Dear Mrs Munro

Exposure Draft: Responding to a Suspected Illegal Act

Mazars is an international independent organisation, member of the IFAC Forum of Firms, that specialises in audit, accounting, tax and advisory services. On behalf of our organisation we welcome the opportunity to comment on the International Ethics Standards Board’s Exposure Draft “Responding to a Suspected Illegal Act.

Our response contains both general comments and responses to the specific questions within the Explanatory Memorandum.

General Comments
In our comment letter in response to the IESBA Strategy and Workplan 2010-2012 in June 2010 we stressed the need for a pause in ethics and independence standards setting following the adoption and implementation of the completely Revised IESBA Code of Ethics for Professional Accountants of July 2009.

Nevertheless, we were, and still are, supportive of adding (practical) guidance for professional accountants when dealing with illegal acts, but not additional requirements.

In that context, we are supportive of the IESBA’s desire to provide further guidance to professional accountants on the interpretation of Section 140 of the Code of Ethics, Confidentiality, and the circumstances set out therein where a professional accountant may disclose confidential information.

We are not convinced, however, that the IESBA’s approach to require disclosure in certain circumstances where disclosure is not required by law is appropriate.

In particular, we are not persuaded that the balance of the arguments set out in the section within the Explanatory Memorandum entitled Requirement or Right to Disclose naturally leads to a conclusion that there should be a requirement to disclose in circumstances when the law does not already require it.
The document notes that the determination of what is 'in the public interest' may vary from person to person but makes no attempt to reconcile the 'public interest' with a legal duty to report. We consider that it could be dangerous for a professional accountant to be required by the Code to make their own decision on what is in the public interest in a situation where the public interest in disclosure is not already reflected in a legal requirement to do so. Indeed the interaction between the proposals in the Exposure Draft and national laws would likely lead to complex application, particularly in cross-border assignments.

**Answers to Specific Questions**

Our comments on each of the specific questions asked, other than those directed at the professional accountant in business, are set out below.

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, what action should be taken?*

   In principal, we agree with the requirement set out. We would, however, question whether the process described is appropriate in all situations and particularly where the amounts in question are, or appear to be, trivial.

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?*

   We agree that the professional accountant should have the right to make disclosure to an appropriate authority in certain circumstances where in the public interest, overriding confidentiality.

   We do not agree that there should be an obligation other than one under law. Our view is that such an obligation could be counter-productive and, through creating an unnecessary tension between the professional accountant and the entity, lead to a less open relationship and a greater likelihood that issues arising in the entity are not disclosed to the professional accountant.

   An approach which required disclosure appears to run contrary to the concept of professional privilege in other professions. It is not clear why a professional accountant dealing with a matter presented by an entity should be required to make disclosure when a lawyer, for example, in the same situation is protected by law from having to disclose.

   Paragraph 225.9 of the proposed Code sets out some factors that the professional accountant should consider in assessing whether an entity has appropriately addressed a matter. While these factors are reasonable, the inclusion of the third, which considers the risk of re-occurrence does appear to widen or confuse the scope of the professional accountant’s responsibility and require consideration of whether an entity’s systems and controls are adequate to prevent illegal acts. We are not convinced that this is intended.
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?*

While we consider that a public interest test is appropriate, the determination of what is 'in the public interest' is not straightforward and the professional accountant may not be in a position to make such a determination.

In a situation where a professional accountant has no protection under the law in making a disclosure to an appropriate authority should the suspicions eventually turn out to be unfounded, the imprecision of the 'public interest' test would, in our view, likely mean that few matters would be reported in practice.

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?*

In a Code which deals with Ethics, there appears to be little justification for the standard to be determined by the nature of the service being provided by the professional accountant in public practice. We do not believe that a suggestion that such a person should act 'more ethically' in certain circumstances than in others is appropriate.

5. *Do respondents agree that an auditor should be required to override confidentiality and disclose certain 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?*

As set out in our General Comments and in answers to earlier questions, we do not believe that there should be a requirement to make disclosures to an appropriate authority.

We are not convinced that such a requirement would lead to more matters being reported.

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?*

Yes, agreed.

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 principle within the Code appears to be that the duty to maintain confidentiality can be overridden when it is in the public interest to make disclosure. While it is likely to be the case that a professional accountant has suspicions in areas within their expertise, a limitation on that
professional accountant’s rights or obligation to disclose should suspicion fall in other areas does not appear to be logical in an Ethical Code.

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?

We do not agree with such a requirement. For similar reasons to those above, we do not support a requirement per se. We also question whether the process described is appropriate or workable.

The provisions in the proposed Code suggest that in certain circumstances the professional accountant providing services to a non-audit client makes a disclosure to the entity’s auditor and then needs to assess whether the response is appropriate. This seems to imply that the auditor is required to break confidentiality by discussing the response with the other professional accountant.

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 the 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?

We do not consider the phrase ‘expected to exercise’ in paragraph 225.19 of the proposed Code to be helpful. The ‘expectation’ appears to be a disguised ‘requirement’.

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 answer to question 7 above.

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?

We agree that there could be exceptional circumstances in which disclosure would not be expected (or required).

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?

The distinction between threats to physical safety and commercial implications such as loss of income in the proposed Code appears fair and reasonable.
16. Do respondents agree with the documentation requirements? If not, why not and what documentation should be required?

We do not believe that the Code needs to set out in detail the documentation to be prepared. The first sentence in the proposed paragraph 225.23 would be sufficient.

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 support the proposed addition to paragraph 150.1 of the Code. Whether an organisation has acted unethically is not something that a professional accountant is capable of ascertaining without there being a framework to assist in determining what unethical behaviour is.

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?

We have no observations on the Impact Analysis in addition to the points made earlier in this response.

Yours sincerely

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Mazars Group Ethics & Acceptance Committee