



By Email

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International Federation of Accountants
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Dear Mr Siong

IESBA Exposure Draft: Responding to a Suspected Illegal Act

The Chartered Institute of Management Accountants (CIMA) is pleased to have the opportunity to comment on the above IFAC/IESBA exposure draft.

CIMA, founded in 1919, is the world's leading and largest professional body of management accountants, with 195,000 members and students in 176 countries, working at the heart of business. CIMA members and students work in industry, commerce and not-for-profit organisations. CIMA works closely with employers and publishes leading-edge research, constantly updating its qualification, professional experience requirements and continuing professional development to ensure it remains the employers' choice when recruiting financially-trained business leaders. CIMA is committed to upholding the highest ethical and professional standards of its members and students, and to maintaining public confidence in management accountancy.

CIMA members and students are required to comply with the CIMA code of ethics and to adopt the fundamental principles to their working lives. The CIMA code of ethics is based on the IESBA code of ethics for professional accountants; high ethical and professional standards are an integral part of the CIMA qualification and we devote significant time and resources to raising awareness of the merits of responsible business via outreach and other activities, as well as to delivering ethics support and collateral for our members and students.

General Comments

General Approach:

We welcome and support IESBA's endeavours to review and enhance the relevance of the code of ethics for the global profession, particularly if this also helps to reinforce confidence in the ethical infrastructure of business in such a way that future financial crises may be averted.

We also believe it must be recognised, however, that an ethical code is but one component or driver of responsible business practice and that in respect of suspected illegality, a change in any prescriptive dimension of the code designed to address this would need to be balanced by a commensurate level of regulatory policing and enforcement which is arguably more complex. While we can see the merits of a code demand that better enables accountants to warn of bad or potentially illegal activity in the public interest, this would also require attendant safeguards to be in place- worldwide - in order to provide support and protection to the individuals seeking to fulfil their ethical obligations. This in turn would require acknowledgment and understanding of the many differing legal and cultural contexts within which professional accountants work, and which in some jurisdictions can leave individuals in positions in some instances of significant vulnerability.

Level of Suspicion:

We would suggest that this definition needs expanding to provide more guidance on what might constitute a reasonable level of suspicion as well as what steps taken to dispel that suspicion might also be considered reasonable to ensure compliance with the code.

Appropriateness of Action Taken:

We would suggest that further guidance on this aspect of the proposal would be helpful to ensure consistency of approach.

Effective Date:

It is noted that IESBA intends to finalise the revisions to the code in the second half of 2013 and that only a relatively short transition period is considered appropriate once the final standard has been approved. The proposals do, however, raise important issues, some of which it may not be possible to resolve quickly. With that in mind, an incremental approach to the introduction of changes may be more appropriate, so that the impact analysis could be expanded and the matters relating to risk and enforcement given further consideration.

Specific Comments

CIMA is pleased to provide its views – from the standpoint of accountants in business - on the specific questions raised by IESBA as follows:

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?

We agree that if a professional accountant identifies a suspected illegal act, and is unable to dispel the suspicion, that the accountant should discuss the matter with the appropriate level of management and escalate as appropriate; however, we do not believe it appropriate that the code should “require” an individual to act regardless of the consequences; they should be at liberty to decide what is right in the given circumstances.

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?

This is likely to depend on the nature and scale of the suspected act, access to the relevant supporting information, and the position/level of responsibility of the professional accountant within the organisation.

If a matter has been raised with the appropriate level of management, at what point will the professional accountant be deemed to have discharged the obligations of the code and at

what point should those responsible for the governance of the organisation manage the onward escalation to an appropriate authority?

More clarity and guidance around escalation criteria and protocols would be useful.

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?

In principle, yes, but there is a need for more guidance in relation to this – possibly by articulating the public interest criteria which would apply in the context of the code - to facilitate clarity of understanding, application and accountability, as well as to ensure a distinction between issues which are genuinely in the public interest from those which would merely be of interest to the public (or press) for other reasons.

Questions 4 – 10: Matters Specific to Professional Accountants in Public Practice

No comment.

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?

We believe that in appropriate circumstances, a professional accountant should be obliged to consider disclosing the suspected illegal act beyond the management of the organisation, but should have regard to procedures/personnel already in place within the organisation for the escalation of such concerns, while also remaining mindful of their own legal and contractual obligations.

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?

If there is tangible evidence of illegality then the professional accountant would be expected to disclose in accordance with the guidance/ provisions of sections 140.7 and 140.8 of the extant code; however, this may still be by escalation via the prevailing internal procedures or whistle blowing facility. We can see that in some circumstances, any “right” to report to the appropriate authority would rest with those responsible for the governance of the organisation rather than with the individual accountant. Rather than conferring a “right” we would advocate “duty” as being a more appropriate and realistic approach for the professional accountant in the context of a global code of ethics. Nobody can expect a professional person to cover up illegal acts, but it is doubtful that that have specific rights as opposed to a duty in this context.

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?

From the standpoint of the professional accountant in business, their roles, responsibilities and expertise extend and impact beyond the parameters of financial reporting and apply at all levels of the organisational hierarchy. With that in mind, suspicion around illegal acts could arise from range of sources and in any number of operational areas, but it is our view that the professional accountant would be best placed to be able to confirm or dispel the

suspicion in relation to acts which fall within the ambit of their professional expertise and prevailing responsibilities.

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, but they may be expected to consider and apply judgment as to the likely consequences of non-disclosure on all implicated or affected parties, commensurate with the nature and scale of the act; and, to consider seeking independent advice (under the protection of professional privilege) on any wider regulatory or legal obligations.

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?

Yes, the exceptional circumstances as described in the proposal are appropriate - but only as far as they go. They provide useful guidance, however, the list is not exhaustive and there may be alternative views and courses of action which could be considered, depending on the perceived nature of the exceptional circumstances and on other legal and cultural factors which would have a bearing on the third party test.

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

In the context of ethical conflict resolution, section 100.20 of the current code states that it may be in the best interests of the professional accountants to document the substance of the issue, so it would seem logical to maintain this approach in relation- and in proportion - to enquiries and actions around responding to a suspected illegal act. In our own ethical conflict resolution guidance to members and students we recommend documenting actions in relation to both internal and external escalation actions and advise around the need to safeguard in respect of same.

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?

Please refer to our responses to the previous questions where code references are made.

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?

The analysis provided seems sufficient to justify the remedy being considered, which will need wide ranging stakeholder support and which IFAC should be proactive in seeking. Ongoing monitoring and evidence gathering should be undertaken to establish the effect of the final pronouncement on "responding to a suspected illegal act".

We hope that these comments will be of some assistance and we would, of course, be happy to engage in any further exchanges on this subject.

Yours sincerely

**Professional Standards & Conduct
Chartered Institute of Management Accountants**