



15 December 2012

Mr K Siong
Acting Deputy Director
IESBA

By email

Dear Ken

RESPONDING TO A SUSPECTED ILLEGAL ACT

The CCAB Ethics Group is pleased to respond to your request for comments on the International Ethics Standards Board for Accountants' (IESBA) consultation 'Responding to a suspected illegal act' published in August 2012. The Ethics Group of the Consultative Committee of Accountancy Bodies is a coordinating group for the Ethics Committees of five key accountancy bodies in the United Kingdom and Ireland¹, representing 334,000 members worldwide.

The individual accountancy bodies are submitting separate detailed responses to the consultation but, as it is the intent of all of the CCAB bodies to harmonise their ethical guidance towards that promulgated by IFAC, we submit this combined response highlighting key areas of common concern.

To assist analysis by IESBA, we have set out these points under the questions that they most closely relate to.

By way of a preliminary point the CCAB bodies suggest that IESBA lobby the G20 nations to encourage global principles which could form the basis of development national legislation along the lines proposed in the consultation also giving protection in law to those who blow the whistle

Question 3: public interest threshold for reporting

There can be no rationale for breaching the fundamental principle of confidentiality in the absence of a legal requirement, except in the public interest. That must therefore be the right threshold. However, interpretation of what is in the public interest will vary significantly between cultures and between individuals. We understand IESBA's observation that the likely variability of circumstances meant

¹ ACCA, Chartered Accountants Ireland, CIPFA, ICAEW and ICAS

that guidance would be minimal, but there must be a concern that accountants' decisions will be second-guessed by others, with hindsight, exposing them to unreasonable criticism.

Questions 4 and 6: distinguishing between auditors, other providers of services to audit clients and providers of services to non-audit clients

The IESBA code of ethics is based around a set of fundamental principles that apply to all professional accountants in all of their professional and business activities. It provides additional independence requirements for those giving audit and other assurance opinions because of the nature of those opinions. However, the assurance opinions are not relevant to this matter of overriding confidentiality and we do not believe that a distinction is appropriate. All professional accountants should be in the same position in terms of assessing whether an override of the fundamental principle of confidentiality would be in the public interest.

Questions 5, 9 and 12: establishing a requirement or a right to disclose

We agree that professional accountants should have a right to disclose, where they consider that an override of the fundamental principle of confidentiality would be in the public interest, and the law permits it. Interaction with law, particularly anti-money laundering legislation, is likely to be complicated. The law must prevail and this interaction needs to be highlighted more strongly than it is in the draft.

As noted above, we do not support a distinction between accountants serving different types of client or employer, in terms of whether there should be a requirement or an obligation and we do not believe that an obligation would be appropriate. An obligation of this sort has much more of the characteristics of a legal requirement rather than a behavioural ethical issue and it would sit uneasily in a code of ethics. In addition we believe that its effect would be counterproductive, undermining the role of the professional accountant as a trusted advisor and reducing the likelihood of the accountant becoming aware of a potential illegal act in the first place. This in turn would reduce the ability to counsel against the offence or, in the event that it continued to fruition, report it.

In addition, an obligation moves further away from the principles based approach the code espouses and brings in more legalistic questions of scope and definition. A number of the matters in the draft (such as what a public interest matter is and what falls within the expertise of the accountant) are open to significant difference of view and would create difficulties if they had to be formally defined.

Questions 7 and 13: scope of acts to be reported

We are concerned that 'acts the subject matter of which falls within the expertise of the professional accountant' could be interpreted in a wide range of ways, from matters the individual happens to know a lot about, right through to matters which accountants in general might be deemed to know about. This could be a particular problem if linked to an obligation (see above).

Questions 14 and 15: exceptional circumstances

Exceptional circumstances are naturally more relevant for an obligation than a right and we assume that the requirement for accountants in business is intended to be a right (though the wording is unclear). Nevertheless, noting, as the discussion document does, that commercial circumstances should not be relevant does have a disproportionate effect on accountants in business, who are more likely than those in practice to be dependent on one source of income.

In view of the keen interest in this complex and fundamentally important area, the CCAB bodies hope that IESBA will re-issue whatever its revised proposals are, following assessment of the consultation responses, for further comment.

Please contact us if there are any queries

Yours sincerely

ELIZABETH HIGGS

CCAB Ethics Group Secretary