



中国注册会计师协会
The Chinese Institute of Certified Public Accountants

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International Ethics Standards Board for Accountants
International Federation of Accountants
529 Fifth Avenue, 6th Floor, New York, NY 10017, USA

December 26, 2012

Re: Invitation to Comment: Responding to a Suspected Illegal Act

Dear Sir or Madam,

The Chinese Institute of Certified Public Accountants (CICPA) welcomes the opportunity to comment on Invitation to Comment: Responding to a Suspected Illegal Act. We commend the International Ethics Standards Board for Accountants (IESBA) on its work to provide additional guidance for all professional accountants on how to respond when encountering a suspected fraud or illegal act.

In general, we believed that the proposed changes are helpful for professional accountants to respond to a suspected illegal act, and therefore, to act in the public interest.

The appendix to this letter provides our comments on the exposure draft published in August, 2012.

We would be pleased to discuss in further detail our comments and any other matters concerned.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Yugui Chen', is written over a faint, illegible printed name.

Yugui Chen
Deputy President and Secretary General
CICPA

Appendix

Responses to Questions in the Invitation to Comment: Responding to a Suspected Illegal Act

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 generally believe that the IESBA's suggested actions will help professional accountants to dispel the suspicion.

However, in some cases, the professional accountant may only be aware of some indicators of a possible suspected illegal act, but still needs to take further steps to confirm whether the suspected illegal act does exist. So we suggest the Code to specify how much work does the professional accountant need to do and where does the responsibility stop.

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 generally believe that will be helpful for professional accountants to act in the public interest.

However, we note paragraph 225.22 indicates that the professional accountant may wish to discuss matters relating to complying with the Code's requirements on suspected illegal acts with the relevant professional body. This includes whether to report the suspected matter to the relevant authority. In some jurisdictions, it is the case that the "relevant professional body" is also the "appropriate authority", so it is questionable whether and how the professional body will play both roles as set out in the proposals. We suggest to clarify both "relevant professional body" and "appropriate authority".

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?

Yes. We generally believe that threshold is appropriate.

However, in some cases, it is professional judgment to determine whether a disclosure is in the public interest. We noted that the proposed changes of the Code provided some factors to be considered, such as "number of people that could be affected" (paragraph 225.11), but in many cases, it is difficult for the professional accountant to determine reliably the number of people that could be affected without doing more investigation. Therefore, it is unclear that how much work does the professional accountant need to do and where does the responsibility stop.

4. 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?

Yes. Generally, providing services to an audit client involves more public interest, so the professional accountant's responsibility should be more rigid.

5. 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. We believe that will be helpful for professional accountants to act in the public interest.

6. 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?

Generally speaking, if the professional accountant is providing a non-audit service, he/she usually doesn't have the same access to all information that an audit can usually have, and the work scope of him/her is also relatively limited, so the professional accountant usually cannot assume the same obligation as an auditor.

In this case, we recommend the professional accountant to consider discussing with the audit engagement partner first.

7. 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?

No. In our opinion, every illegal act of the client will eventually affect its financial reporting, either directly or indirectly. So we suggest to further clarify which kinds of suspected illegal act, if not all, need to be disclosed.

Also, if the professional accountant is aware of other kinds of suspected illegal act, disclosing is also in the public interest, so they should have the right to disclose, and it will not breach the fundamental principle of confidentiality.

8. 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. We generally agree. However, it is unclear here how much more work does the professional accountant need to do. For example, is the professional accountant required or have the right to trace the issue and find how is the problem be resolved?

9. 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?

Yes. We agree with that.

10. 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?

Please refer to our response of question 7.

11. 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 generally agree. However, as discussed in our response to question 8, it is unclear here how much more work does the professional accountant need to do. For example, is the professional accountant required or have the right to trace the issue and find how is the problem be resolved?

12. 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?

Yes. We agree with that.

13. 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?

Please refer to our response of question 7.

14. 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 with that.

15. 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?

Whether a specific circumstance constitutes an exceptional circumstance is a matter of professional judgment, and the proposed changes of the Code gave some examples such as threats to the physical safety of the professional accountant or other individuals. We concern

that the example might be abused, and suggest to give further guidance on what constitutes a specified circumstance.

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

Yes. We agree with that.

17. 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 generally agree with these changes, however, there should be some literal changes, listed below:

Description	Comments
<p>1. Section 225 is relevant to professional accountants in public practice, and Section 360 is relevant to professional accountants in business. However, in both the two sections, the phrase “professional accountant” is still used.</p>	<p>We noted in 2012 Handbook of the Code, in Part B, the phrase “professional accountant in public practice” is used, and in Part C, the phrase “professional accountant in business” is used. We recommend the proposed changes use the same word with the existing Code.</p>
<p>2. 225.20 If the professional accountant does not exercise the right to <u>disclose the</u> accountant shall consider whether to terminate the professional relationship with the client.</p> <p>360.10 If the professional accountant does not exercise this <u>right the</u> accountant shall consider whether to resign from the employing organization.</p>	<p>We recommend to add a comma as following: If the professional accountant does not exercise the right to <u>disclose, the</u> accountant shall consider whether to terminate the professional relationship with the client.</p> <p>..... If the professional accountant does not exercise this <u>right, the</u> accountant shall consider whether to resign from the employing organization.</p>
<p>3. 360.4 If a professional accountant in business acquires, or receives, information that leads the accountant to suspect that an illegal act <u>has been committed</u> by an employing organization, or by those charged with governance, management or employees of an employing organization, the accountant shall take reasonable steps to confirm or dispel that suspicion.</p>	<p>If the suspected illegal act is being committed by the employing organization, what should the professional accountant do?</p>

18. 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 with that.

Other Comment on Non-Audit Services (Advisory and Tax)

Clients may engage accounting firms to carry out non-audit services that trigger considerations of suspected illegal acts. The question is whether professional accountants need and if so, whether it is practical, to report all such cases.

The objective of the engagement may be to implement steps to eliminate the suspected illegalities. Therefore, a requirement in the Code to report suspect illegal acts is counter-intuitive to the intention of these engagements.

Examples:

- (1) Firms may be engaged to investigate whistleblower accusations.
- (2) In financial due diligence engagements, teams often encounter allegations or talk of what may or may not be illegal acts.
- (3) Firms may be engaged to conduct reviews of suspicious “red flag” businesses, such as Reverse Takeovers (RTOs) for the benefit of future potential investors.