

3 December 2012

Executive Director  
Quality and Member Relations  
International Federation of Accountants  
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New York  
New York 10017  
USA

Dear Sir

**International Ethics Standards Board for Accountants –  
Exposure Draft on Responding to a Suspected Illegal Act**

CIPFA is pleased to respond to this Exposure Draft.

We recognise the potential conflict between considerations of client confidentiality and of public interest, and we welcome the attempt to examine the different considerations that would apply depending upon whether the professional accountant is in a contractor/client or an employer/employee relationship. As most of our members are employed within organisations, our comments mainly concern the position of an employed accountant.

On the general issues, however, we are not convinced that accountants necessarily have a 'right' to disclose a suspected illegal act. The word 'right' seems to us to indicate either that there is some form of intrinsic right associated with a particular action – rather like a human right – or alternatively that there is an acquired right, normally awarded through some form of legislation. On the assumption that the draft deals with a situation where no awarded rights are in force, this leaves the question whether an intrinsic right exists, which would be a difficult argument to prove.

We are also concerned that it is necessarily left to the judgment of the accountant involved whether or not a particular act is illegal, and whether any remedial action is sufficient. We feel that there is insufficient guidance to the individual, and that those wishing to ensure compliance may be prompted to err on the side of caution, to the detriment of client confidentiality.

We understand that the response from the CCAB will cover the detailed issues relating to 'tipping off' under the UK Anti Money Laundering legislation. Additionally, we have seen a draft version of the proposed response from the IFAC PAIB Committee, and we will not repeat the points made there.

We note the differences between the requirement on an auditor, and on a contractor providing non audit services. The more limited requirements in the second case seem to us to be illogical – we believe that a public interest argument would point to a requirement for any illegal act to be reportable.



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However, we note the comment on page 9 of the draft, that as the IESBA is not in a position to provide protection from retaliation, it would be inappropriate to widen the requirement beyond the scope of the subject matter of the assignment.

For this reason, we are particularly concerned about placing additional requirements on accountants working in organisations. Our comments on the specific PAIB questions are as follows:

Q11 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?

A11 In a larger organisation, we believe that the normal route would be to raise the matter with the internal audit function, or with the Chair of the audit committee. This route may not be possible in a smaller organisation, and in this case any disclosure action is likely to lead to a breakdown in the relationship with other senior management or owner of the business.

Q12/13 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? Do respondents agree that the suspected illegal acts to be disclosed referred to in question 12 above should be acts that affect the employing organisation'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?

A12/13 As discussed above, the concept of a 'right' is not useful. The question is what an accountant should or should not be required to do. Failure to disclose an illegal act that has material relevance to the professional responsibilities is in effect collusion with that act. It is not clear that the proposals in the draft do anything in practice to change the requirements on the individual here.

On the proposed draft section 360, the only options permitted under section 360.2 appear to be the use of legal or regulatory procedures, or resignation. We note that this represents a very stringent regime for the accountant. It is not clear how, in the absence of any formal procedures, that resignation would serve the public interest, although it would not be appropriate for Code of Ethics to condone silence. The use of the word "shall" in the proposed section 360 appears to impose an absolute obligation to take the various actions specified. Some of these actions seem too onerous. For example in section 360.7, it is inappropriate to in effect, turn an accountant into a guarantor of the actions of other people. This should at least be softened, by including wording such as "to the extent that he/she is aware, or should be aware, of factor such as whether ..." We have some detailed comments on other sections:

*Paragraph 360.8*

This paragraph applies where the professional accountant determines that the suspected illegal act is of such consequence that disclosure to an appropriate authority would be in the public interest. In such circumstances, the professional accountant is required to advise the employing organisation that the matter should be disclosed to the appropriate authority.

It is suggested that, where relevant, the matter of disclosure to an appropriate authority should be brought to the attention of the Audit Committee or the Chair of the Audit Committee in the first instance.

*Paragraph 360.9*

This paragraph applies where the response to the matter (presumably by the external auditor) has not been appropriate. In such circumstances, the professional accountant has **a right** to disclose certain matters to the appropriate authority. A professional accountant 'is expected to exercise this right to disclose in order to fulfil the accountant's responsibility to act in the public interest'.

See my comments above on the use of the word "right".

The nature of the suspected illegal acts to be disclosed to an appropriate authority are set out in bullet points. It is not entirely clear whether the bullet points in this paragraph are mutually exclusive or whether the suspected illegal acts must satisfy both criteria i.e. directly or indirectly affecting the employing organisation's financial reporting as well as being within the expertise of the professional accountant. From the consultation, it appears they must both apply, in which case this should be made clear.

*Paragraph 360.10*

This paragraph might follow more logically after the current paragraph 360.11 as it provides exceptions to the duty to disclose to an appropriate authority, presumably after it has been determined that such disclosure is in the public interest.

*Paragraph 360.11*

This paragraph sets out some factors that should be taken into account when determining whether the disclosure would be in the public interest. It should be specifically stated that this is not a closed list. Other factors that could be usefully mentioned are: reliability and quality of information available and degree of suspicion; legal protection for breach of duty of confidentiality; any legal advice obtained.

*Paragraph 360.14*

When making a disclosure to an appropriate authority, the professional accountant is required to act reasonably in good faith and exercise caution when making statements and assertions. I suggest that there should also be a requirement to act objectively.

Thank you for the opportunity to comment.

Yours faithfully



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**Policy & Technical**