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Mr Ken Siong,
Technical Director,
International Ethics Standards Board for Accountants,
529 Fifth Avenue, 6th Floor,
New York, NY 10017, USA.

Dear Mr Siong

Comment Letter Responding to Non-Compliance with Laws and Regulations

CNDCEC is pleased to submit its comments on the Exposure Draft Responding to Non-Compliance with Laws and Regulations, providing our contribution on the aspects that we consider most relevant.

CNDCEC appreciates IESBA's interest in satisfying the public interest. Nevertheless, we recognize that there is still uncertainty regarding the definition of "public interest".

As an overall consideration, we understand that this is a situation where a "standard", as a tool is used to achieve the purposes of a "law", which needs to be very clear and with well-defined criteria in order to be enforceable.

Considering the contents of specific paragraphs, Section 225.3 of the ED presents a notion of public interest that encourages the need to react to NOCLAR according to the principles of integrity and professional behavior, thus prevailing on other fundamental principles, such as confidentiality, and - from a different perspective - professional behavior. Actually, the confidentiality requirement, that in several jurisdictions is legally qualified as professional secrecy, responds to the public interest as much as the duty to act in response to NOCLAR. Nevertheless, this is not a sufficiently material reason to object that - where a practitioner opts for confidentiality – this should imply a non-compliance with the integrity requirement.

Paragraphs § 225.5 e 225.6 require professional accountants and auditors to perform a monitoring activity which goes far beyond their professional competencies, including those generally recognized by IFAC.

The requirement – in paragraph 225.25 - to use the third party test is too general and burdens

practitioners with heavy responsibilities.

Similarly the provisions in paragraph § 225.27 raise significant concerns. The wording "Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation" is quite vague. In addition, the wording "Whether there are actual or potential threats to the physical safety of the professional accountant or other individuals" may suggest that the ethical requirement may only apply in countries with a low level of threat to the physical safety of professionals.

We also noticed that, compared with the previous project named "suspected illegal acts", the ED does not make any distinction between non audit services provided to an audit client from non-audit services provided to a non-audit client, but for the provisions in § 225.39 and 225.40.

Regarding the professionals' disclosure to an external auditor, paragraph § 225.43 implicitly turns a simple expectation into an ethical duty for the auditor to comply with. Defining the thresholds beyond which a disclosure is required is up to the legislator and not to professional ethics. Setting very vague ethical principles on the matter may place heavy responsibilities on professionals, affect the expectation gap and may as well generate a reputational risk.

Similar considerations apply to § 360.24, for what concerns third party test for senior PAIBs.

Below we address some of the specific matters discussed in the IESBA's request for comments.

Question 1.Where law or regulation requires the reporting of identified or suspected NOCLAR to an appropriate authority, do respondents believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement?

No, we do not believe it would. Legislation of single jurisdictions may regulate the matter in different ways - so a guidance to the application should be "tailor made". Paradoxically, the guidance proposed in the ED could be in contrast with relevant local law.

Question 2. Where there is no legal or regulatory requirement to report identified or suspected NOCLAR to an appropriate authority, do respondents believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances?"

Our answer is no. The concept of "public interest" - as we have seen in many other occasions - is vague and indefinite and this does not really guide PAs in solving their ethical issues, while it places heavy responsibilities on professionals. For illustrative purposes, assuming that a company has unlawfully concealed its distress to obtain credit - if the credit in excess can be reduced and cancelled through a sound financial plan, would it be in the public interest to report the unlawful action, thus probably leading to the insolvency of the company? or would the main objective rather be to promote its recovery? If the public interest is considered as a synonym of lawfulness, a report should be made; while if the general economic wealth and good are considered, it should not. This proves that there is in fact no guidance.

Question 7. With respect to auditors and senior PAIBs: (a) Do respondents agree with the factors to consider in determining the need for, and the nature and extent of, further action, including the threshold of credible evidence of substantial harm as one of those factors? (b) Do respondents agree with the imposition of the third party test relative to the determination of the need for, and nature and extent of, further action?

With regard to both questions, our answer is no. The credible evidence of substantial harm is too vague a concept to be taken as a threshold for determining which action to take. The third party test does not work if the concept of public interest is not defined clearly and in details, as the current subjectivity of this concept may actually result in a third party drawing opposite

conclusions, if this latter adopts a different view of "public interest". For these reasons, we are not providing views on the other two questions.

Question 8. For PAs in public practice providing services other than audits, do respondents agree with the proposed level of obligation with respect to communicating the matter to a network firm where the client is also an audit client of the network firm?

Communication to a network firm performing an audit should in all cases be mandatory. We should assume the neutrality of the organization structure of professional firms and audit firms with regard to ethical requirements: there should be no differences if the consultancy and auditing activities are performed by different structures within the same legal entity or by different legal entities belonging to a network.

Question 9. Do respondents agree with the approach to documentation with respect to the four categories of PAs?

We would like to highlight that, in general terms, we share and support the attention to the preparation of adequate documentation. With regard to such delicate matters, however, the issue of the access to such documentation – even by public authorities - should be kept in mind, as well as the issue of the protection of data which could be highly sensitive (as they could, for instance, lead to substantial movement in the price of listed securities).

We hope that our comments assist the IESBA in this project.

Francesca Maione