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International Ethics Standards Board for Accountants  
International Federation of Accountants  
545 Fifth Avenue, 14th Floor  
New York, NY 10017  
USA

By e-mail: [janmunro@ifac.org](mailto:janmunro@ifac.org)

Dear Sir/Madam

**Re: Exposure Draft, Responding to a Suspected Illegal Act**

The Korean Institute of Certified Public Accountants (KICPA) appreciates the opportunity to provide comments on the Exposure Draft, Responding to a Suspected Illegal Act.

**Overall Comments**

We support the commitment of International Ethics Standards Board for Accountants (Hereinafter, "IESBA") to developing and promoting high-quality ethical standards for professional accountants.

We agree with the basic view of IESBA that one of the most important professional responsibilities of a professional accountant is to act in the public interest and that the professional accountant is expected to fulfill the responsibility to act in the public interest.

However, with all due respect, KICPA would like to request IESBA to revisit and discuss the proposed changes and need for such changes, considering several factors that are described below in detail, including effectiveness of the requirement to override confidentiality that is likely to be undermined by discrepancies in local regulatory structures and judicial systems; potential turmoil in the capital market that is likely to be caused by the disclosure of wrong information; the professional accountant facing increased exposure to litigation; lack of consistency caused by different judgments used to make the determination

as to whether disclosure would be in the public interest; and disproportionateness in terms of cost-benefit analysis.

First, as highlighted in the Exposure Draft of IESBA, the requirements to disclose illegal acts are normally established by laws and regulations. It's because the professional accountant who has disclosed such illegal acts should be provided with protective mechanism under laws and regulations. Furthermore, the important concepts covered by the Exposure Draft of IESBA, such as the definition and scope of 'suspected' illegal act and the details and subjects of the professional accountant's responsibility to maintain confidentiality, are differently prescribed and enforced by local laws/regulations and judicial systems.

In Korea, the professional accountant's duty to maintain confidentiality is prescribed by Certified Public Accountant Act and Act on External Audit of Stock Companies. So, even though the Code prescribes the professional account's requirement to disclose suspected illegal act, the disclosure of suspected illegal act may constitute non-compliance with Certified Public Account Act or Act on External Audit of Stock Companies.

As such, we believe that it makes sense and more effective for local laws and regulations to prescribe and enforce the requirement for the professional accountant to disclose suspected illegal act. Therefore, it is recommended to leave this matter to local laws and regulations, as it wouldn't be effective otherwise. It is not appropriate for the Code to establish this matter when it can't provide the professional accountant with protective mechanism.

Second, the mere fact that a certain suspected illegal act is disclosed to an authority can cause a severe shock to the capital market, e.g. drop in share price, even when it is not confirmed yet that the suspicion is correct. Given that, potential turmoil in the capital market that can be caused when such suspicion is found to be ungrounded can be damaging to the public interest.

Third, as highlighted in the Exposure Draft of IESBA, it is unclear how the determination that a matter is in the public interest should be made and what is deemed to be in the public interest will vary from person to person. The subjective judgment required to make this determination could result in inconsistent results. In this regard, imposing the disclosure

requirement is not likely to bring about the deterrent effect in addressing illegal act. Also, this isn't likely to result in enhanced consistency by establishing the procedure to handle suspected illegal act. As a result, unlike what is described in the IESBA's Analysis of Overall Impact, it is expected to be a limited positive impact on the public interest.

Fourth, as discussed at IESBA meeting, the professional accountant may not have access to all the information needed to be able to confirm or dispel the suspicion that an illegal act was committed and, in this circumstance, requiring the professional accountant to disclose suspected illegal act may lead to an increase in disclosures of an erroneous nature. And when a suspected illegal act that is disclosed is found to be ungrounded, the concerned professional account will face increased exposure to litigation.

Furthermore, in case an auditor, in professional judgment, decides not to disclose suspected illegal act of an entity and, in hindsight, an illegal act is found to have been committed, there is a high risk of the auditor being held accountable for his professional judgment used to decide not to disclose such illegal act, due to the expectation gap between users of audit report and auditors about audit engagement.

Fifth, as such, the changes proposed by IESBA increases the responsibility and burden of the professional accountant and auditor significantly while it is unclear as to whether they can bring about a positive impact on the public interest, e.g. deterrent effect on the client or employing organization or enhanced trust of general investors thanks to a consistent handling process, and the extent of such positive impact, if any, is unlikely to be significant enough to offset related costs to be incurred.

As described above, KICPA has fundamental concerns about IESBA's Exposure Draft. With all due respect, we ask IESBA to re-consider the aforementioned aspects and the need to revise the Code.

In case IESBA intends to revise the Code as described in the current Exposure Draft, we request you to take into account our answers in response to your request for specific comments.

## Specific Comments

**(Question 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?**

We agree that the professional accountant should discuss any suspected illegal act with the appropriate level of management to dispel the suspicion. In case a professional accountant is unable to dispel the suspicion even after such discussion, the professional accountant should escalate the matter to higher levels of management or those charged with governance.

**(Question 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?**

As explained in the Overall Comments, we don't support the proposed inclusion in the Code of the requirement for the professional accountant to override confidentiality principle and disclose suspected illegal act to an appropriate authority. We believe that such requirement should be established by local regulators in a way that best suits local regulatory and judicial environments.

**(Question 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?**

As described in the Exposure Draft, what is deemed to be in the public interest varies from person to person. The judgment required to make this determination is subjective and can result in inconsistent results. So we don't agree with the change proposed by IESBA that the determination should be based on 'whether disclosure is in the public interest', which is a

subjective and ambiguous criteria, although such determination can result in drop in share price and harm to good reputation of the concerned entity and the professional accountant's exposure to litigation and legal liability. We ask IESBA to re-consider this matter, taking into account other country practices, to provide concrete and clearer criteria for determination.

**(Question 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?**

We don't agree with the proposed requirement for the professional accountant in public practice providing professional services to an audit client of the firm, or a network firm to disclose suspected illegal act to an appropriate authority. As an auditor, the accounting firm that provides audit service should identify and assess the impact of suspected or identified illegal act on financial statements or related risks, in accordance with auditing standards. In case such illegal act results in a material misstatement of the financial statements, the firm should modify the opinion in the auditor's report or disclaim an opinion on the financial statements.

Imposing on the auditor additional requirement to disclose suspected illegal act to an appropriate authority, in addition to the requirement of auditing standards, can widen the existing expectation gap between users of audit report and auditors regarding audit engagement. In case a suspected illegal act is disclosed to an appropriate authority, the market may think that such illegal act has actually been committed. And the auditor's act of disclosing such act to an authority itself can cause an excessive and drastic impact on the capital market. This may lead to a wider expectation gap between users of audit report and auditors regarding audit engagement, e.g. misguiding them to believe that the detection of illegal act is included in the scope of audit engagement, negatively impacting the public interest.

To the extent that an auditor performs the procedures requested by auditing standards with regards to identified or suspected illegal act, there is no need to define their obligations in addressing suspected illegal act differently from those of other professional accountants.

**(Question 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?**

As described in our response to question 4, we don't agree to require the auditor to disclose illegal act to an authority. The reason is same as the one provided in the response to question 4.

In case the entity has not made an adequate disclosure within a reasonable period of time after being advised to do so, it is more appropriate to request to terminate the audit engagement if it is allowed by applicable regulations.

**(Question 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?**

As described in our responses to questions 4 and 5, we don't agree with the requirement of disclosure of suspected illegal act to an appropriate authority, whether it is a professional accountant providing professional services to an audit client of the accounting firm or an auditor.

The professional accountants providing professional services to an audit client of the accounting firm, etc., are organizationally separated from audit engagement team to maintain independence, or other safeguards are applied to ensure independence in performing services. Considering such practices, imposing the same strict requirements (disclosure of suspected illegal act to an appropriate authority) on the professional accountant providing non-audit services to an audit client and on the professional accountant involved in audit engagement is not desirable even for the purpose of enhancing auditor independence.

However, we also don't support imposing different requirements on an auditor and on a

professional accountant providing non-audit services to a client that is not an audit client, for the purpose of imposing stricter requirements on an auditor to address suspected illegal act. If there is a reasonable level of procedure to be followed by a professional accountant to address the suspected illegal act of a client and it is possible to define such requirement or procedure in the Code, it is appropriate to impose same reasonable requirements on all professional accountants.

**(Question 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?**

We agree with the proposal of IESBA. In addition, we are concerned that the meaning of suspected illegal acts applied to a professional accountant in public practice providing services to an audit client is ambiguous and may cause misunderstandings about the scope of the suspected illegal acts. Therefore, we recommend that the meaning of suspected illegal acts(“suspected illegal acts that directly or indirectly affect the client’s financial reporting”) be further clarified.

**(Question 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?**

As described in our response to question 6, we don’t support imposing different requirements on an auditor and on a professional accountant providing non-audit services to a client that is not an audit client for the purpose of imposing stricter requirements on an auditor to address suspected illegal act. If there is a reasonable level of procedure to be followed by a professional accountant to address the suspected illegal act of a client and it is possible to define such requirement or procedure in the Code, it is appropriate to impose same reasonable requirements on all professional accountants.

**(Question 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?**

We believe that local regulators should decide the details and subjects of confidentiality requirement for the professional accountant and the definition and scope of suspected illegal act, among others, in a way that best suits local laws/regulations and judicial environments. To that end, we ask you to remove the phrase 'expected to exercise this right'.

**(Question 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?**

We agree with the proposal of IESBA.

**(Question 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?**

As described in our response to question 6, we don't support imposing different requirements on an auditor and on a professional accountant providing non-audit services to a client that is not an audit client for the purpose of imposing stricter requirements on an auditor to address suspected illegal act. If there is a reasonable level of procedure to be followed by a professional accountant to address the suspected illegal act of a client and it is possible to define such requirement or procedure in the Code, it is appropriate to impose same reasonable requirements on all professional accountants.

**(Question 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?**

We believe that local regulators should decide the details and subjects of confidentiality requirement for the professional accountant and the definition and scope of suspected illegal act, among others, in a way that best suits local laws/regulations and judicial environments. To that end, we ask you to remove the phrase 'expected to exercise this right'.

**(Question 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?**

We agree with the proposal of IESBA.

**(Question 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?**

We agree with the proposal of IESBA.

**(Question 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?**

We agree with what is proposed in the Exposure Draft of IESBA and ask IESBA to share more examples of exceptional circumstances.

**(Question 16) Do respondents agree with the documentation requirements? If not,**

**why not and what documentation should be required?**

We agree with the proposal of IESBA

**(Question 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?**

Other than the areas we highlighted in responses to the above questions, we agree with IESBA's the proposed changes.

**(Question 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?**

We ask you to assess whether the proposed changes can lead to positive outcome in terms of benefit-cost analysis.

To this end, we would like to ask you to make additional assessment of a potential negative impact on the public interest caused by the disclosure of inaccurate information and to incorporate the results into the impact on the 'public interest'.

In addition, we would like to request you to make assessment as to whether requiring the auditor to disclose suspected illegal act may result in a wider expectation gap between users of audit report and auditors about audit engagement and to incorporate the results into impact analysis to 'public interest'..

We hope that our comments are useful in the further development of these standards. Should you have any questions regarding our comments, please contact us at [global@kicpa.or.kr](mailto:global@kicpa.or.kr).

Yours sincerely,  
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