

20 December 2012

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

Dear Ken

IESBA Exposure Draft, *Responding to a Suspected Illegal Act*

1. Thank you for the opportunity to comment on this Exposure draft. We submit the feedback from the New Zealand Auditing and Assurance Standards Board (NZAuASB).

NZAuASB's Role and Perspective

2. The NZAuASB is a sub-board of the External Reporting Board (XRB). The NZAuASB is responsible for developing (or adopting) and issuing auditing and assurance standards (including professional and ethical standards) in New Zealand. Once issued, these standards become legal instruments.
3. Our submission is based on the scope of our responsibilities and therefore reflects our perspective as the issuer of instruments that create legal obligations for assurance practitioners. We recognise that there may be different issues to consider for professional accountants.

Overall Comments

4. The NZAuASB supports the general principle that assurance practitioners must act in the public interest, and we can see what the IESBA is trying to achieve with the proposal to provide additional guidance to assurance practitioners on how to respond when encountering a suspected fraud or illegal act.

Specific Comments

5. We have the following specific comments:

Taking Account of Regulatory Arrangements

6. As an organisation that establishes legal requirements on assurance practitioners, we are of the view that the matters covered in the ED are better placed in the context of the legal or regulatory environment rather than in the Code of Ethics for Professional Accountants (the Code). This is particularly as liabilities could flow from any action taken by assurance practitioners in this area. While the NZAuASB understands the outcome the IESBA is trying to achieve, the proposals do not address potential conflicting responsibilities. There is a risk that by including the responsibilities in the Code, it may cause difficulties in those jurisdictions where the issues are dealt with in the regulatory environment.

7. At the very least, there is a close link to the regulatory regime that operates in a country that needs to be taken into account. Therefore, the need for this standard, and the way in which it is applied, is likely to vary from jurisdiction to jurisdiction. In jurisdictions where the issue is dealt with satisfactorily by law, a standard such as that proposed may not be necessary to this extent. In other jurisdictions it may be appropriate for the professional body to establish such ethical requirements on its members. In yet other jurisdictions it may be that the independent standard setter has a role to play, although the link to audit quality may not always be clear in these situations.
8. For example, in New Zealand the Protected Disclosures Act 2000 applies to whistle blowing activities and to a significant extent addresses the matters contained in the ED. It is not altogether clear that a standard such as that proposed is therefore necessary in our situation – at least not as an additional legal requirement on assurance practitioners. The NZAuASB is mindful, however, that such protections are not necessarily available in all jurisdictions.
9. The NZAuASB's view is that these matters are often likely to be better dealt with in law rather than as an ethical standard. The NZAuASB's view is supported by comments received from the New Zealand Financial Markets Authority (FMA)¹ in its submission on the proposal. While the FMA is supportive of the principle underlying the proposals it has noted the following :

“Professional codes of ethics cannot provide complete immunity. Without robust legal protection assurance providers may be exposed to increased litigation risk as a consequence of the proposed duty even when disclosures are made in good faith. Consequently the proposed duty could lead to increased compliance costs on assurance providers. In our view this risk should be taken into account in settling the proposed obligation”.

10. Accordingly, the NZAuASB:
 - recommends that the standard makes allowance for situations where the issues are dealt with in regulation rather than in the Code; and
 - does not support any requirement for an assurance practitioner to breach the fundamental principle of confidentiality and to disclose a suspected illegal act to an appropriate authority, where there is no legal protection available to the assurance practitioner.

Scope of the Investigation and Reporting

11. The NZAuASB considers that the requirements to dispel the suspicion regarding a suspected illegal act, and the threshold for reporting are too broad, too vague and therefore open to a wide range of interpretations.
12. To suspect an illegal act is a relatively low test. The NZAuASB is of the view that it is not the role of the assurance practitioner to investigate all potential suspected illegal acts, and that the broad drafting as proposed potentially extends the scope of the assurance practitioner's role too far.
13. The NZAuASB therefore recommends that, regardless if the IESBA decide to require the assurance practitioner to investigate and report suspected illegal acts where it is in the public interest to do so or if it decides to provide guidance on how the assurance practitioner should comply with the legal or regulatory requirement, we believe that the standard must provide greater clarity about the nature and type of illegal acts that assurance practitioners should be expected to further investigate.

¹ FMA has responsibility for promoting fair, efficient and transparent financial markets in New Zealand, and primary responsibility for the independent oversight of auditors under the Auditor Regulation Act 2011.

14. As noted above in paragraph 9, the New Zealand FMA identifies the risk of increased cost with the requirement to disclose suspected illegal acts. The NZAuASB is equally concerned that the imposition of requirements or expectations on the assurance practitioner to investigate and report suspected illegal acts will result in costs for the assurance practitioners that cannot be recovered through the assurance engagement being undertaken. The proposals do not provide sufficient clarity around the increased compliance cost that may be ultimately borne by assurance practitioners.

Onus Placed on the Auditor

15. The NZAuASB is concerned about the proposal that a professional accountant providing professional services to a client that is not an audit client should be required to disclose the matter to the external auditor.
16. The NZAuASB is of the view that it is not appropriate for these professional accountants to be able to pass the responsibility on to the external auditor, and that this extends the obligation of the auditor beyond the scope of the audit.
17. The NZAuASB therefore recommends that the primary responsibility for following up on any suspected illegal acts should remain with the professional accountant, or other advisor, that identifies the concern. However, we concur that the assurance practitioner should be advised, where relevant.

Should you have any queries concerning our submission please contact either myself at the address details provided below or Sylvia van Dyk (sylvia.vandyk@xrb.govt.nz).

Yours sincerely,



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