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Exposure Draft: 'Responding to a Suspected Illegal Act'

Dear Ken

The Audit & Assurance Committee ('AAC') of Chartered Accountants Ireland is pleased to respond to the Exposure Draft from the International Ethics Standards Board for Accountants 'Responding to a Suspected Illegal Act' ('the ED').

The issue that the ED is highlighting is important and complex. AAC supports the general principle of 'public interest reporting'. Such a principle is relevant not just to the accounting and auditing professions but to the many different professions, such as lawyers, bankers and tax advisors, that provide third party advice to clients. However, our support is conditional on there being a framework for reporting that is common across jurisdictions and provides the necessary legal underpinning which would include appropriate legal protections against breaches of duties of confidentiality, as well as common and agreed understandings of what constitutes the 'public interest' and the nature of matters that fall to be reported.

Examples of the imposition of whistleblowing obligations elsewhere include efforts of the European Union at implementing across Member States the numerous Recommendations of the Financial Actions Task Force aimed at combatting money laundering and terrorist financing. An example of the difficulties with such a measure is the implementation of the various Anti-Money Laundering Directives within the European Union. However, in spite of such requirements being included in various EU Directives, implementation among EU Member States has, we believe, been inconsistent in terms of the nature of professions within the scope of these legal instruments and the nature of suspicions or offences that fall to be reported.

Individual jurisdictions have also chosen to introduce their own 'whistleblowing legislation' on auditors and accountants, and others. In Ireland, in recent years, a number of legal enactments, including company law and criminal justice legislation, have imposed various reporting obligations on external accountants, auditors and others which have themselves led to implementation difficulties particularly with regard to overlapping reporting obligations, duplicative reporting, and inconsistent 'thresholds' at which a reporting obligation is triggered¹. In 2010, this issue led Ireland's Company Law Review Group ('CLRG'), a statutory body, to consider the plethora of reporting obligations on auditors and accountants. Its conclusions are contained in chapter 5.2 of its Annual Report for 2011². For convenience, the appendix to this letter contains the Recommendations of the CLRG in respect of the current whistleblowing obligations on the profession in Ireland. While there are difficulties with such obligations, the one common feature is that legal protection is provided for those making such reports.

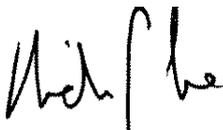
While remaining sympathetic to the underlying intention, we do not believe that it is appropriate for IESBA to seek to impose whistleblowing obligations on the profession in this manner. Our own experience in Ireland has demonstrated the complexities involved in this issue. Indeed, IESBA could be seen as acting beyond its own remit by attempting to impose requirements which are more appropriately decisions of democratically elected legislatures which are also in a position to provide the necessary legal protection for whistle blowers. An alternative approach might have been for IESBA to explore how the Code of Ethics might adopt an approach that 'encouraged' reporting in the public interest, rather than the current proposal which creates complex and possibly insurmountable difficulties.

It would be more appropriate therefore for IESBA to engage with relevant global regulatory bodies and agencies with a view to exploring how to take forward a principle of reporting in the public interest by relevant professions.

In light of the fundamental issues identified above, we have decided not to respond to the individual questions raised in the consultation paper.

If you require any further information in respect of our response, please do not hesitate to contact me.

Yours sincerely



Aidan Lambe
Director, Technical Policy

¹ Some of these obligations are explored further in a Chartered Accountants Ireland publication 'Blow the whistle, who, why, when and where'
http://www.charteredaccountants.ie/Global/sub_documents/whistleblowing.pdf

² <http://www.clrg.org/cuuploads/editor/file/JEICLRGReport300512.pdf>

5.2.6 Recommendations

Following the examination of the issues, the Review Group considers that the issues raised by the profession were both valid and reasonable. In coming to its conclusions, the Review Group has had regard to the various issues outlined above and to its terms of reference and concludes that the most appropriate approach would be to make recommendations for the development of new reporting obligations and for any review of existing obligations that might take place in the future.

Accordingly, the Review Group recommends that if new auditor reporting obligations are to be introduced in future, they should be developed with regard to the following criteria –

- Consultation – the audit profession, together with other interested parties, should be consulted at any early stage of the development of any legislative proposals;
- Materiality – in order to facilitate the taking into account, where applicable / appropriate, of materiality considerations, de minimis provisions be included in reporting obligations;
- Consistency – in order to facilitate, to the extent practicable, consistency across auditors' reporting obligations, the language used in expressing those obligations should be consistent;
- Protection – adequate legislative protection should be afforded to auditors in circumstances where they are required to make statutory reports to regulatory authorities;
- Avoidance of duplication – to the extent practicable, provision should be made that where an issue identified by an auditor would otherwise give rise to reporting obligations to two or more statutory / regulatory authorities (such as, under anti-money laundering legislation, auditors and other designated bodies can be required to report the same offence to both the Revenue Commissioners and An Garda Síochána), a single report to one of the relevant authorities would discharge the auditor's responsibility to report with only a requirement to furnish any other relevant statutory/ regulatory authorities with a copy of the report;
- Web access – to the extent practicable, the making of on-line reports should be facilitated.

In the event that any of the auditors' existing reporting obligations are to be amended, any such amendments should be developed having regard to the foregoing criteria.

Given that auditors' current reporting obligations extend across a number of codes of legislation, which in turn come within the aegis of a number of separate Government Departments and Offices, the Review Group considers that it is likely to be more difficult to achieve consistency of legislative approach to statutory reporting in the near term. That said, the Review Group recommends that consideration be given to the establishment of a cross Departmental group charged with examining the extent to which the objective of consistency of approach might be achieved and that such group should include representatives of the profession. One possibility might be to provide in company law a comprehensive reporting obligation for auditors and the disapplication of all other reporting regimes to auditors.

The Review Group submits that, if the foregoing criteria were to be applied to future and / or amended auditor reporting requirements, the benefits accruing would include –

- A reporting framework more readily understood by the auditing profession and, as a consequence, a more consistent approach to reporting; and
- Reduced costs to the audit profession, leading in turn to reduced costs to business.