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Mr. Ken Siong
Deputy Director
International Ethics Standards Board for
Accountants (IESBA)

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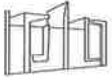
Dear Mr. Siong,

In this letter the Instituto de Censores Jurados de Cuentas de España (ICJCE) conveys its comments on the IESBA Exposure Draft “Responding to a Suspected Illegal Act” about proposed changes to the IESBA Code of Ethics for Professional Accountants (the Code). Our general considerations regarding the Exposure Draft as set out below review our main concerns about the proposal. In Appendix to this letter you will find our responses to the questions contained in the Exposure Draft’s request for specific comments.

The ICJCE does not subscribe to several of the proposals in the Exposure Draft, in spite of the fact that we acknowledge that the initiative underlying the proposals is that the auditor should expose clear violations of laws and regulations having a material impact on financial reporting on matters within the remit of the auditor.

The ICJCE has subscribed to the objectives and requirements included in the International Standard of Auditing (ISA) 250 on “Consideration of Laws and Regulations in an Audit of Financial Statements” which include having to respond appropriately to non-compliance or suspected non-compliance with laws and regulations identified during the audit. The latter includes reporting non-compliance to those charged with governance, reporting non-compliance in the auditor’s report on the financial statements and reporting non-compliance to regulatory and enforcement authorities resulting from legal responsibilities of the auditor.

Although we share the notion that suspected fraud or other illegal activity by companies or individuals must be addressed by company management and those charged with governance, and that the accountancy profession should play a role in communicating its findings to them, we believe that the proposed changes to the Code are not the best way to achieve the goal of addressing illegal activity, we believe that it would be better that the IESBA recommends to the appropriate institutions to encourage governments to produce legislation to achieve the objectives proposed by IESBA.



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The Code is not a legal instrument and thus we believe it is not adequate to regulate the proposed measures. This regulation should be a matter for legislation, attending to the specific circumstances of each nation and provided that there are safeguards. In addition, a legislative framework would allow for the proposed measures to be applied to all professions which members are potentially in a position to respond to suspected illegal acts, and not only to professional accountants. Moreover, the regulation of these measures through the Code would imply that the accountants in business who do not belong to an IFAC member body would not be subject to the requirements proposed by the Exposure Draft.

We can also mention that there are circumstances where the effect of a violation of a law or regulation could be considered as not being significant to the public interest, but the Code does not include guidelines to know under which circumstances a potential illegal act is significant or not, and probably such guidelines could not be provided. It does not seem reasonable to leave it to the accountants and auditors to determine the significance.

Another matter is that, as prescribed in section 100.1 of the Code, a professional accountant is not required to comply with certain parts of the Code if there is a conflict with an existing law or regulation of the country in which he or she operates, therefore, the proposal to require in certain circumstances professional accountants disclosure of a suspected illegal act to an appropriate authority would not need to be complied with in countries where such disclosure is prohibited by professional confidentiality, secrecy or privilege requirements. Moreover, the Exposure Draft does not address how to deal with situations with respect to cross-border engagements, including group audit situations.

We have to note also that, from our point of view, the Exposure Draft does not provide sufficient justification and as regards the requirement to disclose suspected illegal acts for professional accountants providing non-audit services to an audit client or a client that is not an audit-client, or professional accountants in business.

The ICJCE recognises the importance of the public interest for the credibility of the accountancy profession, but the Code does not include a clear definition and common understanding of “public interest”, and we think it is not reasonable to require the individual professional accountant to determine whether the reporting of a particular individual suspected illegal act is or is not in the public interest. What is more, if this issue was to be regulated in the Code national subjective and cultural differences could not possibly be taken into account.



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Other objections to the Exposure Draft are that the scope of the proposals is too broad, that many countries don't have a competent authority to report to, and the practical difficulties arising from the proposals, such as the identification of a suspected illegal act and the understanding of what an illegal act is.

For any issue regarding this letter or if you require further information, please contact Bruno Mayoral (0034 91 446 03 54/ bmayoral@icjce.es) from the ICJCE.

Yours sincerely,

Leticia Iglesias Herráiz
CEO

APPENDIX-REQUEST FOR SPECIFIC COMMENTS IN THE IESBA EXPOSURE DRAFT

As stated in the covering letter above, the ICJCE does not subscribe most of the proposals in the Exposure Draft – both general and detailed. ICJCE’s responses to the questions contained in this Draft’s request for specific comments should be understood in relation to the provisions of that letter and interpreted as a whole.

Question 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?

As we said in the covering letter, the ICJCE has subscribed the objectives and requirements included in the International Standard of Auditing (ISA) 250 on “Consideration of Laws and Regulations in an Audit of Financial Statements” which include having to respond appropriately to non-compliance or suspected non-compliance with laws and regulations identified during the audit. The latter includes reporting non-compliance to those charged with governance, reporting non-compliance in the auditor’s report on the financial statements and reporting non-compliance to regulatory and enforcement authorities resulting from legal responsibilities of the auditor.

We believe it necessary to clearly define some expressions such as “reasonable steps” which are those that the professional accountant is expected to take to confirm or dispel the suspicion of an illegal act. In addition, the effort required should be proportionate to the likely scale of the issue or else the amount of work could become unreasonable. Finally, it should be stated that the professional accountant, in taking reasonable steps to confirm or dispel the suspicion that an illegal act has occurred, should not be required to investigate matters and facts.

Question 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?

The answer is that the Code cannot override national law. As we said in our covering letter, the proposal to require in certain circumstances professional accountants’ disclosure regarding a suspected illegal act to an appropriate authority would not need to be complied with in countries where such disclosure is prohibited by professional confidentiality, secrecy or privilege requirements. What is more, this issue could complicate cross border matters.

Question 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?

The answer is no. As we said in the letter above the Code does not provide a clear definition and common understanding of “public interest” and the regulation of this issue in the Code could not possibly take into account some subjective and cultural differences in each nation. In addition, people have different views of what public interest is, and this is particularly relevant to cross border situations.

Matters specific to professional accountants in public practice (Section 225 of the Code)

Question 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?

The answer is no. As we said above there is no justification in the Exposure Draft for proposing requirements for professional accountants providing services to an audit client as well as professional accountants providing non-audit services to a client that is not an audit client, because in both cases professional accountants play a role according to the public interest, although the considerations about this public interest are different. In our view, distinguishing requirements for auditors and the provision of non-audit services to non-audit clients is a legal matter.

Question 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?

We refer to the answer to question 2 in the sense that the Code cannot override national law where such disclosure is prohibited by professional confidentiality, secrecy or privilege requirements. Furthermore, as noted in our covering letter, in many countries, there is no dedicated competent authority to report to, and sometimes the auditor has the right, even a duty, to resign from the audit without disclosure.

Question 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?

In line with the foregoing provisions, we do not agree with distinguishing the obligation of auditors and of professional accountants to audit clients in the provision of professional services.

Question 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?

The answer is no, for the same reasons stated in the response to question 5. We would add that if one of the main reasons put forward for the proposals is that the new requirements would be in the public interest, any disclosure subject to the law should be on any matter where the accountant considers that the public interest demands that disclosure would outweigh the duty of confidence, and any restriction does not fit with the public interest rationale. Having said this, please remember our concerns about the unclear definition of public interest.

As we also expressed in the covering letter, there are circumstances where the effect of a violation of a law or regulation could be considered as not being significant to the public interest, but the Code does not include guidelines to determine under which circumstances a potential illegal act is significant or not, and probably such guidelines could not be provided. This should not be resolved by leaving it to the accountants and auditors to have to determine the significance.

Finally, we noted that the Code, as it is not a legal instrument, is not adequate to regulate the proposed measures to be used by the auditor to highlight clear violations of laws and regulations having a material impact on financial reporting on matters within the remit of the auditor. A practical issue is recognising what is the competence of auditors.

Question 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?

The answer is no. Apart from what was noted above about the fact that the proposal to require in certain circumstances disclosure from professional accountants regarding a suspected illegal act to an appropriate authority would not need to be complied with in countries where such disclosure is prohibited by professional confidentiality, secrecy or privilege requirements, it is unclear what the external auditors would be required to do with the information received, in circumstances where they themselves have not had a reason to respond to a suspected illegal act as a result of the audit. Requiring auditors to investigate another party's suspicion that may not be related to the audit of the financial statements is untenable. It would also result in inconsistent treatment of reports from accountants who were not auditors. Where there is no auditor, the requirement to report, as drafted, is a right that the accountant is "expected to exercise". However, if there is an auditor and the auditor considers it a public interest matter, external reporting has been converted into an obligation.

Question 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?

The answer is no. We refer to our answer to question 2 based on the fact that the Code cannot override national law so we have concerns regarding the lack of consistency that would result as a consequence of the proposals.

Question 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?

The answer is no. We refer again to what we said in the covering letter about the proposal to require in certain circumstances disclosure from professional accountants regarding a suspected illegal act to an appropriate authority, which would not need to be complied with in countries where such disclosure is prohibited by professional confidentiality, and about our general concerns in relation to requiring disclosure of the suspected illegal acts.

Matters specific to professional accountants in business (Section 360 of the Code)

Question 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?

The answer is no. Please see the comments in response to the previous question and our comments in response to the question 8 about the effect of disclosure to the external auditors.

Question 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?

The answer is no. We refer to the answer given to question 9 referring to our comments in response to question 2. We also have concerns as already noted regarding the implications of what such right would mean in practice, mainly the lack of consistency for audit and non-audit service providers.

Question 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?

We refer again to the covering letter regarding our general concerns in relation to requiring disclosure of the suspected illegal acts.

Other

Question 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?

Please, see our response to question 2.

Question 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?

We refer to our response to the previous question.

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

The answer is no. We refer to the provisions of covering letter. In addition, we note that in relation to documentation requirements, other than those related to compliance with auditing regulation, the Code generally advocates documentation in the interest of the accountant but does not require it. The proposals seem to be at odds with this, and with proportionality, given that there is no “de minimis” threshold at the start of the process.

Question 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?

We do not agree with the proposed changes to the existing sections of the Code for the reasons stated in the covering letter. We also believe that it would be necessary to define what is “ethical” and what is “unethical”, so as to fully understand and properly apply some of the proposed changes of the Code.

Question 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 answer is no. We note that as regards to the impact analysis, some of the issues raised are not addressed in the revised Code.