



International Ethics Standards Board  
for Accountants  
IFAC  
545 Fifth Avenue  
New York 10017  
USA

Stockholm 15<sup>th</sup> December 2012

## **Responding to a Suspected Illegal Act**

FAR, the Institute for the Accountancy Profession in Sweden, has been asked to comment on the Exposure Draft issued by the International Ethics Standards Board for Accountants (IESBA) on *Responding to a Suspected Illegal Act*.

### **General comments**

FAR welcomes this opportunity to comment on the exposure draft. FAR would like to underline that FAR finds guidance for its members on how to respond to a suspected illegal act helpful and essential.

FAR supports the proposal that a suspected illegal act should be reported to an appropriate level within the client entity.

The IESBA approach that an acceptance to act in the public interest should also include disclosure of suspected illegal acts to an appropriate authority can at first seem logical. FAR's opinion, however, is that disclosure of illegal acts outside the client entity is such a delicate matter that it must be dealt with by national legislation and cannot be based solely on professional regulations.

Thus, FAR opposes any regulation on professional ethics that provides for overriding the fundamental principle of confidentiality. FAR does not find that it lies in the role of a professional institute to instruct its members to disclose illegal acts to anyone outside the entity of the client. Such a disclosure risks coming into conflict with national law, which in FAR's opinion would hardly be acceptable in most jurisdictions. In many jurisdictions there would be no guarantees for a professional accountant, who overrides the fundamental principle of confidentiality, that invoking a professional duty based on the ethical rules put down by a professional institute would protect him or her against damage claims raised by the client. FAR is of the opinion that any rules providing that a professional accountant reports to anybody outside the client go beyond the scope of ethical professional conduct and thus fall under the scope of national legislation.

In Sweden, and presumably in other national jurisdictions, legislation on disclosure of suspected illegal acts is already in place. As far as Swedish legislation is concerned, FAR notes that the rules proposed by the IESBA do not correspond to Swedish national legislation. This is most certainly also the case in other jurisdictions that already have such legislation in place. In the choice between national legislation and rules put up by a professional institute, it is highly unlikely that a national court would choose the latter.



In article 225.11, the proposal designates what an “appropriate authority” for disclosure might be. If the national legislation does not provide for such disclosure there is a risk that such an “appropriate authority” is not ready to handle a disclosure from a professional accountant. This also speaks against any professional rules that anticipate national legislation on the subject.

It is also important to avoid overlapping regulations between the different standard setting boards of the IESBA, as both ISA 240 and ISA 250 contain standards that have impact on the subject of dealing with suspected illegal acts.

### **Specific questions**

FAR’s further comments on the specific 18 questions posed by the IESBA are based on the opinion stated above.

1. FAR agrees 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.
2. FAR is of the opinion that a professional accountant should not be given the right or an obligation to override confidentiality. FAR finds that being given the right to report a suspected illegal act, but not an obligation to do so, would put the professional accountant in an extremely difficult situation of having to choose between the public interest and betraying the confidence put in him or her by the client entity. An obligation to override confidentiality would thus perhaps be easier for the individual accountant to handle, but FAR does not support either option.

If the entity does not appropriately address the matter, the accountant should have to consider resigning from the engagement. In considering whether resignation is necessary, the accountant should consider the magnitude of the matter, the attitude of those charged with governance of the entity and the public interest.

3. If there is to be a threshold for disclosure, the public interest-level would be appropriate. However, FAR is of the opinion that disclosing illegal acts should be a matter for national legislation and not for a professional institute. Further guidance on defining “the public interest” (or any other potential threshold) would be essential, should any rules on disclosure be adopted.
4. If there is to be an obligation of disclosure, FAR does agree that the standard for professional accountants 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.
5. In principle FAR agrees that an auditor should in certain cases be required to override confidentiality and disclose 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. However, as stated above in FAR’s general comments, FAR finds that it is a matter for the national legislator to define if and when an auditor should report suspected illegal acts and to whom such reporting

should be made. The position of an auditor may be very different in different jurisdictions and it would be wrong for a professional institute to dictate rules that cannot be adhered to by the auditor without amendments to or new provisions in national law.

6. In FAR's opinion, a professional accountant providing professional services to an audit client of the firm or a network firm should have the same obligations as an auditor. Those obligations should be to discuss the matter with the appropriate level of management and then escalate the matter to the extent the response is not appropriate. If the entity does not appropriately address the matter, the accountant should have to consider resigning from the engagement. In considering whether resignation is necessary, the accountant should consider the magnitude of the matter, the attitude of those charged with governance of the entity and the public interest.
7. FAR does not agree that a professional body should have rules of disclosure that override the fundamental principle of confidentiality. If there were to be such a rule, FAR agrees that the scope should be limited to illegal acts that affect the client's financial reporting and acts where the subject matter falls within the expertise of the professional accountant.
8. FAR does not 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 firm should be required to disclose the suspected illegal act to the entity's external auditor, if any. FAR finds that the role of the professional accountant providing other services than audit is based on an assumption of mutual confidence and trust between the professional accountant and the client. Therefore 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 firm should be required to consider resigning from the assignment.
9. See the answer to question 8, above.
10. FAR does not agree that a professional body should have rules of disclosure that override the fundamental principle of confidentiality. If such a rule was to be put in place by the IESBA, FAR would agree that the suspected illegal acts should be those acts that relate to the subject matter of the professional services being provided by the professional accountant.
11. FAR does not agree. FAR finds that a professional accountant in business who is unable to escalate the matter within the client or who has doubts about the integrity of the management should be required to consider resignation. It must be up to the national legislation to provide for whistle blowing against an employer.
12. See the answer to question 11, above.
13. See the answer to question 10, above. As far as professional accountants in business are concerned the arguments against overriding confidentiality are even stronger than in the case of a professional accountant in public practice, as an

employee would normally be in a more vulnerable position than a professional accountant in public practice.

14. If the proposed rules on disclosures were to be adopted, FAR would understand, in the exceptional circumstances described in the proposal, that a professional accountant should neither be required nor expected to exercise the right to disclose certain suspected illegal acts to an appropriate authority. The need for such an exemption from the rules of disclosure shows, in FAR's opinion, that many jurisdictions cannot handle rules on reporting suspected illegal acts and this is another argument not to introduce such rules, but leave it to national legislation, so that it can also provide necessary protection to the professional accountant with an obligation to report.
15. FAR finds that the exceptional circumstances described are difficult to apply and might constitute an excuse not to report suspected illegal acts, as it would be difficult in hindsight to determine whether there were threats to the physical safety of the professional accountant or other persons.
16. FAR agrees with the documentation requirements as such. FAR would prefer a general rule from the IESBA on documentation that is in line with ISA 230.
17. FAR does not agree with the proposal in so far as it prescribes disclosure outside the client entity of confidential information and recommends a revision of the proposed changes to the Code.
18. FAR finds that it would not necessarily be in the public interest to put an obligation of disclosure on the professional accountant, as it would damage the relationship between professional accountants and their clients. Clients where illegal acts have been committed would be inclined to hide these from the professional accountant, rather than seeking the professional accountant's advice on how to best deal with the suspected violation or infringement.

FAR

A handwritten signature in blue ink, appearing to read 'Jan-Hugo Nihlén'.

Jan-Hugo Nihlén  
Chairman, FAR Ethics Policy Group