

**Request for Specific Comments**

The IESBA would welcome views on the following questions:

1.	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?	Yes.
2.	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?	Yes.
3.	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?	Yes.
<b>Matters specific to professional accountants in public practice (Section 225 of the Code)</b>		
4.	Do respondents agree that the standard for a professional accountant in public practice providing services to an audit client should 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?	No.  The standard applied should be the same regardless of service offered. Just as auditors do not actively go out to detect fraud and are obligated to report it when they do across it, this should also apply for the professional accountant in public practice providing non-audit services to a client.
5.	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?	Yes.
6.	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?	Yes.
7.	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?	No.  Failure to report an illegal act, of any nature, even where stumbled upon accidentally, could result in the accountant being accused of unethical behavior with a view to assist/ collude with/ cover-up the culprit.  Any act which is deemed to be illegal as defined by any effective regulation or law e.g. the employment of illegal immigrants in breach of immigration/ employment laws, the importation of raw materials not complying with domestic health and safety laws, the infringement of health and safety regulations in production (hazardous to factory manpower), the infringement of any patent/ intellectual property rights, the payment of bribes to any foreign parties/ associates in securing business, breach

		of environmental regulations relating to industrial waste, illegal use of client base personal data, price fixing, market manipulation, insider dealing, tax evasion et al.
8.	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?	Yes.
9.	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?	Yes.
10.	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?	<p>No.</p> <p>Failure to report an illegal act, of any nature, even where stumbled upon accidentally, could result in the accountant being accused of unethical behavior with a view to assist/ collude with/ cover-up the culprit.</p> <p>Any act which is deemed to be illegal as defined by any effective regulation or law e.g. the employment of illegal immigrants in breach of immigration/ employment laws, the importation of raw materials not complying with domestic health and safety laws, the infringement of health and safety regulations in production (hazardous to factory manpower), the infringement of any patent/ intellectual property rights, the payment of bribes to any foreign parties/ associates in securing business, breach of environmental regulations relating to industrial waste, illegal use of client base personal data, price fixing, market manipulation, insider dealing, tax evasion et al.</p>
<b>Matters specific to professional accountants in business (Section 360 of the Code)</b>		
11.	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 the entity's external auditor, if any? If not, why not and what action should be taken?	<p>No.</p> <p>The professional accountant should be allowed to use his/ her professional judgment in deciding whether to disclose or not his/ her suspicions of illegal acts to the external auditors. Management integrity is quite often directly linked to auditor integrity and/or professional ethics and/or competence. Therefore, in cases where the professional accountant feels that he/ she cannot escalate the matter within the client, quite often this will also be the case with the external auditor.</p> <p>In such cases, it would be preferable for the professional accountant to have the right to report to an appropriate external authority directly, bypassing client/ external auditor reporting step.</p> <p>Examples where this may be the case can be SMEs whereby the people responsible for the appointment/ remuneration of the external auditors are the same individuals who are the initiators/ perpetrators of the illegal acts. A more specific example can be a private hospital, whereby the doctors (also directors) who appoint the external auditors also fail to pass through hospital books/ records a significant chunk of their earnings, as they recruit/ appoint own secretaries who are responsible for booking their appointments and receive cash/ issue receipts, contrary to standing hospital share agreements.</p>

12.	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?	<b>Yes.</b>
13.	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?	<b>No.</b> <b>Failure to report an illegal act, of any nature, even where stumbled upon accidentally, could result in the accountant being accused of unethical behavior with a view to assist/ collude with/ cover-up the culprit.</b> <b>Any act which is deemed to be illegal as defined by any effective regulation or law e.g. the employment of illegal immigrants in breach of immigration/ employment laws, the importation of raw materials not complying with domestic health and safety laws, the infringement of health and safety regulations in production (hazardous to factory manpower), the infringement of any patent/ intellectual property rights, the payment of bribes to any foreign parties/ associates in securing business, breach of environmental regulations relating to industrial waste, illegal use of client base personal data, price fixing, market manipulation, insider dealing et al.</b>
<b>Other</b>		
14.	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?	<b>No.</b> <b>Whistle-blowers should be offered full confidentiality/ protection.</b> <b>Anonymity in reporting could also be an alternative option (i.e. web-based reporting hotline, with the option to provide as many facts/ information as deemed necessary to support the allegation made), however, this may provide a forum for unfounded malicious attacks against persons/ corporate entities. In such cases, in-depth assessment of the allegations made and evidence/ information provided could determine seriousness/ validity of the allegations made.</b>
15.	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?	<b>No.</b> <b>Providing for exceptional circumstances would defeat the purpose of this ED, as proof/ validation of such circumstances will be almost impossible to establish. As a consequence, professional accountants will tend to (falsely) retrospectively maintain the existence of exceptional circumstances in order to offer explanations for failing to act when needed.</b>
16.	Do respondents agree with the documentation requirements? If not, why not and what documentation should be required?	<b>Yes.</b>
17.	Do respondents agree with the proposed changes to the existing sections of the Code? If not, why not and what changes should be made?	<b>Yes and No – see below.</b>
18.	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?	<b>Yes.</b>

**General Comments - Proposed Additions to the Code of Ethics for Professional Accountants Addressing Illegal Acts**

<b>Professional Accountants in Public Practice – Professional Accountant Providing Professional Services to an Audit Client</b>	
It is felt that the application of the Code guidance would be better clarified/ helped by the incorporation of the decision tree/ chart as an appendix setting out the various options in different cases.	
225.8	Clarification required - Relevant professional body referred to here would be the one the accountant has qualified with (e.g. ACCA/ICAEW/CIMA etc), or the one which provides the practicing license e.g. ICPAC in Cyprus?
225.10	It is felt that the onus should be on the audit engagement partner to advise the entity that the matter should be disclosed to the appropriate authority and further this advice should be issued in writing in order to protect the engagement partner in case of failing to respond to reports of illegal acts committed by the audit client.
225.13	The reportable offences should also include “any other suspected illegal act which may be deemed to be significant by the professional accountant”.  Further, it is recommended to explain fully what is meant by “expertise of the professional accountant”, as this can be confusing e.g. would an ACCA be able to report illegal securities act, if his/ her background/ area of specialization relates to accounts preparation/ financial reporting?
225.14	As mentioned already, providing for exceptional circumstances would defeat the purpose of this ED, as proof/ validation of such circumstances will be almost impossible to establish. As a consequence, professional accountants will be allowed to (falsely) retrospectively maintain the existence of exceptional circumstances in order to offer explanations for failing to act when needed.  Whistle-blowers should be offered full confidentiality/ protection and their right to report illegal acts should be safeguarded by specific law in each jurisdiction.  The offering of anonymity in reporting could also be an alternative option (i.e. web-based reporting hotline, with the option to provide as many facts/ information as deemed necessary to support the allegation made), however, this may provide a forum for unfounded malicious attacks against persons/ corporate entities. In such cases, in-depth assessment of the allegations made and evidence/ information provided could determine seriousness/ validity of the allegations made.
225.15	It is recommended that all external advisors to a firm, whether providing professional services to an audit or a non-audit client, should be required to complete a questionnaire and submit it to the lead engagement partner after the completion of their assignments routinely. Such questionnaires should clearly require the professional accountant to report of any incidents of any suspected illegal acts as noted during the course of the provision of the professional services to the client, or provide a declaration to the contrary i.e. that no suspected illegal acts were noted during their engagement.

<b>Professional Accountants in Public Practice – Professional Accountant Providing Professional Services to a non- Audit Client</b>	
It is felt that the application of the Code guidance would be better clarified/ helped by the incorporation of the decision tree/ chart as an appendix setting out the various options in different cases.	
225.18	Need to define a length of time to be allowed to the external auditor for responding to the reporting of the illegal acts.
225.20	As mentioned already, providing for exceptional circumstances would defeat the purpose of this ED, as proof/ validation of such circumstances will be almost impossible to establish. As a consequence, professional accountants will be allowed to (falsely) retrospectively maintain the existence of exceptional circumstances in order to offer explanations for failing to act when needed.  Whistle-blowers should be offered full confidentiality/ protection and their right to report illegal acts should be safeguarded by specific law in each jurisdiction.  The offering of anonymity in reporting could also be an alternative option (i.e. web-based reporting hotline, with the option to provide as many facts/ information as deemed necessary to support the allegation made), however, this may provide a forum for unfounded malicious attacks against persons/ corporate entities. In such cases, in-depth assessment of the allegations made and evidence/ information provided could determine seriousness/ validity of the allegations made.

<b>Professional Accountants in Public Practice - Obtaining External Advice</b>	
225.22	<p>Clarification required - Relevant professional body referred to here would be the one the accountant has qualified with (e.g. ACCA/ICAEW/CIMA etc), or the one which provides the practicing license e.g. ICPAC in Cyprus?</p> <p>How anonymous? - This is unlikely to operate effectively in a small country like Cyprus, where the market is small, entities and auditors are easy to identify. How about if the professional body provides own legal advisors for such cases?</p>

<b>Professional Accountants in Public Practice - Documentation</b>	
225.23	<p>Agreed. Additional provisions need to be made in respect of the record-keeping – i.e. where the professional accountant works in an audit firm, would these be kept within the records of the audit file? Would a copy be centrally recorded also by the audit firm?</p> <p>What if the professional accountant works in business? Where would these records need to be maintained? Would copies need to be maintained in two places for safekeeping?</p> <p>Definite need for additional guidance.</p>

<b>Professional Accountants in Business – Professional Accountants in Business</b>	
<p>It is felt that the application of the Code guidance would be better clarified/ helped by the incorporation of the decision tree/ chart as an appendix setting out the various options in different cases.</p>	
360.6	<p>It is felt that the proposal does not adequately address the options available to the professional accountant in cases where the illegal acts are committed by those charged with governance, i.e. those responsible for appointing the external auditors. Would the professional accountant still be required to disclose the matters to the external auditor?</p> <p>What if the above scenario, related to a case where the internal auditor (professional accountant) has investigated the illegal acts already, made recommendations for remedial action (where possible) to the Audit Committee, attempted to disclose to the external auditors the reports' existence but both the Audit Committee and external auditors fail to respond, what options would be available to the professional accountant?</p>
360.8	<p>It is felt that "<u>reasonable time</u>" to act should be defined in terms of days. US similar provisions define 120 days a <u>reasonable time</u>.</p>
360.9	<p>The Code of Ethics should make adequate provisions for options available to the professional accountant whereby he/she has reported illegal acts to the audit engagement partner and he/she has failed to respond appropriately/ adequately within "<u>a reasonable time</u>" [see above definition need]. One option here would be for the reporting to be in writing to the audit firm ethics/ independence committee as well as the lead engagement partner to ensure that some additional monitoring would take place within the audit firm itself.</p> <p>Also, ring-fencing the mandatory rotation of audit firms (not partners) every 6-7 years is likely to mitigate risks of collusion/ tolerance/ personal relationships between clients and audit firms. Practice dependence on audit fees should also be better scrutinized by independence watchdogs, especially in cases of clients with presence in overseas locations – i.e. are the amounts of audit fees charged for overseas operations justified by the number of employees there/ materiality (or potential risk) to group/ extent of service offered?</p>
360.10	<p>It is felt that the proposal does not provide an elaborate definition of "<u>reasonable and informed third party</u>".</p> <p>It is further regarded insufficient to simply advise to "consider whether to resign from the organization" – i.e. in cases where illegal acts have criminal implications, the only option available would be to resign?</p> <p>It is therefore recommended that alternative means of reporting should be encouraged, e.g. named/ anonymous, using web-based hotline, separate investigative authority, with appropriate police/ investigation teams, combined with counseling and legal support, to assist with illegal act reporting as well as making disclosures of threats received to physical safety of self and others.</p>
360.11	<p>A more elaborate definition of "<u>public interest</u>" is recommended, together with the use of examples, as this can be quite subjective and down to individual interpretations. E.g. would the case of corruption and illegal acts initiated by top management, within a semi-governmental organization, ignored by external</p>

	auditors due to personal relationships/ conflicts of interests of individual audit partners, be regarded as of “ <u>public interest</u> ”? Would this decision alter where the said organization becomes dependent on the government for funding as a result of the above mismanagement? Further, one can argue that serious incidences of tax evasion by companies could be regarded as being in the public interest – therefore all these require further clarification.
--	--

Lastly, for the above to work, the whistle-blowers protection law should be uniform across the European community at least – perhaps an EU directive needs to be drafted for adoption by all member states to ensure that whistle-blowers are at least equally treated.