suspected illegal acts the professional accountant should have a right to report rather than an obligation to report, and they should be relieved of the obligation of confidentiality.
6. We believe that the Code should make it clear that in all circumstances where the professional accountant is considering making a report, that before doing so they seek legal advice.

Response to Individual Questions

We have, as requested, responded to the individual questions posed in the consultation paper; our responses should be read in conjunction with our initial comments above.

Q1: Do respondents agree that if a professional accountant identifies a suspected illegal act, and the accountant is unable to dispel the suspicion, the accountant should be required to discuss the matter with the appropriate level of management and then escalate the matter to the extent the response is not appropriate? If not, why not and what action should be taken?

As indicated in our initial comments we believe that a professional accountant should fully comply with the requirements of any statutory provisions in relation to reporting suspected illegal acts.

We cannot agree that professional accountants should necessarily seek explanations within management as this may be in breach of the law, for example Anti-Money Laundering Legislation.

Q2: Do respondents agree that if the matter has not been appropriately addressed by the entity, a professional accountant should at least have a right to override confidentiality and disclose certain illegal acts to an appropriate authority?

We believe that where the professional accountant identifies a suspected illegal act of such seriousness that he/she believes in good faith that it is in the public interest to report it to the relevant authority, then there should be a right to override the principle of confidentiality and the professional accountant should not be at risk of disciplinary action from his/her member body for such disclosure.

We would however, refer you to Note 1 in our initial comments above and question 5 below in which we set out our concerns regarding the absence of legal protection.

Q3: Do respondents agree that the threshold for reporting to an appropriate authority should be when the suspected illegal act is of such consequence that disclosure would be in the public interest? If not, why not and what should be the appropriate threshold?

We have set out our concerns regarding the requirement in a Code for professional accountants to report matters other than those required by the law. However in circumstances where IESBA propose to include reporting provisions in the Code, we would refer you to Note 4 in our initial comments. In summary we agree that reporting should be confined to matters of public interest but believe that greater clarity is required.

Q4: Do respondents agree that the standard for a professional accountant in public practice providing services to an audit client differ from the standard for a professional accountant in public practice providing services to a client that is not an audit client? If not, why not?

Whilst accepting that the law may create differing reporting obligations we do not believe that the Code, which is based on a set of fundamental principles, should distinguish between the rights or obligations of professional accountants regardless of whether they are carrying out audit or non-audit services.

Q5: Do respondents agree that an auditor should be required to override confidentiality and disclose certain suspected illegal acts to an appropriate authority if the entity has not made adequate disclosure within a reasonable period of time after being advised to do so? If not, why not and what action should be taken?

We do not believe that the Code should 'require' a professional accountant to make a report. We believe that if this area is to be addressed in the Code that professional accountants should have a 'right' to disclose. Where there is a right and the professional accountant determines that, in the public interest, a report should be made then they should not be hindered by any obligation of confidentiality as set out in the Code. As stated before, we believe that reports should be made where there is a legal obligation to do so and in such circumstances the professional accountant will have legal protection from any charges of a breach of confidentiality.

Q6: Do respondents agree that a professional accountant providing professional services to an audit client of the firm or a network firm should have the same obligation as an auditor? If not, why not and what action should be taken?

See our response to question 4 above.

Q7: Do respondents agree that the suspected illegal acts to be disclosed referred to in question 5 should be those that affect the client's financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

We are concerned that 'acts the subject matter of which fall within the expertise of the professional accountant' could be interpreted too widely.

We believe that it should be made clear that the subject matter should not only be within the expertise of the professional accountant but also within the ambit of the service provided or the function being performed.

Q8: Do respondents agree that a professional accountant providing professional services to a client that is not an audit client of the firm or a network firm who is unable to escalate the matter within the client should be required to disclose the suspected illegal act to the entity's external auditor, if any? If not, why not and what action should be taken?

As stated previously we believe that the Code should be restricted to providing a 'right' to report.

Where the professional accountant determines that a report should be made we agree that he/she should have the 'right' to report to the external auditor. However reports to the external auditor should not be made where this could be in breach of any statutory provisions.

Q9: Do respondents agree that a professional accountant providing professional services to a client that is not an audit client of the firm or a network firm should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority and be expected to exercise this right? If not, why not and what action should be taken?

As stated previously the Code should refer only to a right. It should not in any way or by any form of wording place an obligation to report on the professional accountant.

Q10: Do respondents agree that the suspected illegal acts to be disclosed referred to in question 9 should be those acts that relate to the subject matter of the professional services being provided by the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

See our response to question 7 above.

Q11. Do respondents agree that a professional accountant in business who is unable to escalate the matter within the client or who has doubts about the integrity of management should be required to disclose the suspected illegal act to then entity's external auditor, if any? If not, why not and what action should be taken?

See our earlier comments regarding the merits of a right versus an obligation or requirement and our response to question 8 regarding reports to the external auditor.

Q12. Do respondents agree that a professional accountant in business should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority and be expected to exercise this right? If not, why not and what action should be taken?

See our response to question 5 above.

Q13. Do respondents agree that the suspected illegal acts to be disclosed referred to in question 12 above should be acts that affect the employing organization's financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant? If not, why not and which suspected illegal acts should be disclosed?

See our response to question 7 above.

Q14. Do respondents agree that in exceptional circumstances a professional accountant should not be required, or expected to exercise the right, to disclose certain illegal acts to an appropriate authority? If not, why not and what action should be taken?

As discussed previously a professional accountant should be required to comply with the relevant statutory provisions in reporting suspected illegal acts. The Code, if it addresses the issues other than in guidance, should restrict itself to providing a 'right' to report. In this case exceptional circumstances will not apply.

Q15. If respondents agree that in exceptional circumstances a professional accountant should not be required, or expected to exercise the right, to disclose certain illegal acts to an appropriate authority, are the exceptional circumstances as described in the proposal appropriate? If not, how should the exceptional circumstances be described?

See our earlier comments, our response to question 14 above.

Q16. Do respondents agree with the documentation requirements? If not why not and what documentation should be required?

We agree that the professional accountant should document his consideration and reporting (or otherwise) of any suspected illegal act.

Q17. Do respondents agree with the proposed changes to the existing sections of the Code? If not, why not and what changes should be made?

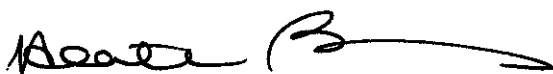
We are not in a position to comment on the proposed changes to the Code as we believe that it should be to be fundamentally reviewed in light of the comments above.

Q18. Do respondents agree with the impact analysis as presented? Are there any other stakeholders, or other impacts on stakeholders, that should be considered and addressed by the IESBA?

We believe that the impact analysis needs to be extended to consider additional impacts on professional accountants and their business, such as, the danger that the proposals could inhibit members of management and audit committees from holding a free and open dialogue with their auditor, and that professional accountants may be at a competitive disadvantage to other advisers who do not belong to IFAC member bodies.

We are happy to discuss any of the comments above with you, please contact the undersigned if you have any queries.

Yours sincerely



Heather Briers
Director
Chartered Accountants Regulatory Board