



Friday, 14 December 2012

**Our ref: ICPAK/ED/E03-12**

**Jan Munro**  
**IESBA Deputy Director**  
**janmunro@ethicsboard.org**

**Dear Ms Munro**

**RE: RESPONDING TO A SUSPECTED ILLIGAL ACT**

The Institute of Certified Public Accountants of Kenya (ICPAK) welcomes the opportunity to comment on the Exposure Draft: **Responding to a Suspected or Illegal Act**. This letter provides comments of the Institute of Certified Public Accountants of Kenya (ICPAK) on the International Ethics Standards Board for Accountants' (IESBA) ED on "*Responding to a Suspected Illegal Acts*" in the IESBA *Code of Ethics for Professional Accountants* (the Code). In this regard therefore, we wish to respond to the specific comment questions as follows;

**Our Comments:**

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. We agree.

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. We agree.

- 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?**

We are in agreement; however, we suggest that reporting should follow in a sequence. For example an accountant should not report to relevant public authorities before reporting to those charged with governance of the entity.

*Matters specific to professional accountants in public practice (Section 225 of the Code)*

- 1. 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 they should not differ because the standards for a professional accountant in public practice whether for audit or non-audit services should be on the premise that the accountant is hired as an expert to guide the PAIB's in both assurance and non assurance services hence the standards should be the same for all PAPPs but differ from the standards for PAIB's. Yes.**
- 2. 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.**
- 3. 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.**
- 4. 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? Yes**
- 5. 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**
- 6. 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? No. This is because accountants providing non assurance services do not have the same protections as accountants providing assurance services since the former's work is usually for the board and management while the latter is relied upon by third parties. Thus disclosures of illegal acts in the case of non-assurance services should first be taken to the board or oversight arm of the organization. Yes.**

7. 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? *Yes.*

*Matters specific to professional accountants in business (Section 360 of the Code)*

8. 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?

Yes. We agree.

9. 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 agree. However the reporting to third parties should first be to the external auditor and if no action is taken then disclose to appropriate public authorities. Evidence of such disclosures should be kept by the professional accountant in business as evidence of having carried out the disclosures in an ethical manner.

10. 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?

Yes. We agree. However, any other act that a professional accountant is required to report on by country law like money laundering should also be disclosed.

*Other*

11. 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?

Yes. We agree.

12. 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 propose that an inclusion of weak regulatory frameworks to support/protect whistleblowing as an exceptional circumstance should be added.

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

Yes. We agree.

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

Yes. We agree.

**15. 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?**

Yes. We agree.

Further, we are of the opinion that there is need to include professional accountants who sit in governance bodies like boards and policy making bodies.

We thank you for considering our comments on the issue.

**Yours sincerely,**



Nixon Oindi

**Manager – Professional Standards**

**For: ICPAK-Professional Standards Committee**