

Late Response to IESBA Consultation on the Exposure Draft - Illegal Acts

The Institute of Financial Accountants is pleased to submit its concerns over the proposed additions to the IESBA Code of Ethics in relation to Illegal Acts.

The chief concern is that although warnings are expressed in the proposed wording of new Section 225.2 (for instance), UK members of the IFA and other UK member bodies may be tempted to ignore the requirements of UK law relating to “tipping off” and possibly ignore the requirement to make a confidential report to the Serious Organised Crime Agency (SOCA), an omission punishable by a fine and possibly imprisonment.

“225.2 If a professional accountant in public practice identifies a suspected illegal act, the accountant shall consider whether there are any applicable legal or regulatory requirements governing how the suspected illegal act is to be addressed and, if so, the accountant shall comply with those requirements.”

“When required by law or regulation to disclose a suspected illegal act, for example as a result of anti-money laundering legislation, a professional accountant in public practice shall make the disclosure in compliance with the relevant legal or regulatory requirements and comply with any prohibitions on alerting (“tipping-off”) the client to the pending disclosure.”

Termination of the contract as described as an option in 225.3 would not be an option as this might at that point be interpreted as “tipping off”:

“225.3 If the professional accountant in public practice identifies a suspected illegal act, the accountant shall consider whether it is appropriate, based on all relevant facts and circumstances, to terminate the professional relationship with the client. Termination shall not be a substitute for disclosure to an appropriate authority as discussed in this section.”

The proposed Section 225.5 gives even more cause for concern, as it could involve consulting with others:

“225.5If a professional accountant in public practice providing professional services to an audit client of the firm or network firm acquires, or receives, information that leads the accountant to suspect that an illegal act has been committed by the audit client, or by those charged with governance, management or employees of the audit client, the accountant shall take reasonable steps to confirm or dispel that suspicion. In doing so, the professional accountant is expected to apply knowledge, judgment and expertise when considering the matter, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. In taking reasonable steps to confirm or dispel the suspicion, the professional accountant may wish to consult with others within the firm, a network firm or, on an anonymous basis, a relevant professional body. If the professional accountant in public practice is performing a non-audit service for an audit client of the firm, or a network firm, the accountant shall consult with the engagement partner for the audit.”

Section 225.6 gives even more cause for concern on the “tipping off” point:

“225 If the professional accountant is unable to dispel the suspicion, the accountant shall discuss the matter with the appropriate level of management.....”

The remaining paragraphs of section 225 also give cause for concern, especially:

“225.22 In determining how to comply with the requirements of this section, including whether to disclose the suspected illegal act to an appropriate authority, and if so, to which authority, the professional accountant may wish to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of professional privilege. In addition, the professional accountant may wish to seek legal advice to obtain an understanding of any protection afforded by legislation, such as that afforded in some jurisdictions under whistle-blowing legislation.”

Whistle-blowing is not an option; he is required by law to report to SOCA.

We have similar concerns which relate to proposed Section 360.

The proposed changes to Section 100 seem sensible and we are happy to endorse them. However, the proposed changes to Section 140 would be difficult to reconcile with our views expressed above on proposed Sections 225 and 360.

We would broadly support the proposed change to Sections 150 and 210, as well as 300.

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