

# Supplement B to Agenda Item 2

**Note:** This supplement has been prepared for information only. A comprehensive summary of the significant comments received on the August 2012 exposure draft (ED), [Responding to a Suspected Illegal Act](#), and the Task Force's related analysis of significant issues were [presented](#) at the March 2013 IESBA meeting. As the ED proposals have been comprehensively revised in light of the significant comments on the ED, no attempt has been made to respond to each individual comment from respondents. All comment letters on the ED can be accessed [here](#).

**Please consider the environment before printing this supplement.**

## ED Responding to a Suspected Illegal Act—Compilation of Responses to ED Questions

### 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?*

#	Source	Comment
1.	AAA <sup>1</sup>	<p>In general, the contributors believe this proposed standard relates to professional accounting firms, rather than individuals. Many of the requirements can only be met by those at the highest levels of a firm, such as conducting an inquiry to confirm the existence of the illegal act, and discussing this act with the appropriate level of management. The actions The Exposure Draft recommends seem, in general terms, appropriate for a managing partner of the firm to perform, perhaps with the assistance of those at lower levels.</p> <p>More specifically, we agree that discussing suspected illegal acts with a member of client management at least one level above the perpetrator, as recommended in 225.6, is appropriate. This step is consistent with academic research concerning effective reporting of wrongdoing within an organization because it allows the auditor to inform a client representative with authority to take action (Near and Miceli 1985; Grant 2002; Miceli et al. 2009).</p> <p>However, this leaves the question as to what the individual professional accountant should do, if he or she identifies an illegal act by a client which is not addressed appropriately by the client and their firm. The contributors do not believe an individual in these circumstances can meet the requirements of this proposed standard. For example, an employee of a firm typically cannot “consider whether it is appropriate,</p>

<sup>1</sup> For a list of abbreviations, see Appendix 1 to the March 2013 IESBA [agenda material](#).

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		<p>based on all relevant facts and circumstances, to terminate the professional relationship with the client” or “take reasonable steps to confirm or dispel that suspicion” or “discuss the matter with the appropriate level of management”.</p> <p>Moreover , one contributor believes that the proposed standard does not adequately address the auditor's responsibility to discuss suspected illegal acts within the accounting firm. While paragraph 225.5 notes that auditors may wish to consult others within the firm or anonymously with a relevant professional body, we recommend adding more guidance on this issue. For several reasons, we believe the IESBA should consider adding wording that auditors below the rank of partner should discuss a suspected illegal act with another member of the engagement team at least one level above their own rank before discussing the situation with the appropriate client personnel.</p> <p>First, junior auditors are especially unlikely to have the experience necessary to evaluate the legality of questionable acts and the confidence required to effectively approach client managers about sensitive situations. Second, academic research indicates that auditors prefer to discuss ethically sensitive situations with experienced colleagues such as a partner or mentor rather than reporting anonymously to regulators (Robertson et al. 2011). Accordingly, such guidance from standards may seem natural to auditors. Third, more experienced auditors such as partners and managers typically handle “big picture” issues with the client such as negotiations over audit fees and proposed financial statement adjustments. Thus, it seems reasonable that more experienced auditors may wish to discuss sensitive issues with junior auditors who detect suspected illegal acts before addressing the situation with the client. While this last reason may be more related to a given firm's quality control practices, it is within the purview of standards setters to provide guidance on quality control.</p>
2.	ACCA	<p>In principle, we agree that discussion of a suspicion at an appropriate level would usually be in the public interest, provided the suspected illegal act was of a certain significance, and the professional accountant was protected from any accusation of ‘tipping off’. However, we have concerns regarding the requirement that a professional accountant should take ‘reasonable steps’ to confirm or dispel a suspicion, as there is no guidance regarding what is ‘reasonable’, and we believe that this should be related to the materiality (or significance) of the act concerned.</p> <p>Any attempt to address issues of the significance of suspected illegal acts, or whether any form of disclosure is in the public interest, will be problematic in a global context. Although IESBA and ACCA would agree that there should be a universally acceptable ethical standard for all professional accountants, the proposed amendments to the Code would require professional accountants to consider the suspected illegal acts of others, and so, between different jurisdictions, suspected transgressors will be subject to a variety of both economic and cultural values.</p> <p>We acknowledge that the proposed paragraph 225.2 refers the professional accountant to ‘any applicable legal or regulatory requirements governing how the suspected illegal act is to be addressed’. Where such legal requirements do not exist, the professional accountant would not be adequately protected if reporting his suspicions outside the company. However, where such legal requirements do exist, the proposed additions to the Code add little except for scope for confusion.</p>

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		We support the requirements of International Standard on Auditing (ISA) 250 – that an auditor's appropriate response to a suspected breach of the law includes reporting to those charged with governance, reporting by way of the audit report, and reporting to 'regulatory and enforcement authorities', according to the auditor's legal responsibilities in the jurisdiction concerned.
3.	AICPA	Yes. We believe it would be appropriate for a professional accountant to report suspected illegal acts to the appropriate levels of management of a client or employer, and possibly with those charged with governance, if management's response is not timely and appropriate. However, we believe that the specific circumstances warranting escalation should be refined and clarified. See General Comment No. 6.
4.	APESB	<p>APESB agrees in principle that if a professional accountant identifies a suspected illegal act, and the professional accountant is unable to dispel the suspicion, the professional accountant should be required to discuss the matter with the appropriate level of management and escalate the matter within the organisation.</p> <p>We commend the IESBA's decision to use the reasonable third party test as the basis for discussion to be initiated with the appropriate level of management. Whilst in larger organisations there will be several layers of management, in smaller organisations there may only be one or two levels of management. This may pose a particular challenge for SMPs.</p>
5.	BDO	<p>Yes, generally we agree with this requirement; however, there are several important considerations that are not fully addressed by the guidance but are critical to its context and application.</p> <ul style="list-style-type: none"> <li>• It is often far from clear what an illegal act is, and this lack of clarity is exaggerated exponentially when many jurisdictions have to be simultaneously considered (e.g., for a multinational entity). Taking reasonable steps to confirm or dispel the suspicion is therefore fraught with problems and exposes the professional accountant to unwarranted risk of criticism.</li> <li>• There does not appear to be sufficiently clear recognition of materiality. Professional accountants frequently use the concept of materiality in practice. The Exposure Draft indirectly refers to materiality in several ways (e.g., by providing that any obligation must recognise that the professional accountant should exercise 'professional judgment' and weigh 'all the specific facts and circumstances available at the time,' including 'the magnitude of the matter') and recognises that the professional accountant might choose not to pursue a suspicion even though, in hindsight, it might turn out to be of significance). Instead, we believe that the guidance should integrate the concepts of materiality included in the audit literature.</li> </ul>
6.	CalCPA (APAS)	Yes, with such escalation limited to people within the client organization.
7.	CARB	As indicated in our initial comments we believe that a professional accountant should fully comply with the requirements of any statutory provisions in relation to reporting suspected illegal acts.

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		We cannot agree that professional accountants should necessarily seek explanations within management as this may be in breach of the law, for example Anti-Money Laundering Legislation.
8.	CGA Ca	<p>We consider a robust code of conduct for the professional accountants sine qua non for establishing the credibility of the profession, and a golden rule of such code should be the primacy of public interest over self-interest. However, we believe that the professional accountant's obligation with respect to a suspected illegal act should be restricted to the acts of accounting mischiefs and financial reporting frauds, or misrepresentations for which direct linkage can be established between the act and the impact, and that would have a material financial impact. Any other types of illegal acts which may indirectly impact financial reporting are not within the natural domain of the professional accountant's core competencies and beyond the expertise of professional accountants. We believe that all illegal acts ultimately impact financial reporting directly or indirectly and we do not believe that it should be an ethical obligation of a professional accountant to suspect and report illegal acts (such as violation of building code or formation of a price fixing cartel by an entity in contravention of antitrust laws, for example). We would like to reiterate the observations made by Lord Justice Lopes in the famous case <i>Re: Kingston Cotton Mills Co. (1896)</i>, as follows:</p> <p>"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably careful, cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said to approach his work with suspicion, or with a forgone conclusion that there is something wrong. He is a watchdog, not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest and rely upon their representations, provided he takes reasonable care."</p> <p>Although, these observations are made with reference to the auditors, they can be reasonably applied to all the professional accountants. Since the above-mentioned definitive judgment, there has been gradual increase in the standard of care expected from professional accountants. However, we believe that the proposals in the present ED are extreme and can metamorphose professional accountants into self-appointed moral police. We are concerned that, with the passage of time, the "duty to respond to a suspected illegal act" will mutate into the "duty to suspect and respond to an illegal act", notwithstanding a professional's fundamental mindset for professional skepticism. We believe that such possibility is more real than imaginary, as there are known instances when professional accountants in public practice were held to higher standards of accountability.</p> <p>To avoid such an outcome, we believe that the terms "suspected illegal act" and "suspicion" need to be more clearly defined within the context of the ED in order to assist professional accountants in making these determinations.</p> <p>The proposals are likely to increase the expectation gap among members of the public with respect to the work of professional accountants. We believe that the unintended consequences of the present ED will be to nullify the objectives of the IAASB ED: Improving the Auditor's Report which is to diminish such expectation gap with respect to the work of professional accountants working as auditors. We are not</p>

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		<p>aware of such onerous ethical obligations for other professionals such as lawyers who in fact enjoy the protection of privileged communication with their clients.</p> <p>However, we do 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, provided that the subject matter in question is accounting or financial reporting irregularities and is of a nature which falls within the expertise of the professional accountant, and would have a material impact on the financial reporting of the entity.</p> <p>Our responses to the other questions in this ED are without prejudice to those stated above.</p>
9.	CICA	<p>We agree with the principle that professional accountants should be required to discuss suspected illegal acts with the appropriate level of management and then escalate the matter to the extent the response is not appropriate. However, we do have some concern, as described above, with the extent to which, to whom and in what circumstances, escalation of the matter beyond the client or employer is necessary and whether appropriate whistleblower protection exists. One area of concern is the potential for differences in what constitutes an “illegal act” between jurisdictions, particularly where the professional accountant’s association is with a client or employer with international operations. In particular, which jurisdiction’s laws are to be applied and how broadly do they apply across borders to the entire entity?</p>
10.	CICPA	<p>Yes. We generally believe that the IESBA’s suggested actions will help professional accountants to dispel the suspicion.</p> <p>However, in some cases, the professional accountant may only be aware of some indicators of a possible suspected illegal act, but still needs to take further steps to confirm whether the suspected illegal act does exist. So we suggest the Code to specify how much work does the professional accountant need to do and where does the responsibility stop.</p>
11.	CIMA	<p>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.</p>
12.	CNDCEC	<p>Yes, we agree with the proposal; however, we note that it should be also necessary to clarify that, in every case, the professional accountant, in taking reasonable steps to confirm or dispel the suspicion that an illegal act has occurred, is not be required to investigate matters and facts.</p>
13.	CPA Au	<p>CPA Australia is of the opinion that a professional accountant should use professional judgement to deal with a suspected illegal act.</p>

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14.	DE	<p>Yes. The professional accountant can be identifies a suspected illegal act, but I have doubt in relation the responsibility of professional accountant for identifies illegal acts with development international standards, for example what do need for identify illegal act or fraud in the company?</p> <p>The process actually is very complex, can be have problems in relation internal control and high quality of informations elaborated of results of process of globalization, transparency and responsibility, I don't know.</p> <p>I suggest for the board, if agree that this point could be related with internal process, the professional need to be observed the internal control, audit services, risk of activities and principally if every operations are described in the reporting.</p> <p>In this case, I think that is very important that IFAC-Board elaborated papers described this important process and development of new structure of financial reporting and auditing reporting, the organizations besides of knowledge that need to have for this process is fundamental that the regulators elaborated tools or workshops for discussed for don't have problems in the future.</p> <p>So, I understand that identify fraud or illegal act depends of the organizations, professional accountant, government in relation laws specifics for this and the regulators, is very important to be integrated for this new decade. I suggest that contact local regulators for to have informations about specific laws in each country about this subject.</p>
15.	DTT	<p>In our view, professional accountants performing an audit currently must comply with the ISAs. We believe the ISAs set the appropriate standard which should not be overridden by the IESBA Code. Professional accountants who learn of a suspected illegal act while performing services not governed by the ISAs should have an obligation to consider, among other things, whether disclosure to the appropriate level of management is appropriate taking into account the particular facts and circumstances, including any laws or regulations governing disclosure in the particular jurisdiction. We also believe the ordering of the disclosures should clearly begin with management and then to the governing body as needed.</p>
16.	EFAA	<p>We have already raised concerns about the definition of a “suspected illegal act”. It would be unreasonable for the professional accountant to have to discuss the suspected illegal act with management or those charged with governance (“TCWG”) without being certain of the subject matter and this may also require that the accountant takes legal advice or has at least discussed this with its regulatory body or professional institute in the first instance. Taking action to dispel the suspicion could prove difficult in practice and some guidance on this may be appropriate. There may also be instances where the professional accountant can neither confirm nor dispel the suspicion. The ED does not address this particular circumstance.</p> <p>We have further concerns about the materiality of such actions. Whilst accepting that all illegal acts should have consequences we feel that this could place undue burden on SMPs because of their special relationship outlined above. Larger practices and networks are more likely to have audit clients where their only responsibility is to form an opinion on whether the accounts give a true and fair view. In doing so they necessarily plan their work with audit materiality in mind and it is possible that they would be likely to find fewer suspected illegal</p>

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		<p>acts. This would mean that the professional accountant in a smaller practice which, for example, provides bookkeeping and daily accounting services could be placed in a situation in which he is held to a higher standard as he is more likely to become aware of such issues which may be very small but nevertheless could be judged ultimately to have been likely to be deemed illegal.</p> <p>We are also of the opinion that this determination could require significant time and effort for SMPs which is disproportionate to that which would be required within much larger firms or networks which may well have in house legal and technical staff and certainly have access to additional resources to which staff can turn to for a second opinion.</p> <p>What we can say is that we do agree that some escalation of the matter is warranted and we would 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”.</p>
17.	EY	As described in our summary above, we support an illegal act reporting requirement for accountants who provide audit services but believe this objective can be best achieved through changes to laws or regulations rather than through changes to the Code.
18.	FAOA	Yes. In our view the duty to report to the audited entity should relate primarily to those offences that the professional accountant discovers within the scope of his or her legal or statutory audit duties and responsibilities, or that should have been discovered within the course of a proper audit. That being said, the duty to report also covers offences which he or she finds outside the scope of such audit duties and responsibilities. Additionally, the professional accountant generally has no duty to investigate. Should he or she discover an illegal act or evidence of such an act incidentally, however, he or she must carry out the appropriate investigations.
19.	FAR	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.
20.	GTI	<p>Grant Thornton 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 escalate the matter if management’s response is not appropriate, where not prohibited by law or regulation.</p> <p>We recommend, however, that the Board require a professional accountant in public practice providing services to an audit client to discuss suspected illegal acts with the appropriate level of management only when there is a direct or material indirect effect on the amounts in the financial statements. Entities can be affected by laws and regulations that affect their day-to-day operations rather than their financial and reporting functions. Professional accountants may not have sufficient expertise to recognize possible violations of such laws and regulations, making it difficult to take reasonable steps to confirm or dispel a suspected illegal act. Furthermore, the breadth of matters that may be discovered by the professional accountant could involve a plethora of considerations not only outside the expected competence of a professional accountant, but that have no significant impact on financial reporting and the financial statements.</p>

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		Regarding professional accountants in public practice providing services to a non-audit client, we recommend that the Board require the professional accountant to discuss suspected illegal acts with the appropriate level of management when the suspected illegal act relates to the subject matter of the professional services being provided by the professional accountant.
21.	HKICPA	<p>We have substantial concerns with the above-mentioned proposal, which would require a professional accountant when encountering a suspected illegal act to take reasonable steps to confirm or dispel the suspicion and to discuss the matter with the appropriate level of management. If the response of those with whom the matter has been discussed is not appropriate, the professional accountant shall escalate the matter to higher levels of management and those charged with governance, as appropriate.</p> <p>We understand that the IESBA is of a view that through escalating the matter the professional accountant would obtain additional information about the suspected illegal act. This would mean that before reaching the stage where disclosure to an appropriate authority might be expected or required, the professional accountant would have been able to confirm or dispel a reasonable level of suspicion.</p> <p>In our view, professional accountants may encounter significant practical difficulties in considering whether the level of suspicion on a matter is high enough to warrant disclosure given the subjectivity involved. Moreover, there are possibilities that illegal acts, if any, are directed and committed by top management. By escalating the matter to a higher level of management, the professional accountant may be effectively "tipping off" the concerned personnel and consequently lead to the concealing of important evidence. Potentially, this could also put a professional accountant at risk of breaching anti-money laundering laws, which may impose criminal liabilities on tipping off a possible suspect. Escalating a matter might also promote mistrust in the relationship between the professional accountant and client. The professional accountant may be viewed as "policeman" or "informant", which would directly affect the way they discharge their professional responsibilities or continuation of providing services to clients or employing organisations.</p> <p>There may also be a possibility that, through escalating the matter, the professional accountant may be constrained in obtaining additional information where management/client undertake work or investigations that are under privilege and the professional accountant is outside of that privilege.</p>
22.	ICAA	<p>The Institute considers that there should not be a stated requirement in these circumstances. It is our view that a principles-based document such as the Code of Ethics for Professional Accountants should, where possible, move away from dictating through detailed, prescriptive rules and required actions how accountants should behave. Rather, it should give accountants the responsibility to decide how best to align their behaviour with the ethical and professional outcomes that the Code has identified.</p> <p>In the context of responding to a suspected illegal act, the professional accountant will need to exercise their professional judgement on a number of occasions and across a range of issues, such as whether they have a reasonable level of suspicion, whether actions taken are considered appropriate, and whether disclosure would be in the public interest. In this context, we do not consider that it is appropriate to</p>



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		require the accountant to discuss the matter or escalate it. In our view the Code, as a principles-based document, should identify the appropriate actions to be taken, and the issues to be considered by the accountant in dealing with a suspected illegal act.
23.	ICAEW	<p>Subject to our comments in paragraph 9 above, we agree, but with caveats to ensure there are not unintended consequences. In determining what 'reasonable steps' to confirm or dispel suspicion might involve, the accountant is going to need to take into account a number of issues. For example:</p> <ul style="list-style-type: none"> <li>- Substantial work and personal cost may be required just to establish the "likely scale" of the occurrence: if this is for a potential client or employer the difficulty and cost may be substantially increased. The amount of effort ought to be proportional to the likely scale of the issue or the amount of work could be unreasonable. However, this could risk missing items which appear to be minor but prove otherwise.</li> <li>- Investigation to determine whether there are grounds for the suspicion could result in tipping off the perpetrator.</li> <li>- Investigation could also put the accountant in direct danger as those being reported to may be parties to the act.</li> <li>- The extent to which the matter falls within the accountant's expertise will be relevant to the degree to which investigation may need to be carried out – see our comments under question 7 below.</li> </ul> <p>It is sometimes unclear what is illegal. For example, there are different definitions of illegal acts in different jurisdictions and even within one, the issue can be debatable (for example tax avoidance, particularly where there is a general anti-avoidance rule).</p> <p>It would, in practice, be difficult for the accountant in employment to determine if a matter has been dealt with properly by those in more senior positions in the employing organisation, if he or she holds a relatively junior position. This person may not have sufficient facts to make a determination in any event.</p> <p>Taking reasonable steps to confirm or dispel suspicion may therefore prove to be fraught with problems. The draft wording addresses the issue of doubts about whether the potential reportees are involved but does not otherwise seem to consider the possibility that the accountant simply may not be able to confirm or dispel suspicion.</p> <p>The code envisages scenarios where someone within the client or employer is the perpetrator. Would it require the accountant to investigate matters to the same extent where the client/employer is the potential victim?</p>
24.	ICAP	<p>Professional accountant has certain established areas of responsibility e.g. audit or assurance or non-assurance services etc and his objective and role while providing these services is explicitly clear in the light of different pronouncements. The professional accountant is not a legal expert having insight of all the legal requirements within a jurisdiction; therefore, he must not be construed to have a primary role of identifying all the illegal acts regardless of the nature of services being provided.</p> <p>In my view, where the professional accountant is providing audit services and during the normal course of his audit work he discovers a suspected illegal act having repercussions related to financial reporting or accounting, and the procedures applied by him do not remove</p>

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		<p>the suspicion, the professional accountant should discuss the matter with the management at an appropriate level to obtain further clarity, explanation or justifications. If no appropriate response is received, the matter should be escalated to the extent the response is not appropriate, and such escalation should be made up to the level of those charged with governance or ultimately to the legal stakeholders of the organization. <b>For escalating such matter to the appropriate Authorities, the Professional Accountant must be allowed to take a prior written legal advice, and the matter should be escalated only where such legal advice urges the professional accountant to do so thereby providing the due legal comfort to the professional accountant for making such a disclosure.</b> Such an advice may be sought from a renowned Law Practitioner, and the professional accountant should make sure that he keeps the references of his client confidential or signs a Non-Disclosure Agreement with the Law Practitioner before sharing the information. In my view, if the professional accountant, based upon legal advice, concludes that it would not be appropriate to escalate the matter to appropriate Authorities, he should be permitted to avoid it, by keeping on record all the circumstances and ensuring the completeness of documentation. However, if the professional accountant also concludes that such a suspected illegal act could be severe and can affect the public interest, while the legal advice does not support escalating the matter to appropriate authorities, the professional accountant may have to withdraw from the engagement.</p> <p>Further, as mentioned earlier, more clarity should be provided as to what constitutes the 'public interest' and which illegal acts can affect the 'public interest' that pertain to the role of a professional accountant in a given engagement of audit or assurance or non-assurance services, and how their severity has to be measured by the professional accountant for deciding the appropriate course of action. I believe all the illegal acts cannot be discovered, identified and investigated by a professional accountant and where such a suspected illegal act is not concerning the domain of responsibilities of the professional accountant in an engagement, he should not be held responsible to investigate, conclude or escalate the matter up to the appropriate Authorities. In all such unrelated matters, the Professional Accountant's responsibility should be to report them to those charged with governance.</p> <p>In case of other services provided to non-audit clients e.g. advisory on tax or corporate matters, where professional accountant has to appear before certain public tribunals or judgment forums, the professional accountant should have to follow the same confidentiality measures with which the legal counsels are privileged in connection with the information shared by their clients. He should only be required to escalate such matter of suspicion to those charged with governance or in a severe case to withdraw from the engagement. Professional accountant may have to seek legal advice in such cases as well.</p> <p>A professional accountant in job or business should only disclose / report the suspected illegal act to his immediate next authority as per managerial hierarchy of an organization, in case this comes under his specified official duties. However, professional accountant in business should not be required to or expected to do so on the acts which are not related to his job's subject matter. He should be required to respond to the external auditors, <u>only</u> if he receives a specific inquiry on such a matter. Otherwise, it should not be obligatory for him to do so.</p>

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25.	ICAS	We are not supportive of such a requirement being introduced. There is also the possibility in certain circumstances of a potential conflict with national anti-money laundering requirements in certain jurisdictions, particularly in relation to any “tipping off” requirements that are in place. We also refer you to our primary concern stated above.
26.	ICJCE	<p>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.</p> <p>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.</p>
27.	ICPAC	Yes
28.	ICPAK	Yes we agree
29.	ICPAR	Agree
30.	ICPAU	Yes, we agree with the proposal.
31.	IDW	<p>ISA 250.19 requires auditors who suspect there may be non-compliance with certain laws and regulations to discuss the matter with management and where appropriate with those charged with governance, and to consider the need to obtain legal advice. As we have pointed out in the accompanying letter, the approach taken in the proposals exceeds that taken by the IAASB, since the IESBA is not proposing a risk-based approach. This proposal, if adopted, would also lead to a change in the scope of an audit.</p> <p>Extending any such requirement to professional accountants that are otherwise engaged or employed by an entity could be problematical, for a variety of reasons, which we discuss in detail below:</p> <p>In addition, as a professional body, the IDW cannot agree with the contention made in the Explanatory Memorandum that questions individual accountants may have in complying with specific sections could be dealt with by discussion with relevant professional bodies or with a legal advisor (see 225.22). This “guidance” does not adequately compensate for a lack of firm criteria.</p> <p>Determining What is in the Public Interest</p>

#	Source	Comment
		<p>Determining what is in the public interest is not straightforward. IFAC itself has found it challenging to even define the phrase in general terms, let alone in a specific situation. We are concerned that in proposing a requirement for individual professional accountants – irrespective of whether they are serving as auditors, engaged for the provision of professional services, or directly employed by an entity – to determine whether or not a particular matter is of such consequence that it is in the public interest on the merits of an individual case IESBA will lay the accounting profession open to accusations of getting it wrong either way. If professional accountants are overly cautious they run the risk of being accused of damaging the reputation of the engaging party or employer (libel – which also carries significant liability issues). If they are not sufficiently cautious, then, accusations that the accountant “should have reported” are bound to ensue. The proposed requirement in paragraph 225.21 that in making a disclosure to an appropriate authority the professional accountant shall, among other things, “exercise caution when making statements and assertions” merely exacerbates this problem. Without clear criteria with which to determine the public interest in a particular set of circumstances, the proposal is unworkable.</p> <p>Furthermore, the ED lacks concrete criteria which would enable accountants and the public to form a reliable appreciation as to what sort of suspected illegal acts will be reportable under the ED. We do not believe that the “reasonable and informed third party” test including “weighing all the specific facts and circumstances” and “likely to conclude” is appropriate, and in any case, it cannot be capable of consistent application (culturally) on a global scale. No-one can ever have all the facts.</p> <p>The proposal gives rise to more questions than answers. For example, citing the number of people affected and extent they could be affected does not seem to us to constitute a reasonable criteria (i.e., to what are such numbers meant to be relative?). How exactly is the accountant expected to consider the “nature of the matter” in addition to or in the context of the magnitude? Further issues arise, such as the extent to which cultural differences are likely to impact an individual accountant’s determination of public interest. As we have mentioned in our accompanying letter, in our opinion this area should be addressed by standard setters and legislators rather than the individual accountant on his/her own capacity.</p> <p><b>Professional Judgment as to What Constitutes an Illegal Act</b></p> <p>We have a number of concerns with the proposals that a professional accountant be required to take reasonable steps to confirm or dispel his or her suspicion (paragraphs 225.5, 225.16 and 360.4).</p> <p>Professional accountants are generally neither trained in legal matters, not accorded the authority or powers so as to be able to determine whether an illegal act may have been perpetrated (i.e. accountants are unable to assume the role of legal counsel and certainly not judge and jury, nor do they have the powers equivalent to police forensic accountants, etc.).</p> <p>The proposal gives rise to more questions than answers. For example, what exactly are these reasonable steps the accountant will take to confirm or dispel the suspicion? Who will pay for this “extra” work, especially if the extra work results in the suspicions being dispelled? How will the proposals impact the overall costs to business? How will the proposals impact client relationships, especially if the client believes the “suspicions” are unfounded? How does the professional accountant assess whether the entity’s response is appropriate (paragraph</p>

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		<p>226.7)? Do the three bullets in paragraph 225.9 imply that as long as management has dealt with this (investigation/remedial action/steps to reduce the risk of reoccurrence) the professional accountant is “off the hook” and no escalation of the matter is warranted? If so, it is questionable whether this is really always the case, or whether even a one-time occurrence could be so serious as to warrant further attention and potentially disclosure to the authorities.</p> <p>It is also not clear what “unable to dispel the suspicion” means. Does this mean that the auditor has a responsibility beyond the audit of the financial statements to investigate any suspicions of illegal activity even if they do not result in a material misstatement of the financial statements? What level of assurance is associated with “dispelling the suspicion” and what does the auditor do if, due to a lack of evidence, the auditor can neither confirm nor dispel that suspicion?</p> <p>Furthermore, the requirements to discuss with management etc., escalate the matter may be entirely inappropriate (tipping-off), even if there is no law actually preventing the professional accountant from doing this in a particular jurisdiction.</p>
32.	IFAC PAIB	<p>We do not necessarily agree. Paragraph 360.5 states that “if the professional accountant is unable to dispel the suspicion, the accountant shall determine the appropriate course of action, taking into account whether the organization has an established mechanism, such as an ethics policy, for addressing such matters.”</p> <p>The PAIB Committee believes that following established mechanisms in an organization, when present, such as reporting to a designated compliance officer and beyond (“escalation ladder”), should be the preferred way to resolve a suspicion. Only when these mechanisms do not exist, or do not work properly, should the professional accountant in business follow the procedure proposed in paragraph 360.6 of the Code. In addition, the committee notes that question 1 uses the term “should be required.” Although this term is not used in the proposed changes to the Code, the committee would like to emphasize that it is strongly opposed to a <i>requirement</i> in this area and proposes use of a principles-based “apply or be able to explain” approach instead.</p>
33.	IFAC SMP	<p>We believe the term “suspected illegal act” needs to be more clearly defined if professional accountants are to properly evaluate a given situation and, if appropriate, take further action. In the absence of a clearer definition we doubt whether professional accountants will be able to take the appropriate action. “Suspicion” in particular is not only fundamental to the ED but also has serious potential legal implications. Professional accountants in SMPs may be generally more exposed than those in larger firms, given the likely absence of a formal hierarchy within the firm and/or the client.</p> <p>Subject to the IESBA defining and providing further guidance around the word “suspicion”<sup>2</sup> within the context of the ED, in principle we agree that if a professional accountant identifies a suspected illegal act, and the accountant is unable to dispel the suspicion, the accountant</p>

<sup>2</sup> For example, in the UK, case law suggests that suspicion is a state of mind more definite than speculation, but falls short of knowledge based on evidence. It must be based on some evidence, even if that evidence is tentative - simple speculation is not sufficient grounds to form a suspicion. Similarly, a general assumption that low levels of crime (e.g. not

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		<p>should be required to discuss the matter with the appropriate level of management and then escalate the matter within the entity to the extent the response is not appropriate.</p> <p>Taking reasonable steps to confirm or dispel suspicion requires further elaboration. For example, the effort required should be proportional to the likely nature and extent of the issue, recognizing the inherent risk of missing items which appear to be minor at first sight, but which later prove otherwise. Then there is the issue of who will pay for the additional work: clients may be reluctant to pay unless they have an interest in uncovering illegal behaviour within their entities and may not want their accountant to act on every suspicion at potentially disproportionate cost. This may prompt the client to turn to other professionals.</p> <p>It is important to clearly articulate the fact that investigations determining whether there are grounds for the suspicion could result in 'tipping off' the perpetrator and/or tainting forensic evidence. Those to whom the report is made may be parties to the act. The draft wording addresses the issue of doubts about whether the potential reportees are involved but does not otherwise seem to consider the possibility that the accountant simply may not be able to confirm or dispel suspicion.</p> <p>Paragraphs 225.6-8 seem to have medium sized / large audit clients in mind rather than smaller entities, who may lack formal governance structures thus preventing any meaningful escalation of reporting through the entity. For example, a sole proprietor may have limited staff, if any, minimal governance and possibly only the proprietor as management. Perhaps a way of handling this for smaller entities with only one level of management is for the code to provide for something along the lines of section 225.19 which deals with clients who are individuals. Another suggestion would be a section or paragraphs that address "Considerations for smaller entities", similar to that used in the International Standards on Auditing.</p> <p>Finally, we wish to stress that professional accountants may lack the training, authority or rights of access to facilitate the detection of illegal acts, which, by their very nature, are typically perpetrated so as to make them difficult to detect. Whilst an audit of financial statements performed pursuant to ISA requires the auditor to exercise professional scepticism and to perform specific procedures in consideration of the potential for fraud, an audit should not equate to a forensic audit such as might be needed as part of a thorough investigation by the authorities. Professional accountants in public practice who provide services to non-audit clients and professional accountants in business will generally also lack the forensic accountant's means and authority to pursue any suspicions they may have.</p>
34.	IIA	<p>Suspected illegal acts (SIAs) are serious matters, the suspicion should be confirmed or dispelled by professionals with the appropriate experience in order to deal with the SIA, and protect the entity and the professional accountant (PA); some activities may even be conducted under attorney-client privilege.</p>

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declaring all cash takings) are endemic in particular industry sectors does not amount to reasonable grounds for suspicion of particular clients operating in that sector. *[Taken from the UK CCAB's Anti-Money Laundering Guidance for the Accountancy Sector].*

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		<p>Often, PAs will not be equipped to confirm or dispel the SIA. They may not have the requisite skills, expertise, and experience. They typically do not have the authority, resources, or access to people, information and systems. Requiring PAs to confirm or dispel the suspicion could put the PAs and/or others, including the entity itself at risk.</p> <p>PAs should generally report SIA using established reporting structures and processes (e.g., whistleblower processes) and if these do not exist or not operating effectively, then Internal Audit should be informed. Absent these avenues, those charged with governance should be informed. Any of the aforementioned would be responsible for and designate appropriate investigation resources to confirm or dispel the SIAs.</p> <p>We do not believe the requirement for Professional Accountants in Public Practice (PAIPP) providing non-audit services and Professional Accountants in Business (PAIB) to report SAIs to the external auditor is appropriate. External auditors are not charged with the core governance responsibility of addressing SIAs. We should not expand the responsibilities of external auditors into this area when other parties are more appropriate.</p> <p>We therefore recommend that:</p> <ol style="list-style-type: none"> <li>1. For PAIPPs Providing Audit Services to an Audit Client</li> </ol> <p>The PA should report SIAs to the Audit Engagement Partner (AEP) who has the experience and responsibility to handle SIAs. AEP's role is defined in regulations in various countries and generally includes responsibility to inform appropriate parties of SIAs and improprieties. AEP has the responsibility for safeguarding public interest, the authority to allocate resources, and access to those charged with governance, management, people, system, information and resources to confirm or dispel the SIA. All SIAs related to financial reporting should be confirmed or dispelled as part of the audit engagement; resolution of the matters should follow the audit process.</p> <p>SIAs not related to financial reporting should be reported to management in accordance with a process agreed upon with the entity, to Internal Audit, or to those charged with governance (as a last resort).</p> <ol style="list-style-type: none"> <li>2. For PAIPPs Providing Non-Audit Services to an Audit Client</li> </ol> <p>The PA should report SIAs related to financial reporting to the EP. The EP should then report the SIAs to the AEP, who will confirm or dispel the SIAs as part of the audit engagement; resolution of the matters should follow the audit process.</p> <p>SIAs not related to financial reporting should be reported to management in accordance with a process agreed upon with the entity, to Internal Audit, or to those charged with governance (as a last resort).</p> <ol style="list-style-type: none"> <li>3. For PAIPPs Providing Non-Audit Services to a Non-Audit Client</li> </ol> <p>The PA should report SIAs to management in accordance with a process agreed upon with the entity, to Internal Audit, or to those charged with governance (as a last resort). Management of the entity is responsible for reporting allegations related to financial reporting and those with financial reporting implications to the AEP.</p>

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		<p>4. PAIBs</p> <p>The PAIB should first report the SIAs within the reporting lines of the entity to a superior. If, in the PAIB's judgment, the responses are not appropriate or adequate, or the PAIB suspects that the superior or management is involved, the PAIB should report the SIAs in accordance with company protocol for potential violation of Ethics (e.g., Hotline, Whistleblower processes), or to Internal Audit.</p> <p>We recommend reporting SIAs to Internal Audit for the following reasons:</p> <ul style="list-style-type: none"> <li>- Internal Audit offers an alternative conduit for reporting if the PAs have doubts about the integrity or honesty of management or suspect that management is involved in the SIAs.</li> <li>- An Internal Audit function which complies with the IPPF is independent of management, has a formal charter, and reports to senior management and/or those charged with governance.</li> </ul> <p>Resolving the SIAs</p> <p>An Investigation Team should be responsible for confirming or dispelling the SIAs and reporting confirmed SIAs to senior management, Internal Audit, and those charged with governance. Senior management develops and reviews action plans with Internal Audit. Internal Audit provides an independent assessment of whether: the matters have been adequately investigated; appropriate remedial actions have been taken; effective steps have been taken to reduce the risk of re-occurrence, and; management has made appropriate disclosure. If the AEP or EP is not satisfied with the response, they should be required to escalate the matter to those charged with governance</p>
35.	IMA	<p>On this question, we must clearly state that we can only address PAIB and not public accountants (who have audit, tax, and compliance responsibilities). We believe that our response may differ based on this distinction. However, for PAIB, yes, we agree with this basic principle. According to the IMA Statement of Ethical Professional Practice (the "Statement"), after determining that the existing ethics policy of the organization does not resolve the issue, the accountant should discuss the issue with his/her immediate supervisor ("except when it appears that the supervisor is involved") and then should "submit the issue to the next management level" if/as necessary</p>
36.	IRBA	<p>It is difficult to understand how the IESBA Code can seek to impose "requirements" on a professional accountant in public practice that are more demanding than the requirements in the ISAs where the professional accountant is the auditor of an entity and that audit is performed in accordance with the ISAs. The IESBA Code should seek to support and not override the comprehensive ISAs that, for example, set out in ISA 250 the process to be followed by an auditor to consider compliance by the entity with laws and regulations.</p> <p>An auditor is required to obtain sufficient appropriate evidence to support the auditor's opinion on the financial statements in complying with the ISAs, and / or other National Auditing Standards applied in the jurisdiction. The ISAs already provide for suspicions regarding non-compliance with laws and regulations by the entity, to be discussed with an appropriate level of management above the level at which a suspected illegal act is identified. A professional accountant, who is not the auditor of the entity, may not have any right of access even to identify, let alone to discuss such suspected illegal acts, with management of an entity at any level.</p>



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		<p>An auditor also pursues enquiries in the process of gathering sufficient evidence to determine whether or not they have reason to believe that a suspected illegal act has or is likely to have occurred. Formal reporting of a suspected illegal act where this has, or may have, resulted in material losses may be considered a significant matter to be reported to those charged with governance as required by ISA 260 <i>Communication with those charged with Governance</i> (paragraph 16).</p> <p>In circumstances, where there are legislated requirements for reporting of suspected illegal acts other reporting requirements may pertain, for example money laundering legislation that requires such illegal acts to be reported directly to a Financial Intelligence Centre (FIC) to avoid alerting those involved in the suspected illegal act that they have been found out giving them time to cover their tracks and possibly to escape arrest, before the FIC or other legal enforcement processes can be activated. Such jurisdictional reporting requirements may be imposed by law or a regulator in the first instance on management, followed by those charged with governance of the entity, before requirements are imposed on the auditor.</p> <p>It is doubtful whether the IESBA Code can succeed in imposing such “requirements” on professional accountants / auditors where these are not required in a particular jurisdiction’s legal and regulatory framework.</p>
37.	JICPA	<p>We agree with the proposal only when it is applied to a professional accountant in an audit engagement, but not in others.</p> <p>Since management of an entity is responsible for appropriately addressing an illegal act within an entity, we are of the view that, when a professional accountant identifies a high probability of constituting a suspected illegal act, he or she should first discuss the matter with an appropriate level of management who would be expected to first address the matter in the entity. If no appropriate action is taken by those with whom the matter has been discussed, it would then be appropriate to escalate the matter to higher levels of management, to be consistent with corporate governance structures of the organization. ISA 250 also states that, when a professional accountant conducting an audit of financial statements identifies a suspected illegal act that has material effects on financial reporting, he or she is required to discuss the matter with management and, where appropriate, with those charged with governance.</p> <p>A professional accountant who is not providing services as an auditor may lack close relationships with management or with those charged with governance of an entity. In such a case, a professional accountant would be responsible for communicating the matter only with an appropriate level of management who would be expected to first address the matter. Therefore, we believe that the IESBA should not require such a professional accountant who is not providing services as an auditor to escalate the matter and follow up with higher levels of management.</p>
38.	KICPA	<p>We agree that the professional accountant should discuss any suspected illegal act with the appropriate level of management to dispel the suspicion. In case a professional accountant is unable to dispel the suspicion even after such discussion, the professional accountant should escalate the matter to higher levels of management or those charged with governance.</p>

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39.	KPMG	<p>We strongly support the principle that the accountant should discuss a suspected illegal act with the appropriate level of management. However, before taking this step, the accountant is required to take reasonable steps to confirm or dispel the suspicion. In this context we have the following interrelated concerns:</p> <ul style="list-style-type: none"> <li>• The term “reasonable” is very subjective, and because in taking reasonable steps to confirm or dispel the suspicion, the accountant shall apply “knowledge, judgement and expertise” to the matter and each accountant’s knowledge, judgement and expertise differs, it is likely that these requirements will be given widely varying interpretations in practice. For example, an accountant with extensive forensic investigation experience is likely to adopt a different approach to satisfying the requirements of the proposals than an expert in supply chain management.</li> <li>• There are obvious difficulties in determining the threshold for when a matter is to be regarded as a “suspected illegal act”. The proposals state that they refer to suspected illegal acts “because whether a matter constitutes an illegal act is ultimately a matter for legal determination by a court of law” (225.1). However, the proposals do not explicitly address the situation, which is very likely to arise in practice, where there is insufficient evidence to determine whether the matter arose in the first place, but there is nevertheless a suspicion that it did. This is a serious omission and one which is likely to cause confusion, particularly for accountants who are required to comply with money laundering reporting requirements where the term “suspected” is generally taken to reflect evidential as well as legal uncertainty.</li> </ul> <p>We believe these requirements should be clarified. This may be done, for example, by giving recognition to the complexity and subjectivity of the judgements involved.</p> <p>We also agree that if, having discussed the matter with the appropriate level of management and the response is inadequate, there should be a requirement to escalate the matter to those charged with governance.</p>
40.	KPMG	<p>ISA 250 “Consideration of Laws and regulations in an Audit of Financial Statements” adequately sets out the steps to be taken by an auditor. It is unclear what steps a professional accountant should take to dispel the suspicion and this is expecting the accountant to instigate work of their own accord. The correct route is to follow the established procedure within the entity and if these are in appropriate the professional accountant should obtain legal advice.</p>
41.	MIA	<p>The MIA 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.</p>
42.	Mazars	<p>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.</p>

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#	Source	Comment
43.	MG	We agree it would be appropriate for a professional accountant to report suspected illegal acts to the appropriate levels of management of a client, and possibly with those charged with governance, if the professional account is a member of management or if management's response is not timely and appropriate.
44.	NASBA	Yes, assuming there are no "tipping-off" prohibitions and if unable to dispel the suspicion, the accountant should be required to discuss the suspected illegal act with the appropriate level of management and TCWG if necessary. As noted elsewhere, we believe this reporting responsibility falls to the audit firm, as an organization, in client audit scenarios.
45.	PKF	<p>No. A professional accountant should have the right to discuss matters with management or to report to an appropriate authority as they see fit, but not a requirement to do so.</p> <p>Many jurisdictions have laws that prescribe the action to be taken when a professional accountant identifies a suspected illegal act. This is often contained in anti-money laundering laws or may be required under financial services, pensions, charities, anti-bribery and other legislation. Discussions with management may result in a breach of "tipping-off" provisions in such laws, and therefore may constitute an offence.</p> <p>Proposed paragraph 225.3 of the Code acknowledges this fact and notes the position in relation to tipping-off, and notes that a professional accountant should comply with the anti-money laundering laws and comply with any prohibitions on tipping-off. Proposed paragraph 225.8 of the Code notes a mechanism by which the professional accountant should avoid tipping-off but still requires the professional accountant to pursue the matter. It is not clear why the Code should require professional accountants to go beyond what is required by local law. Where a report or disclosure has been made under local law, the requirements of the Code should fall away. Any prescriptive requirement for discussions with management, despite making allowances in the Code, increases the risk of tipping-off.</p>
46.	RSM	Yes. We believe it would be appropriate for a professional accountant to report suspected illegal acts to the appropriate levels of management of a client, and possibly with those charged with governance, if management's response is not timely and appropriate.
47.	SAICA	Yes, we agree that the professional accountant should discuss the matter with the appropriate level of management. Where the appropriate level of management is part of the suspected illegal act, then the professional accountant should discuss the matter with an appropriate level above that person, alternatively the accountant could report the matter to the internal audit (if the internal audit function exist) and the external auditor, if the professional accountant is employed by the organisation or provides non-audit services. This is as far as the reporting/disclosure should go even if no further action is taken. The professional accountant will then need to evaluate whether they want to remain with the organisation or not and this is where this exposure draft becomes too onerous for the profession. In South Africa, the professional accountant performing the external audit or review assurance function is required by law to follow further steps and this, we believe would be sufficient. For professional accountants not providing assurance, we believe that more guidance should be given on what other steps could be taken by the accountant so as not to put their career and personal wellbeing in jeopardy

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#	Source	Comment
48.	ZICA	We do agree with the proposed sequential steps to be undertaken when a professional accountant identifies a suspected illegal act, and the accountant is unable to dispel the suspicion

**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?***

#	Source	Comment
1.	AAA	<p>The contributors agree in principle. This requirement is similar to the current form 8-K required disclosure of reasons for auditor resignation/dismissals, such as auditor-client disagreements. In practice, however, we do not see such disclosures often. Moreover, auditors can disclose certain illegal acts in the audit report (presumably, such a report would have an adverse opinion).</p> <p>Thus, contributors feel that merely allowing disclosure is nothing new for external auditors. However, requiring is a definite step in the right direction.</p>
2.	ACCA	<p>In principle, we agree that a professional accountant should have the right to override confidentiality if to do so would be in the public interest. However, this should only be encouraged where safeguards exist to protect the professional accountant from liability should it transpire that his or her suspicions were mistaken. The Code cannot provide adequate safeguards in this respect.</p> <p>Even in jurisdictions where appropriate legal safeguards do exist, the professional accountant would be well advised to seek legal advice before deciding to override confidentiality. With this in mind, and in view of the fact that paragraph 100.1 acknowledges that a professional accountant may be prohibited by law from complying with certain parts of the Code, it would seem entirely inappropriate to effect the proposed deletion from paragraph 100.21, which recommends obtaining legal advice.</p> <p>In addition, any right to override confidentiality would need to be carefully defined. The exercise of a right to disclose a suspected illegal act is likely to be harmful to the professional accountant's relationship with the client, but also harmful to the profession. Upholding the fundamental principle of confidentiality is, itself, in the public interest, and any modification of the principle should be undertaken with extreme caution. It is important that any right to override confidentiality should not be characterised as giving accountants discretion to inflict reputational damage and administrative burdens on clients.</p>
3.	AICPA	<p>No. For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate liability safe-harbor protections. In addition, as discussed in General Comment No. 6.5, we do not believe that there is any actual difference between a professional accountant's requirement and "right" to disclose certain illegal acts to an appropriate authority under the proposed standard, since the Exposure Draft states that the accountant generally would be "expected" to exercise that right.</p>

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#	Source	Comment
4.	APESB	<p>APESB supports the professional accountant having the right to override confidentiality in rare and exceptional circumstances and where it can be demonstrated that the disclosure is in the public interest.</p> <p>We recommend that IESBA provide additional guidance to enable the professional accountant to determine the exceptional circumstances where such action would be appropriate, and to make an assessment whether the professional accountant has sufficient information and/or evidence to form a conclusion beyond reasonable doubt that the suspected illegal act occurred. It should be a higher test than “reasonable level of suspicion” as currently proposed.</p> <p>Guidance could include criteria for:</p> <ul style="list-style-type: none"> <li>• assessing the nature and significance of the suspected illegal act and the likelihood it has occurred;</li> <li>• assessing the potential impact of the suspected illegal act on a third party, stakeholders or the general public;</li> <li>• determining whether management's actions are appropriate or inappropriate as the case may be;</li> <li>• documenting the decision reached; and</li> <li>• determining what constitutes an appropriate authority.</li> </ul>
5.	BDO	<p>No. As mentioned above, we do not agree that professional accountants should be placed in a position whereby they have to consider overriding contractual, professional or legal obligations relating to confidentiality without any related legal protection or safe-harbour provisions. The proposal is unable to create a mechanism that affords such protection or provisions to a professional accountant who breaches a confidentiality requirement arising from either local law or contractual arrangements. To illustrate this dilemma, a number of jurisdictional laws make professional privilege available, usually in a direct response to the public interest. It would be an irresolvable anomaly if the Code required disclosure, yet at the same time professional privilege prevented it. Furthermore, what constitutes ‘appropriate authority’ should be clarified as this is a critical concept. In our view, the Exposure Draft also introduces a significant risk of reducing the likelihood of preventing and detecting illegal acts, which is counter to its public interest intentions. This may arise as a result of the following:</p> <ul style="list-style-type: none"> <li>• Client candor may be discouraged, causing professional accountants difficulty in performing their job to a professional standard (that is the driver for professional privilege noted above, which is often afforded to lawyers, doctors, priests and accountants). This is of particular concern if there are no stringent criteria for determining matters that are disclosable to external authorities.</li> <li>• Those setting out to subvert the law may merely ensure that professional accountants are kept at a distance and use the services of others who do not have the same stringent reporting obligation.</li> <li>• A requirement to disclose could cause significant problems for a number of services that are currently delivered by professional accountants. For example, if forensic services are required, entities or lawyers may be reluctant to engage professional accountants to</li> </ul>

#	Source	Comment
		<p>participate on the engagement if they would be required to report suspected illegal acts. This restriction could result in such services being performed by other parties that are not subject to such restrictions, who may be less competent than the accountants.</p> <ul style="list-style-type: none"> <li>• A requirement could cause problems for professional accountants working for law firms or within multi-disciplinary practices, in the event of a conflict of codes.</li> </ul> <p>As such, we firmly believe that any such 'requirement' or 'right' to disclose should only arise by way of a separate requirement outside the Code, based on a national law or regulation.</p>
6.	CalCPA (APAS)	<p>No. Although we do not totally equate the accountant / client relationship to the attorney/client relationship, there are sufficient parallels for us to conclude that essentially the same client privilege is appropriate. Accountants, and auditors in particular, must be able to rely on totally open and complete communications with their clients. Once the accountant is either required or permitted to override confidentiality, clients will almost certainly start to guard their communications with their accountants out of fear that the communications will either fall into the hands of prosecutors, or lead the accountant to report the client to prosecutors.</p> <p>We note that the word "suspected" is absent from this question. Is the presumption that the client has committed an illegal act? This would be absurd as criminal culpability can only be ascertained via a trial. Also, what does "appropriately addressed" mean? The ED in ~225. 9 talks about investigation, remedial action and steps to reduce the likelihood of a recurrence as though these procedures somehow absolve the entity from dealing with the crime that is suspected; the context is criminal activity that affects the public interest. This is completely inadequate guidance. The only way to know if the activity is illegal or not is to get a prosecutor involved and then go to trial.</p>
7.	CARB	<p>We believe that where the professional accountant identifies a suspected illegal act of such seriousness that he/she believes in good faith that it is in the public interest to report it to the relevant authority, then there should be a right to override the principle of confidentiality and the professional accountant should not be at risk of disciplinary action from his/her member body for such disclosure. We would however, refer you to Note 1 in our initial comments above and question 5 below in which we set out our concerns regarding the absence of legal protection.</p>
8.	CGA Ca	<p>We maintain that a professional accountant is not an agent of the state and whether the professional accountant should override confidentiality and disclose certain illegal acts to an appropriate authority is contingent upon the legal framework of a particular jurisdiction. Under no circumstances should professional accountants violate the law of the land or contractual obligations unless such override is expressly permitted by the statutes in the relevant jurisdiction.</p> <p>We recognize that these proposals may well require amendments to member bodies' code of ethics in order to permit professional accountants to make such disclosures without finding themselves offside of their respective confidentiality requirements.</p> <p>Furthermore, we believe that such reporting instances should be undertaken only after appropriate consultation with legal counsel.</p>

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9.	CICA	<p>We understand that there may be situations where a professional accountant should at least have a right to override confidentiality and disclose certain illegal acts to an appropriate authority. We are concerned that even the potential for such a right (not to mention a requirement, in some cases) to disclose could undermine the trust relationship that is necessary between both an employee and employer and between an auditor and audit client. However, if we understood more clearly which matters must be disclosed, our concerns with respect to the importance of such trust relationships might be outweighed by the need for public protection.</p> <p>We also suggest that it may be appropriate to include a reminder to professional accountants (or perhaps reminders in several places) that when faced with such situations, it is always prudent to obtain legal advice. While legal advice does not excuse a professional accountant from complying with the exercise of sound professional judgment in determining what acts are to be disclosed, it can assist the professional accountant to take steps to mitigate risk while still complying with disclosure requirements.</p>
10.	CICPA	<p>Yes. We generally believe that will be helpful for professional accountants to act in the public interest.</p> <p>However, we note paragraph 225.22 indicates that the professional accountant may wish to discuss matters relating to complying with the Code's requirements on suspected illegal acts with the relevant professional body. This includes whether to report the suspected matter to the relevant authority. In some jurisdictions, it is the case that the "relevant professional body" is also the "appropriate authority", so it is questionable whether and how the professional body will play both roles as set out in the proposals. We suggest to clarify both "relevant professional body" and "appropriate authority"</p>
11.	CIMA	<p>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.</p> <p>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?</p>
12.	CNDCEC	<p>Yes, we agree with the proposal. It could be appropriate to also specify in par. 225.9 and par. 360.5, when the professional accountant has to assess whether the response of the client or employing organization to the suspected illegal act is appropriate, to consider, as a remedial action to address the matter, whether the client or the entity has activated whistle-blowing procedures.</p>
13.	CPA Au	<p>As outlined in our general comments, we are of the opinion that a professional accountant should have the right to override confidentiality and disclose certain illegal acts to an appropriate authority but not a duty or a requirement to do so.</p>
14.	DE	<p>Yes. I think that the entity and professional accountant need to be integrated in this process and I have doubt in relation the confidentiality and disclose certain illegal acts to an appropriate authority, I have doubt about this, but I understand that this matter has not been appropriately addressed by the entity.</p>



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		In relation professional accountant for obligation to identify fraud, illegal acts or errors is very important that the organization identify this process with board of entity, principally when this aspect has relation with internal control, I don't know. I suggest observed the discussion of ESMA about statement practices.
15.	DTT	No. For the reasons stated in our general comments above, we believe the obligation to disclose suspected illegal acts to an appropriate authority rests with management and those charged with governance. A right to disclose that includes an expectation that such right will be exercised creates a de facto requirement to disclose, which we do not support.
16.	EFAA	<p>Firstly we assume that the question is in fact addressing suspected illegal acts as illegal acts would have been determined by a court of law and would therefore already be in the public domain.</p> <p>We reiterate the point made above about the skills required of a professional accountant. It may be beyond the ordinary competence of a professional accountant to determine whether a matter has been appropriately addressed by the entity and indeed to determine whether disclosure is in the public interest. That said, we agree with the principle that a professional accountant should at least have a right to override confidentiality subject to existing national requirements and guidance already included in the Code.</p>
17.	EY	In our view there should not be a right of illegal-act disclosure established through the Code; instead, there should be an illegal-act disclosure requirement established through changes in law, as long as certain thresholds and elements, such as a materiality standard and safe harbour protection, are included.
18.	FAOA	<p>Yes, but subject to applicable national law.</p> <p>Under Swiss law the auditor must notify the Board of Directors in writing of violations of the law, articles of association or organisational regulations. In addition, the auditor must inform the shareholders of violations of the law and articles of association if (1) the violations are significant or (2) the Board does not take reasonable measures in re-sponse to the written notification of the auditors. An individual shareholder may also reach out to the authorities, not being bound by the auditor's duty of confidentiality. If the audited entity is obviously over-indebted and the Board of Directors fails to report this, the auditor must notify the Court (Art. 728c Swiss Code of Obligations, CO, SR 220).</p> <p>Furthermore, in the context of an action under Swiss law, the procedural law provisions of criminal, respectively civil, law and the substantive provisions of special laws, particularly as regards auditor confidentiality and trade secrecy, are also to be considered.</p>
19.	FAR	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

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		<p>obligation to override confidentiality would thus perhaps be easier for the individual accountant to handle, but FAR does not support either option.</p> <p>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.</p>
20.	GTI	As noted above, Grant Thornton is supportive of amending the Code to provide all professional accountants with the right to disclose a suspected illegal act to an appropriate authority if, in the professional accountant's judgment, he or she believes that the suspected illegal act is of such consequence that disclosure of the act would be in the public interest, and the professional accountant would not be deemed to breach the fundamental principle of confidentiality as defined in the Code.
21.	HKICPA	<p>We agree in principle for the Code to afford professional accountants the right to override confidentiality and disclose certain illegal acts to an appropriate authority if the matter has not been appropriately addressed by the entity.</p> <p>However, it appears to us that the proposal is imposing an obligation on the professional accountant, but not a discretionary right, to disclose a suspected illegal act as the proposal explicitly states that the professional accountant would be expected to exercise this right in order to fulfill their responsibilities to act in the public interest. We consider that the decision on whether to make such disclosure to an appropriate authority should rest within the discretion by the professional accountant after considering all the facts and circumstances including among other things, requirements under local laws, regulations or standards, and the Code should not impose on the professional accountant additional requirements in terms of whether they need to explain their approach and reasoning should they choose not to make such a disclosure.</p> <p>Having said that, we consider there might be practical difficulties for professional accountants to exercise a discretionary right if they would likely need to bear personal liability for compromising their confidentiality obligation under the local laws and regulations. Therefore, professional accountants will need to consider carefully when and how to exercise any discretionary right.</p>
22.	ICAA	Yes
23.	ICAEW	We agree with that professional accountants should be encouraged to make disclosure where they consider that the public interest in disclosure outweighs their professional duty of confidence, and local law permits it. The code says little on this at present. Additional wording need not be lengthy. An example is ICAEW's own additional wording in an add-on to paragraph 140.7 in its code of ethics. We also believe that it is right to clarify that resignation/disassociation is no substitute for disclosure.

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		<p>The exposure draft proposals refer to a right. However, a number of respondents to us commented that a right implies something granted by law. The code cannot give a legal right. What is being considered here is under what circumstances it would be appropriate for the professional accountant to override the fundamental principle of confidentiality, within the boundaries of the relevant legal framework.</p> <p>Paragraph 225.2 of the draft does allude to the requirements being subject to national law. Although this is a general condition of the code it is particularly critical here. The interaction with national law will be complex (and not just for auditors: for example in the UK there are special reporting requirements which include anyone providing accountancy services). The paragraph only gives an example of where the law would require disclosure: we are aware that, for instance, there are many countries where laws forbidding disclosure are much stronger than in the UK and other examples should be included.</p> <p>National law may make professional privilege available. If this is permitted but not required, what prevails: a confidentiality privilege that local legislators have made available, presumably in the public interest, or a disclosure requirement in the code, included for the same reason? We assume that it should be the former, as national legislators are likely to be in a position to be able to make a more detailed assessment of the public interest in their jurisdiction, taking into account local issues, than IESBA inevitably can, in an international code.</p> <p>We do not agree that there should be an absolute obligation to disclose, within a global code of ethics. While we assume that this is not what IESBA intends, other than for those providing services to audit clients, our members responding to our consultation got the impression that by being given a right to disclose which they were then 'expected to exercise' the wording was trying to impose a requirement in a roundabout manner. An obligation of this nature is suited to law, not an ethical code based on threats to personal ethical behaviour. In our view it would also be counterproductive, reducing the likelihood of preventing and detecting illegal acts:</p> <p>It may discourage openness by clients and employers, causing professionals difficulty in doing their job to a professional standard (which is the point of professional privilege in many countries for lawyers, priests and medical practitioners among others), or in persuading the client/employer/colleague to minimise illegality.</p> <p>Those setting out to subvert the law will merely ensure that accountants are kept at a distance and use the services of others who do not have a reporting obligation.</p> <p>A requirement to disclose would cause significant problems for, for example, forensic accountants, rescue and recovery professionals or accountants acting as expert witnesses in legal proceedings, given the nature of many of their engagements.</p> <p>A requirement would also cause problems for accountants working for law firms and other multi-disciplinary practices, in the event of a conflict of codes</p>
24.	ICAP	<p>Professional accountant must have to follow the local laws before overriding the confidentiality and disclosing the matter to appropriate Authorities. Further, as stated earlier, we believe that the professional accountant should seek proper legal advice before doing so, even if the Code provides a right to override the confidentiality instead of making it an obligation.</p>

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25.	ICAS	In principle, yes, but this depends on whether a breach of the fundamental principle of confidentiality would be deemed to be in the public interest in the given circumstances and indeed whether the applicable legal framework permitted such an action. As we have highlighted above, these proposals cannot be considered in isolation from the applicable legal framework. Regardless of how well intended these proposals might appear, interaction with law, particularly in jurisdictions where there is anti-money laundering legislation, is undoubtedly going to be complicated. Ultimately, it is the applicable legal framework that must prevail and currently in this respect this fact is not sufficiently taken account of in the draft proposals.
26.	ICJCE	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.
27.	ICPAC	Yes
28.	ICPAK	Yes we agree
29.	ICPAR	Agree when not prohibited by law and if the client has not self-reported.
30.	ICPAU	Yes, we agree with the proposal.
31.	IDW	<p>As noted in our covering letter, we do not believe that IESBA has the authority to allow or deny professional accountants such rights. Client confidentiality is required by law in many jurisdictions, so releasing the professional accountant from this duty in specific circumstances is a matter for national legislators.</p> <p>Indeed, given the question of IESBA's authority to govern such matters, we are unable to appreciate the difference between the proposed <u>requirement</u> for auditors to disclose certain information and a <u>right expected to be exercised</u> that IESBA is proposing be extended to professional accountants in public practice and professional accountants in business.</p>
32.	IFAC PAIB	We agree. However, as mentioned in our general comments, the PAIB Committee believes that the proposed changes to the Code are confusing regarding whether disclosing certain illegal acts to an appropriate authority is a right or a requirement. We, therefore, recommend the IESBA replace the requirement with a principles-based "apply or be able to explain" approach in these circumstances.
33.	IFAC SMP	We agree with a right to disclose (notwithstanding any legal requirements around the need to maintain confidentiality), which professional accountants should be encouraged to exercise where they consider that the public interest in disclosure outweighs their professional duty of confidence. However, if the professional accountant is then 'expected to exercise' the right to disclose, the wording appears to be trying to impose a requirement in a roundabout manner.

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		<p>To prevent the professional accountant being unduly exposed, reporting outside the organization due to the lack of an appropriate response is likely only to be undertaken after appropriate consultation with legal counsel. This is costly for SMPs, both directly in terms of legal fees, and indirectly, through increased professional indemnity insurance premiums for example, which might even threaten the viability of the practice.</p> <p>Finally we wish to reiterate that, since client confidentiality is fundamental to the relationship between a professional accountant and their client, robust enforceable criteria need to be established as to when confidentiality may be overridden. We question whether the proposal is sufficiently clear so as to give the necessary confidence, let alone legal certainty, to clients, potential clients and professional accountants in this regard. In many jurisdictions client confidentiality and exceptions thereto are governed by legislation.</p>
34.	IIA	<p>Based on our response to Q.1, the PAIPPs would report SIAs to the AEP or EP; SIAs related to financial reporting will be confirmed or dispelled during the course of the audit. SIAs not related to financial reporting would be reported to management in accordance with a process agreed upon with the entity, to Internal Audit, or to those charged with governance (as a last resort).</p> <p>As the last resort, the audit firms and PAIBs shall or have a right to escalate to those charged with governance, and if not satisfied with the response, override the fundamental principle of confidentiality and disclose a SIA to an appropriate authority if the entity has not made an adequate disclosure within a reasonable period of time, after being advised to do so. However, protections for various potential violations (e.g., confidentiality requirements) need to be afforded to the PAs that took appropriate actions</p>
35.	IMA	<p>We have significant reservations about an accountant overriding confidentiality and this should only be done in the most significant and clear circumstances. According to IMA's Statement, "communication of such problems to authorities or individuals not employed or engaged by the organization is not considered appropriate, unless you believe there is a clear violation of the law." This principle brings us into conflict to some of the proposed IESBA changes. One such conflict is the usage of the term "suspects" in the IESBA document. In our view, a mere suspicion is not enough of a basis to breach confidentiality – instead, the issue should be communicated externally only if it involves a "clear violation of the law." There can be many instances of employees suspecting things that perhaps they don't have the background to fully understand and to report this externally without it being a "clear violation" would be irresponsible. This could, potentially, unfairly damage the reputation of the organization and set the accountant up for unnecessary potential legal actions (not to mention loss of employment).</p>
36.	IRBA	<p>Yes. We agree that, if the matter has not been appropriately addressed by the entity, the professional accountant / auditor of the entity should at least have a right to override confidentiality and disclose certain illegal acts to an appropriate authority after considering all the facts and circumstances, including any confidentiality requirements under local laws and regulations or applicable ISAs and contractual arrangements with the client.</p> <p>This right may be imposed as a requirement only where there are laws and legal processes in place in a jurisdiction to enable reporting to be made to appropriate regulators. The audit client needs to be made aware of the circumstances when a professional accountant / auditor</p>

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		<p>may have a right, or legal obligation, to override confidentiality. This is best conveyed in the engagement letter with the audit client, stating that such processes and legal obligations are imposed on the professional accountant / auditor of the entity, so that the client is aware of the limitation on the fundamental principle of confidentiality.</p> <p>Ideally in such circumstances, appropriate protection mechanisms need to be in place for the professional accountant / auditor reporting the suspected illegal act, in good faith, to the appropriate regulator. Failing which, where a suspected illegal act reported is subsequently found not to be illegal, the professional accountant / auditor could face claims for damages for defamation from the audit client.</p>
37.	JICPA	<p>We believe that a right to override confidentiality and disclose certain illegal acts to an appropriate authority should be considered in light of laws and regulations of each jurisdiction, and that each jurisdiction should determine whether such a right should be granted to a professional accountant. Additionally, if a right to disclose would be established by legislation, protection mechanisms for a professional accountant who make sure a disclosure would be necessary, otherwise, we believe that the right would not be effective.</p> <p>Some jurisdictions, for example, already have laws or regulations that require auditors to disclose illegal acts that would have material effects on financial reporting to regulatory authorities. In general, such disclosure requirement is accompanied by regulations that afford protection to those who make disclosures, and therefore, a right to disclose would be effective.</p> <p>Insofar as there are no laws or regulations that require such disclosures, and no protection is afforded by legislation, we are concerned that it would be very ineffective to require a professional accountant to disclose certain illegal acts, or to expect a professional accountant to exercise his or her right to disclose.</p> <p>In view of the variety of regulations across jurisdictions, although the Code of Ethics is a global standard, in order for the proposed requirements of the ED to be prescribed and implemented, we believe that the IESBA should study the prevailing laws and regulations of each jurisdiction, and thus, should state that whether a professional accountant has a right to disclose should be determined by each jurisdiction.</p> <p>Also, unlike a right to protect one's professional interests described in the Code of Ethics, the meaning of the term "right" in a proposed right to override confidentiality and to disclose is difficult to understand for non-native English speakers such as ourselves. Therefore, we suggest that the term "right" be clarified, in light of in what circumstances a professional accountant is expected to exercise this right.</p>
38.	KICPA	<p>As explained in the Overall Comments, we don't support the proposed inclusion in the Code of the requirement for the professional accountant to override confidentiality principle and disclose suspected illegal act to an appropriate authority. We believe that such requirement should be established by local regulators in a way that best suits local regulatory and judicial environments.</p>
39.	KPMG	<p>For the reasons set out in our covering letter, we believe that requirements relating to overriding the duty of confidentiality can only be effectively addressed in local laws and regulation.</p>

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		<p>We also question the purpose of recognising that a professional accountant has a right to override confidentiality. Although such a right might confer moral or ethical authority on the accountant, it would not confer any legal authority.</p> <p>Further, we disagree with inclusion of the statement that “a professional accountant is expected to exercise this right in order to fulfil the accountant’s responsibility to act in the public interest”. We see this statement as tantamount to a requirement.</p>
40.	KRESTON	The ability to override confidentiality is a matter for national law and is not something that can be introduced consistently through the IESBA Code.
41.	MIA	In principle, we would agree with a right (and not an obligation) for a professional accountant to override confidentiality, however subject to the legal provisions in place. Please refer to our general comments.
42.	Mazars	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
43.	MG	No. For the reasons discussed in our General Comments above, we believe that the decision to disclose a suspected illegal act to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. Additionally, it should not be IESBA, but rather the appropriate legislative bodies in each jurisdiction who should decide whether to impose a requirement on or grant a right to a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant.
44.	NASBA	We have concerns here. Please see General Comments above and the section “Duty and Right to Disclose.”

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45.	PKF	<p>Yes. A right to override confidentiality and disclose certain illegal acts to an appropriate authority (subject to local law) is more appropriate than a requirement to do so, as this leaves the decision to the professional judgment of the professional accountant, taking into consideration all relevant matters, and avoids the situations set out in our response to question (1).</p> <p>Once the accountant has reported a suspicion of an illegal act to an appropriate external authority, we consider that the accountant should have no further responsibility to pursue the matter or establish the outcome. The role of the accountant should be one of 'whistle-blower' only.</p>
46.	RSM	<p>We believe that in exceptional circumstances and when the matter has not been appropriately addressed by the entity, the professional accountant should not be found in violation of the confidentiality requirements under the Code by disclosing an illegal act to an appropriate authority, and therefore should have a "right" (but not a requirement) to override the confidentiality requirements and make such disclosures. This "right" (but not a requirement) would allow the professional accountant to evaluate possible implications of such disclosure outside the entity if appropriate legislative bodies had not established safe harbor "whistle-blower" protections.</p>
47.	SAICA	<p>No, we do not agree that if the matter has not been appropriately addressed by the entity, a professional accountant should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority.</p> <p>Confidentiality should never be compromised unless the situations identified in Section 140 of the Code have been satisfied. That is:</p> <ul style="list-style-type: none"> <li>- Disclosure is permitted by law and is authorized by the client or the employer;</li> <li>- Disclosure is required by law; and</li> <li>- There is a professional duty or right to disclosure when not prohibited by law.</li> </ul> <p>Other than the above, we do not support the right to override confidentiality as we believe that this could negatively affect the working relationship between the client and the professional accountant which in turn could affect the quality of the service provided</p>
48.	ZICA	<p>We believe that when the consequences of non-disclosure are potentially harmful to individuals or society or will cause the professional accountant to be in breach of existing legislation, confidentiality must be overridden.</p>



### 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?***

#	Source	Comment
1.	AAA	In principle, the contributors agree. However, we are concerned that there are currently many disclosures which the public might feel it is in their interest to know, yet relevant facts are not routinely disclosed to them. Thus, this standard is open to considerable variation in interpretation.
2.	ACCA	<p>We are not aware of an alternative criterion to public interest (except for legal compulsion), although we have already expressed our concerns regarding defining the public interest and reaching a global understanding of what public interest entails. Ultimately, this must be a matter of personal judgement, with the result that a wide variation in standard of 'public interest reporting' emerges, with the potential for confusion and abuse of the provisions of the Code.</p> <p>'Public interest' itself could be susceptible to a range of interpretations, including those that might seek to justify non-disclosure. For example, in the case of a company with significant public sector contracts (and employment relying upon them), which is suspected of committing an illegal act, it might be claimed that disclosure is not in the public interest if prosecution could result in the company losing its ability to tender for public works contracts, with the resultant loss of many employees' jobs. This scenario demonstrates that public interest considerations are crucial but certainly not straight-forward, and they require a detailed analysis of the interests of the various stakeholders, as well as the wider public.</p>
3.	AICPA	No. For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate liability safe-harbor protections. In addition, as discussed in General Comment No. 6.3, we believe that the "public interest" standard for disclosure in the Exposure Draft is unduly vague, and would likely lead to inconsistent and subjective interpretations of the obligations that the IESBA proposes to place on professional accountants who become aware of a suspected illegal act.
4.	APESB	<p>APESB agrees that the public interest test is a reasonable threshold for reporting to an appropriate authority, however this should only be in rare and exceptional circumstances and where the suspected illegal act is of such consequence that the disclosure is in the public interest. APESB believes that the Code should incorporate additional guidance to assist the professional accountant in determining what is in the public interest and also provide guidance on how to determine the significance of suspected illegal acts. We suggest that IESBA consider adopting a tiered approach for this guidance in the following manner:</p>

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		<ul style="list-style-type: none"> <li>There will be rare and exceptional circumstances where it will be clear that the disclosure is in the public interest (e.g. major environmental disaster and related falsification of reporting);</li> <li>There will be some circumstances where the professional accountant's judgment will be required in making a determination on whether or not to disclose (e.g. an environmental spill has occurred but it has been promptly dealt by management); and</li> <li>There will be other circumstances where the issues will be minor and it will be clear that disclosure is not required (e.g. a minor fraud in the company and management has taken appropriate actions to address it).</li> </ul> <p>Consideration should also be given to linking the term 'public interest' to the IFAC Policy Position Paper #5 – A Definition of the Public Interest. In the absence of public interest, APESB does not support the obligation to disclose a suspected illegal act unless there is a legal or regulatory obligation to do so or where there are protective mechanisms in place for the professional accountant.</p>
5.	BDO	<p>No. As noted above, we do not agree with the proposal for reporting to an external authority. In addition to the reasons noted above, consideration of the public interest is the only concept important enough to override a fundamental principle; however, determining the public interest is fraught with complexity and differs significantly across different cultures.</p> <p>Although the IESBA attempts to provide guidance by introducing the 'reasonable and informed third party' test, this proposal does not currently provide any clear guidance as to what a 'reasonable and informed third party' might conclude. We believe that this is far from straightforward; in reality the public interest may reflect the views of various constituencies and stakeholders with different and often competing perspectives. Without clear guidance, it is easier to determine public interest after the fact, which leaves the professional accountant exposed in hindsight for non-disclosure, or indeed for disclosure should it prove to be unwarranted.</p>
6.	CalCPA (APAS)	<p>No. As is noted in the ED, in various countries around the world, accountants are already under legal obligations to whistleblow under certain defined circumstances. In other words, governments have legislated such requirements where in the judgment of the government such action is in the best interests of the public. This may be fine, but our professional ethics should not expand the whistleblowing obligation beyond that which is already a matter of law.</p>
7.	CARB	<p>We have set out our concerns regarding the requirement in a Code for professional accountants to report matters other than these require by the law. However in circumstances where IESBA propose to include reporting provisions in the Code, we would refer you to Note 4 in our initial comments. In summary we agree that reporting should be confined to matters of public interest but believe that greater clarity is required.</p>
8.	CCAB	<p>There can be no rationale for breaching the fundamental principle of confidentiality in the absence of a legal requirement, except in the public interest. That must therefore be the right threshold. However, interpretation of what is in the public interest will vary significantly between cultures and between individuals. We understand IESBA's observation that the likely variability of circumstances meant that</p>

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		guidance would be minimal, but there must be a concern that accountants' decisions will be second-guessed by others, with hindsight, exposing them to unreasonable criticism.
9.	CGA Ca	<p>We believe that what constitutes public interest is a highly subjective matter and can be better judged ex-post than ex-ante. As famously stated by the world's greatest investor Warren Buffett, "In the business world, the rearview mirror is always clearer than the windshield."</p> <p>Hence prescribing a threshold in general or generic terms is not right and proper unless the term "public interest" can be clearly interpreted as being set at a very high threshold for reporting. While we appreciate the guidance offered in paragraph 225.11, it is our view that this guidance needs to be more succinct and understandable to readers.</p>
10.	CICA	<p>As noted above in our general comments, the interpretation of what constitutes a suspected illegal act "of such consequence that disclosure would be in the public interest" will differ among jurisdictions, legislators, regulators, professional accountants and the public itself.</p> <p>It is also possible that the interests of one segment of the public may be adverse to the interests of another segment of the public, which requires the professional accountant to judge which interests are to be served. Shareholders or employees are one public segment whose interests could be seriously harmed if the professional accountant discloses information in order to protect the interests of another segment of the public, who might otherwise suffer equal, more or less harm.</p> <p>It would be very helpful if greater clarity was provided as to what the profession believes would constitute a suspected illegal act of such consequence that disclosure would be in the public interest. Perhaps this could be accomplished through the addition of some examples or supplementary guidance. Or perhaps, as we have suggested in our general comments, consideration might be given to establishing different disclosure requirements for different suspected illegal or other acts, with stricter requirements applying to acts that can be described with more certainty.</p>
11.	CICPA	<p>Yes. We generally believe that threshold is appropriate.</p> <p>However, in some cases, it is professional judgment to determine whether a disclosure is in the public interest. We noted that the proposed changes of the Code provided some factors to be considered, such as "number of people that could be affected" (paragraph 225.11), but in many cases, it is difficult for the professional accountant to determine reliably the number of people that could be affected without doing more investigation. Therefore, it is unclear that how much work does the professional accountant need to do and where does the responsibility stop.</p>
12.	CIMA	<p>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.</p>

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13.	CNDCEC	<p>Yes, we agree that reporting to an appropriate authority a suspected illegal act is necessary when there is a real or a strongly believed risk of abuse or legal infraction for which disclosure serves the public interest (for example if the illegal act could cause the organization's insolvency). As to the definition of Public Interest in par. 225. 11 we note that the disclosure is in the public interest when it directly affects a consistent number of people (such as savers in case of a listed entity's insolvency). In this sense, it would not be considered as "in the public interest" any disclosure relating to suspected illegal acts against a single State/Government Authority (for example Tax Authority).</p> <p>In this perspective, we suggest to change the definition in par. 225.11 as follows:</p> <p>"... The determination will require professional judgment and consideration of the nature and magnitude of the matter, including the number of people that could be directly affected by the suspected illegal act and the extent to which those people could be directly affected."</p>
14.	CPA Au	<p>CPA Australia is of the opinion that the right to override confidentiality and report to an external authority should be based on the public interest. However, while the public interest test appears to be appropriate, we can identify several difficulties with its operationalization, as the ability to accurately identify and calculate possible consequences and therefore be able to defend disclosure is a difficulty that professional accountants will face.</p> <p>IFAC defines public interest as: 'the net benefits derived for, and procedural rigor employed on behalf of, all society in relation to any action, decision or policy'. The proposed changes to the Code appear to be based on the assumption that disclosure of suspected illegal acts will result in net benefit. As mentioned in the general comments, it is not clear whether this assumption can be verified as an explicit consideration of the costs, benefits and competing duties is not evident. The approach adopted also appears to be based on the assumption that certain costs can be justified for the achievement of a net benefit but it is not clear who has the right to decide who will bear such costs.</p>
15.	DE	<p>No, public interest in relation the consequence for suspected illegal act, I have doubt about this, for me is very difficult understand the market process, if every suspected illegal act identified of audit firms or professional accountants in this process, can be occur problems for results of entities and regulators.</p> <p>I think that this point is very important but need to be integrating a form and the process for don't has impact in the results of organizations and the proposal of the regulators. If, the regulators don't simplify this process, the organizations couldn't include information in the Integrated Reporting, I don't know. I observed that this point needs to be integrated with idea of the transparency, high quality and objectivity of informations.</p>
16.	DTT	<p>No. For the reasons stated in our general comments above, we do not believe the Code should require the reporting of suspected illegal acts to an appropriate authority. Moreover, this question seems to presume that there is a correlation between the significance of the suspected illegal act and the extent of the public interest, i.e., the greater the consequence of the suspected illegal act, the greater the public interest. We do not support that presumption. The "in the public interest" standard set out in the ED, "consideration of the nature and magnitude of the matter, including the number of people that could be affected by the suspected illegal act and the extent to which those</p>

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#	Source	Comment
		people could be affected,” is vague, as we noted above, and could be read to require the accountant to exercise judgment in areas beyond his or her professional expertise
17.	EFAA	<p>In our opinion the issue is potentially more complicated than that outlined. Our earlier comments addressed the difficulties inherent in the definition of the “public interest”. A clear definition is necessary for the professional accountant to be able to conclude that a threshold has been exceeded.</p> <p>For instance, the issue may involve one that rests within a small “not for profit” organisation. The matter in question may not involve large sums of money but could be of particular interest to certain sections of the local community and therefore would be of public interest. That said, in the scenario outlined this would not necessarily fall into the current view of what the public interest is or when it is best served. We think that this will always be a grey area unless a definition of the public interest is clear and widely accepted. It may also be the case that a matter on its own is not in the public interest but because of other similar “matters” raised or because of a general feeling of unease in certain sections of business or the community, the accountant concludes that this issue should be brought to the attention of others.</p> <p>Whilst we believe that this lack of clarity will result in different practical applications of the Code we are sympathetic to IESBA’s attempt to determine a threshold given the complexity of the issue. Asking professional accountants to use their judgment therefore seems sensible in this regard.</p>
18.	EY	No. As discussed above, the “public interest” is much too vague to be useful in this context. We believe a materiality threshold tied to the financial statements is a more precise measure and is consistent with other existing illegal act reporting frameworks.
19.	FAOA	Yes, but subject to applicable national law. We note that Swiss law does not limit the reporting obligation to cases of public interest (see paragraph 2.2 above).
20.	FAR	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
21.	GTI	As noted above, Grant Thornton agrees that there could be situations where a suspected illegal act could be of such consequence that to act in the public interest, a professional accountant should have the right to override confidentiality in order to disclose the suspected illegal act to an appropriate authority. We do not support requiring a professional accountant to disclose such a suspected illegal act to an appropriate authority unless there is a legal or regulatory obligation to do so.
22.	HKICPA	We consider the guidance included in the existing Code is sufficient in the meantime to assist a professional accountant to act in the public interest. Currently, paragraph 140.7 of the current Code highlights the circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:

#	Source	Comment
		<p>"(a) Disclosure is permitted by law and is authorized by the client or the employer;</p> <p>(b) Disclosure is required by law, for example:</p> <ul style="list-style-type: none"> <li>(i) Production of documents or other provision of evidence in the course of legal proceedings; or</li> <li>(ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and</li> </ul> <p>(c) There is a professional duty or right to disclosure, when not prohibited by law:</p> <ul style="list-style-type: none"> <li>(i) To comply with the quality review of a member body or professional body;</li> <li>(ii) To respond to an inquiry or investigation by a member body or regulatory body;</li> <li>(iii) To protect the professional interests of a professional accountant in legal proceedings; or</li> <li>(iv) To comply with technical standards and ethics requirements." <p>Based on the above, we are concerned as to the appropriateness, and lack of clarity in, the proposed threshold for suspected illegal act reporting.</p> </li></ul>
23.	ICAA	<p>Yes, although it is noted that some considerable degree of subjectivity can be present in determining what is in the public interest. And the public interest in disclosure must always be contrasted with the public interest in clients and employers being able to confide in the professional accountants they engage with or employ. In any event, only the professional accountant involved is going to be in a position to be able to make the assessment as to whether in the particular circumstances disclosure would override the fundamental principle of confidentiality to the client or employer, which in our view is a further argument against obliging the accountant to disclose.</p>
24.	ICAEW	<p>The basic consideration for overriding a fundamental principle can only be a public interest duty: there should be disclosure if the public interest in disclosure outweighs the professional duty of confidence. However, making such a determination could put the accountant in an impossible situation: different people will have different views, including reasonable and informed third parties. This is particularly so in cross-border situations: different cultures have different ideas about the public interest.</p> <p>It is a lot easier to determine public interest after the fact: human nature being what it is, the accountant could be open to hindsight criticism for non-disclosure. Consider examples: (a) of a construction company where there is a failure to follow health and safety, or (b) of a client's car being seen with a bald tyre: in each case these are likely to be minor offences but could be potential killers.</p> <p>There will also be an interaction with national legislation on, eg whistleblowing, where there may be different reporting thresholds.</p> <p>These illustrate the difficulties in making a public interest determination: given the variable circumstances, only the professional can make that determination and whether he or she needs to make a disclosure.</p>

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25.	ICAP	As pointed out earlier, there is a substantial need of explaining the term 'public interest' for further clarity. A detailed guidance is required as to which suspected illegal act can affect the 'public interest', how can it affect and to what extent it can affect?  Without providing a very clear yardstick or guidance, the matter of deciding among various situations would create extreme difficulties for the professional accountants, especially in the matters of dispute.
26.	ICAS	We agree with the proposed required threshold. However, there are significant issues related to this:  (i) we would reiterate that the applicable legal framework needs to permit such reporting and provide a safe harbour for doing so.  (ii) whilst in theory this is the right threshold to be applied, there is unfortunately no globally agreed definition of 'public interest'. Therefore, interpretation of what is in the public interest will vary significantly between cultures and between individuals. This in itself is a significant issue.
27.	ICJCE	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.
28.	ICPAC	Yes
29.	ICPAK	We are in agreement; however, we suggest that reporting should follow in a sequence. For example an accountant should not report to relevant public authorities before reporting to those charged with governance of the entity.
30.	ICPAR	Agree
31.	ICPAU	Yes, we agree with the proposal, public interest obligations of the professional accountant should override any confidentiality requirements.
32.	IDW	Given our concerns already explained elsewhere, we do not agree that IESBA is the appropriate body to determine such a threshold, nor that the professional accountant should be required to determine the public interest connotations for each and every suspected illegal act of which he or she may become aware during the provision of audit or other professional services or by dint of his or her employment as an accountant. In our view, the exact determination of such a threshold is a matter for national regulators.
33.	IFAC PAIB	We agree. Being in the public interest is an appropriate threshold for reporting to an appropriate authority. In this respect, the PAIB Committee notes that "the public interest" is wider than "the general public" and can consist of all types of stakeholders.

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		Contrary to the IESBA, however, the PAIB Committee believes that disclosures of suspected illegal acts within smaller organizations without an external auditor can still be in the public interest. <sup>3</sup> Not only because various external or internal stakeholders, including employees, could be severely disadvantaged by such illegal acts (for example, society as a whole in the case of tax fraud), but also because having a professional accountant in business who is acting inappropriately could damage confidence in the profession.
34.	IFAC SMP	We do not believe that there yet is sufficient common understanding of what is in the 'public interest' for these proposals to be mandated. Some consider tax evasion to be in the public interest, irrespective of the sums involved, others do not, whereas others may take a different view depending on the sums involved. Despite the guidance offered in paragraph 225.11, it is not sufficiently clear what the IESBA means by "public interest" or where the threshold for reporting would be.
35.	IIA	<p>Yes, we agree that the threshold for reporting to an appropriate authority should be when the SIA is of such consequence that disclosure would be in the public interest. The assessment would require professional judgment and consideration of the legal and regulatory requirements; nature, severity and magnitude of the matter; availability of sufficient, reliable evidence on the issue; and an obligation to balance a need for wider disclosure with due confidentiality. The assessment should be consistent with IFAC Policy Position 5, issued in June 2012 on A definition of Public Interest.</p> <p>Accordingly, "the public interest is defined as the net benefits derived for, and procedural rigor employed on behalf of, all society in relation to any action, decision or policy. Implicit in this definition is the need for assessing the cost benefits, the extent to which, for society as a whole, the benefits of the action, decision or policy outweigh the costs, and the process. the extent to which the manner of considering the action, decision, or policy was conducted with the qualities of transparency, public accountability, independence, adherence to due process, and participation that includes a wide range of groups within the society. There is a need for proportionality in both assessments. It is important that the application of these assessments be proportional to the importance of the matter under consideration."</p>
36.	IMA	See response to question #2 above for our view on the use of the word "suspected" instead of a "clear violation." We also believe that the word "materially" should be added in front of the phrase "in the public interest" in the IESBA document. In other words, it's important that this be a significant or material issue which would affect the public interest, and not a frivolous or minor issue.
37.	IRBA	Concern has been raised that the definition of "public interest" is too vague and judgmental and insufficient criteria are available to ensure a consistent and objective of the materiality of a suspected illegal act to be established as a threshold for reporting to an appropriate authority. For example, Securities Regulators may have a more narrow perspective focused on the possible impact for investors on misleading price sensitive information, whereas other regulators may have a much broader view of stakeholders whose interests may be materially and adversely impacted by suspected illegal acts by an entity.

<sup>3</sup> See the IESBA's Explanatory Memorandum under "Entities with No External Auditor."



#	Source	Comment
		<p>The expectation in Section 225.11 that “the auditor consider the number of people that could be affected by the suspected illegal act and extent to which they could be affected” as a threshold, seems largely impractical, and public interest is merely one of the factors to be considered. An auditor may be expected to consider “public interest” as one of the factors, amongst many other factors, when evaluating the possible impact of suspected illegal acts that have caused, or are likely to cause, “material financial loss to the entity, or any partner, member, shareholder, creditor or investor of an entity in relation to his or her or its dealings with that entity” is possible. This latter basis, however, is likely to provide a more consistent basis for determining whether a suspected illegal act should be reported to those charged with governance or an appropriate regulator, since the auditor considers the materiality in the context of that applied in the evaluation of materiality in their audit of the financial statements of the entity.</p> <p>We consider that reporting should not be limited only to those matters that are viewed as being in the public interest, but extend to those suspected illegal acts that may be criminal or statutory offences. Different jurisdictions are likely to view the concept and “quantum of losses” that are in the “public interest” very differently. In all cases it will require the exercise of professional judgement by the professional accountant / auditor to determine whether or not, and to whom, a suspected illegal act should be reported in the particular circumstances.</p>
38.	JICPA	<p>We do not agree with the proposal. Since the threshold for reporting to an appropriate authority, which described as suspected illegal acts that are of such consequence that reporting would be in the public interest, is not clear enough, it would be very difficult to determine when a matter is in the public interest, and as a result, could possibly cause an excessive burden on practice or an inconsistent conclusions among professional accountants. We are therefore concerned that such a threshold would be highly ineffective in the absence of explicit legal provisions with well-defined circumstances.</p> <p>Also, we are not sure of a circumstance when the public interest threshold could justify disclosures overriding the confidentiality principle in services other than financial statements audit of listed companies. Therefore, we believe that the threshold, defined as “a suspected illegal act is of such a consequence that disclosure to an appropriate authority would be in the public interest,” is too abstract to be applied uniformly and appropriately to all services performed by professional accountants.</p> <p>In addition to the threshold that a suspected illegal act is of such a consequence that disclosure would be in the public interest, we believe that there should also be a threshold established to reflect laws and regulations of relevant jurisdictions, and that each jurisdiction should be permitted to decide its own threshold for reporting.</p>
39.	KICPA	<p>As described in the Exposure Draft, what is deemed to be in the public interest varies from person to person. The judgment required to make this determination is subjective and can result in inconsistent results. So we don't agree with the change proposed by IESBA that the determination should be based on ‘whether disclosure is in the public interest’, which is a subjective and ambiguous criteria, although such determination can result in drop in share price and harm to good reputation of the concerned entity and the professional accountant's exposure to litigation and legal liability. We ask IESBA to re-consider this matter, taking into account other country practices, to provide concrete and clearer criteria for determination.</p>

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40.	KPMG	Yes, but for the reasons set out in our covering letter, we believe that requirements relating to overriding the duty of confidentiality can only be effectively addressed in local laws and regulation. It must be recognised that the duty of confidentiality and the duty to disclose are both matters of public interest and many countries have legislative requirements that determine when disclosure is appropriate.
41.	KRESTON	It is not within the knowledge and experience of many professional accountants to determine what is in the public interest and this may also differ across jurisdictions.  We have no comment on the appropriate threshold as it is not considered that this is the role of the professional accountant.
42.	MIA	In principle, we would agree that when in the professional accountant's opinion, the suspected illegal act is of such consequence that disclosure would be in the public interest, the professional accountant should have a right to disclose, subject to the law provisions in place.  In addition we do not think that the professional accountant should be expected to exercise this right but that such a matter should best be left to the professional accountant's discretion after having applied his professional judgement.
43.	Mazars	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.
44.	MG	No. For the reasons discussed in General Comments No. 5 above, we believe the "public interest" standard for disclosure in the Exposure Draft is vague, and would likely lead to inconsistent and subjective interpretations of the obligations that the IESBA proposes to place on professional accountants who become aware of a suspected illegal act. We believe professional accountants would be more familiar with the concept of materiality and therefore disclosing matters that have a material impact on the financial statements would be a more concrete threshold.
45.	NASBA	We have mixed views on this complex issue and much of our response is colored by uncertainty about what is meant in the proposal by "such consequence that disclosure would be in the public interest."  Primary responsibility for disclosure always rests with management. The duty of professional accountants should be driven, at least initially, by national and local laws and regulations and not by a private-sector standard setter. However, we also recognize that on rare occasions ethical dilemmas arise, pitting the duty of confidentiality to a client or employer against a duty to the public interest.  Also, please see General Comments above and the section "Scope of the Proposed Standard" and subsections "Public Interest" and "Suspicion Threshold."

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#	Source	Comment
46.	PKF	<p>Yes. This should, however, be subject to additional jurisdictional reporting requirements which may have different thresholds.</p> <p>In addition, the interpretation of the term “in the public interest” may vary in different jurisdictions. The ED includes a “reasonable and informed third party test” which is important, but professional accountants in different jurisdictions (e.g. one in a highly litigious environment as opposed to not) may come to very different conclusions using this test. We note that IFAC has done some work in relation to a definition of the public interest (IFAC Policy Position 5, June 2012, ‘A definition of the public interest’ together with its ‘At a glance’ summary and appendices) but we note that the exposure draft does not refer to this work, which we would have expected.</p> <p>As a minimum, there needs to be some flexibility and additional guidance in the Code in determining what is “in the public interest” and this should be a matter of professional judgment for the accountant.</p>
47.	RSM	Please refer to our comments above under the caption ““Disclosure in the Public Interest.”
48.	SAICA	Yes, we agree, however public interest is not defined in the exposure draft and is therefore subject to interpretation. In order to safeguard the professional accountant, public interest should be defined and steps should be given on how to apply this in the various jurisdictions.
49.	ZICA	Yes we do 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.

#### 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?***

#	Source	Comment
1.	AAA	Here the opinions of contributors diverged. One contributor feels that the public accountant providing audit services is charged with protecting the interest of the investing public. However, those providing non-audit services are not responsible to entities outside of the client. Thus, this dichotomy of expectations seems reasonable. Two other contributors felt that since reporting of illegal acts is in public interest in general, then such requirements should also apply to accountants providing non-audit services as well.
2.	ACCA	The professional accountant should always be mindful of his or her public interest responsibility, and must take appropriate action when in the public interest, subject to the professional accountant being protected by law in his or her particular jurisdiction.  However, the requirements of auditors are stringent and clearly defined. (See our previous comments in respect of ISA 250.) Services provided to a non-audit client arise from a contractual arrangement and a different relationship between the client and the professional accountant, which relies, to a great extent, on safeguarding confidentiality. Different 'public interest' considerations apply. We would reiterate our support for the approach for auditors set out in ISA 250 and, particularly, the guidance provided in that standard.
3.	AICPA	We agree that it may be appropriate to establish a standard for a professional accountant in public practice providing services to an audit client that differs from the standard for a professional accountant in public practice providing services to a non-audit client. For example, a non-auditor providing services to an audit client may be able to share information about a suspected illegal act with the audit engagement partner for that client. In comparison, a professional accountant who is providing services to a non-audit client may be restricted by law or contract in his or her ability to provide such information to an external auditor. In addition, due to the audit relationship, a professional accountant providing services to an audit client may be able to take advantage of existing lines of communication at a client, in order to escalate a matter with senior levels of management or those charged with governance, whereas a professional accountant providing services to a non-audit client may not have access to similar lines of communication.
4.	APESB	As noted above where the disclosure is in the public interest, APESB supports the professional accountant's right to disclose a suspected illegal act. We believe that such a right should apply to both professional accountants in public practice providing services to audit clients as well as non-audit clients.  In the Australian context, legislation mandates that public company auditors report breaches to the regulator in certain circumstances and also provides them with legal protection in such matters. Professional accountants in public practice providing services to an audit client should be held to a higher standard and this should apply only in consideration of matters that are within the scope of the financial report.

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#	Source	Comment
		However, professional accountants serving non-audit clients should not be deterred from disclosing suspected illegal acts where the matter is within their expertise and providing them with a right to do so will support this objective.
5.	BDO	There is some justification for considering these two situations separately (e.g., the professional accountant providing non-audit services to an audit client may be able to discuss matters with the auditor from his or her firm in a way that he or she would be prohibited from doing, for example, through contractual confidentiality if that auditor were not from the same firm). However, the current proposals do not clearly describe the reason for treating these parties differently. On the basis that all professional accountants should be subject to the same fundamental principles, this needs to be clarified before we can support such a distinction.
6.	CalCPA (APAS)	No. An illegal act is an illegal act. If an accountant is to have certain responsibilities regarding suspected illegal acts, why should those responsibilities be different depending on the nature of the service provided?
7.	CARB	Whilst accepting that the law may create differing reporting obligations we do not believe that the Code, which is based on a set of fundamental principles, should distinguish between the rights or obligations of professional accountants regardless of whether they are carrying out audit or non-audit services.
8.	CCAB	The IESBA code of ethics is based around a set of fundamental principles that apply to all professional accountants on all of their professional and business activities. It provides additional independence requirements for those giving audit and other assurance opinions because of the nature of those opinions. However, the assurance opinions are not relevant to this matter of overriding confidentiality and we do not believe that a distinction is appropriate. All professional accountants should be in the same position in terms of assessing whether an override of the fundamental principle of confidentiality would be in the public interest.
9.	CGA Ca	We disagree with the idea of differential standards for a professional accountant in public practice providing services to an audit client and for a professional accountant in public practice providing services to a client that is not an audit client. We believe that such proposal does not enhance the standing of the profession and degrades the value of services rendered by a professional accountant to a non-audit client. We are also doubtful if such differential standards will pass scrutiny in a court of law. We are not aware of such differential standards among other learned professions, such as medicine, and do not expect differential standards of care prescribed for cardiologists and family physicians, for example.
10.	CICA	We do not agree that the disclosure standard should differ based on the nature of the service, the client or whether the professional accountant is an auditor, other service provider, or employee. We acknowledge that the auditor may be perceived to have “higher” responsibility to the public, may have easier access to those charged with governance and may be in a better position to escalate an issue to that level (which may or may not resolve the matter). However, on the basis that the “non-auditor” professional accountant is truly concerned that the public is at risk and has exhausted whatever escalation is available, then public protection should still be the overriding concern and the “non-auditor” professional accountant should have the same disclosure obligations as a professional accountant who is an

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		auditor. On a more technical note, as proposed, the disclosure standard applies differently to “auditors” and “non-auditors”, but it is not clear whether “audit” is intended to include professional accountants who provide review or other assurance services.
11.	CICPA	Yes. Generally, providing services to an audit client involves more public interest, so the professional accountant’s responsibility should be more rigid.
12.	CIMA	Questions 4-10 No comment.
13.	CNDCEC	We agree with the proposed standard.
14.	CPA Au	CPA Australia is of the opinion that the standard for all professional accountants should be the same and every professional accountant should have the right to make a public interest disclosure of a suspected illegal act. As mentioned in our general comments, we are of the opinion that any requirement to disclose should be imposed by the law and not by the Code, because it is only the law that can offer protection from liability and retaliation to professional accountants.
15.	DE	<p>No. I think that professional accountants in public practice need to be the same for activity for to attend the objective of the profession. I believe that used of the informations independent of audit client or not, the results cannot to be different.</p> <p>I understand that the professional need to be responsible in your activities, if not what happened if the professional makes consult services for client and audit services for other. This point is very complex, I suggest for the board if agree consult IOSCO and European Commission in relation this aspect, your discussions and results can be have direction of differences.</p>
16.	DTT	Professional accountants in public practice who provide audit services are required to perform the engagement in accordance with the ISAs and all local and national standards. As noted, the issue of suspected illegal acts and the actions the auditor should take are addressed in the ISAs, which we fully support. We do not believe the Code is the appropriate place to draw distinctions between the ethics standards that apply when the client is an audit client versus those that apply to non-audit clients (other than independence standards for obvious reasons).
17.	EFAA	<p>We do not believe that the standard should differ as in our mind the only difference in respect of the fundamental ethical principles should surround the issue of independence and we do not believe that this is of importance in the sphere of “illegal acts”.</p> <p>What is clear is that the roles and responsibilities may be different and the requirements must thus accommodate such differences. As previously mentioned, an SMP involved in the day to day business of its SME client may well come across very small matters that he judges to be suspected illegal acts. The auditor, on the other hand, will be looking for material issues.</p> <p>To that end we believe there would be merit in including similar wording in the section entitled “Professional accountant Providing Services to a non-audit Client” in respect of the ability for the practitioner to consult legal advice to that included within paragraphs 225.22 and 225.8.</p>

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18.	EY	We would support a change in the Code to permit an accountant who is providing a non-audit service to a non-audit client to inform the client's external auditor of potential illegal acts discovered at the client, although this right should not impact forensic accounting and similar non-audit services which are provided under legal privilege or pursuant to contractual confidentiality obligations.
19.	FAOA	Yes, but subject to applicable national law (see paragraph 2.2 above).
20.	FAR	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.
21.	GTI	<p>As noted above, Grant Thornton would support the Board providing for the right to disclose suspected illegal acts, coupled with guidance specifying when such disclosure should be made. We believe that such a right to disclose should apply to both professional accountants in public practice providing services to audit clients and also to professional accountants in public practice providing services to a client that is not an audit client.</p> <p>In addition, we believe that the exposure draft as written does not truly distinguish between the professional accountant in public practice providing audit services and the professional accountant in public practice providing non-audit services because a right to disclose with an expectation to exercise this right is in reality a requirement to disclose. For the reasons stated in the body of our letter, Grant Thornton does not support a professional accountant being required to disclose an illegal act to an appropriate authority, unless there is a legal or regulatory obligation to do so.</p>
22.	HKICPA	We consider the role of a professional accountant in public practice providing services to a client that is not an audit client, and a professional accountant in business are more fiduciary in nature towards the client and employer. Without necessarily agreeing to the proposals as they would impact on a professional accountant in public practice providing services to an audit client, we consider the standard for such a professional accountant should be different from the standard for a professional accountant in public practice providing services to a client that is not an audit client and a professional accountant in business: for example, the auditor owes a duty to a company's shareholders whereas the non-auditor does not
23.	ICAA	<p>The Institute notes that in this context the standard for a professional accountant in public practice providing services to an audit client already differs from the standard for a professional accountant in public practice providing services to a client that is not an audit client, due to the operation of auditing and assurance standards, and, in Australia, to the legislative requirements of the Corporations Act, which provide obligations for auditors to deal with certain suspected illegal acts.</p> <p>Because of the effect of those obligations, we do not consider that any further distinction should apply within the Code's treatment of suspected illegal acts, as this would potentially involve duplication of or conflict with existing requirements.</p>

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#	Source	Comment
24.	ICAEW	<p>No. We agree that an audit does have some different characteristics from other services:</p> <p>The auditor is appointed to report to shareholders - already a form of public reporting;</p> <p>It is a service imposed by law, whereas most other services are contractual. That is why law often distinguishes reporting duties for auditors from others.</p> <p>The relevant public (see Acting in the public interest: a framework for analysis ) is likely to be wider for many audits than for most contractual services.</p> <p>However, the discussion paper does not clearly justify why these characteristics should result in a different level of imposed requirement. The code applies the same fundamental principles to all professional accountants. The basic public interest/professional duty of confidence equation is the same, albeit auditors may consider that a different balance applies and the factors to be considered by accountants in different roles may be different (see our comments on question 7 below). That must be for their judgement however as an absolute requirement cannot cater for all likely circumstances.</p>
25.	ICAP	Only to the extent permitted in the Code of Ethics.
26.	ICAS	We are not supportive of a different standard. The fundamental principles of the IESBA Code of Ethics apply equally to all professional accountants, whether they be in audit or otherwise. Although the Code provides additional independence requirements for those giving audit and other assurance opinions because of the nature of those opinions this fact is not relevant to the matter in question re that of overriding the fundamental principle of confidentiality. Therefore, we do not believe that such a distinction is appropriate. All professional accountants should be on an equal footing in terms of assessing whether an override of the fundamental principle of confidentiality would be in the public interest
27.	ICJCE	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.
28.	ICPAC	No. The standard applied should be the same regardless of service offered. Just as auditors do not actively go out to detect fraud and are obligated to report it when they do across it, this should also apply for the professional accountant in public practice providing non-audit services to a client.
29.	ICPAK	Yes



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#	Source	Comment
30.	ICPAR	Agree
31.	ICPAU	We do not agree that the type of service provided by the professional accountant should have any bearing on their response to suspected illegal acts. We, however, acknowledge that the professional accountant in public practice in the course of executing their duties is entitled to and likely to access more information than the professional accountant providing other services.
32.	IDW	No. As explained, we do not support the proposals that would alter the role of the auditor and of the accountant; the proposed difference is, in our view somewhat arbitrary.
33.	IFAC SMP	<p>In principle at least the standard for a professional accountant in public practice providing services to an audit client should not differ from the standard provided to a non-audit client. The basic public interest/professional duty of confidence equation is the same albeit the factors to be considered by professional accountants in different roles may be different. Also, differential standards would devalue the services rendered by a professional accountant to a non-audit client (i.e. would elevate the status of auditor). In addition, other professions do not differentiate (i.e. you do not expect a reduced standard of care from a family physician than you do a cardiologist). However, there is an important distinction between that of an auditor and that of a business advisor. The auditor is perceived by the public as a “watch dog”, independent of the client and with a responsibility to act in the public interest. This perception is reinforced by statutory obligations in many jurisdictions. On the other hand the business advisor will likely be seen by the public as an advisor to the business who owes a primary duty of care and confidentiality to the client. The trusted advisor relationship is evident in the business advisor case but not in the auditor case. In short, the public may have different expectations of the business advisor and the auditor such that the business advisor is expected to favor the client while the auditor is expected to favor the public interest and the users of the financial statements.</p> <p>We also suggest a slight expansion to the penultimate sentence in paragraph 225.5, to the effect that the professional accountant may also wish to consult with a legal advisor under the protection of legal privilege. We acknowledge that this same text is subsequently included in paragraphs 225.8 and 225.22; however we believe that this repetition may be helpful in highlighting a further option available to practitioners, particularly SMPs, who may not have “others within the firm” or be part of a network.</p>
34.	IIA	<p>Yes, we agree that the standard (Code of Ethics) for a PAIPP providing <u>audit services</u> to an audit client should differ from the standard for a PAIPP providing <u>non-audit services</u> to an audit client or a non-audit client because:</p> <ul style="list-style-type: none"> <li>- A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act “in the public interest”. In an audit, the public accounting firm is hired specifically for public interest, to issue an opinion on its audit of the financial statements. PAIPP are required to comply with external audit standards, which include obligations to report SIAs and access to those charged with governance is a general trait of a PAIPP providing audit services. Additionally, public accounting firms generally have established reporting and escalation processes for SIAs.</li> </ul>

#	Source	Comment
		<ul style="list-style-type: none"> <li>- PAIPPs providing non-audit services to a non-audit client are hired to perform various services that may not directly relate to “public benefit or interest”.</li> </ul>
35.	IRBA	<p>We do not agree, however, that there should be any difference in the quality of professional services provided to an audit or non-audit client. A consistently high standard of ethics should be applied by all professional accountants / auditors in accordance with the fundamental principles in the IESBA Code in respect of all professional services provided to the public. The Code is not the appropriate place to seek to set different ethics standards for professional services provided to audit or non-audit clients. The standards required for services provided by professional accountants / auditors to audit and non-audit clients are covered in the IAASB standards for audit, assurance, reviews and related services engagements respectively, or related National Standards in different jurisdictions, that differentiate between the types of services provided</p> <p>The relationship between the professional accountant / auditor providing audit services to an audit client is quite different from that of a professional accountant / auditor providing other non-audit professional services to a non-audit client.</p> <ul style="list-style-type: none"> <li>• Firstly, a professional accountant / auditor who is not the auditor of the entity cannot be assumed to have an audit knowledge of the client and may be quite unaware that a suspected illegal act has, or is likely to have occurred or be able to assess the possible impact from their more narrow perspective. An auditor is required to report on the financial statements of the entity as a whole and is expected to obtain sufficient appropriate evidence to support that opinion. Where a suspected illegal act may exist that could materially affect the financial statements, the auditor complies with the requirements of ISA 250, or the equivalent in the particular jurisdiction and cannot simply ignore any suspicions.</li> <li>• Secondly, when providing non-audit services to a non-audit client, a professional accountant may not have a right of access to obtain information or to inquire into matters outside of their particular professional engagement, to determine whether or not they do indeed have reason to believe that a suspected illegal act has, or is likely to have occurred, beyond the particular professional services they are providing. The client will expect that the professional accountant respects the confidentiality of their professional relationship with the entity and this may be included in their contractual arrangements with the client. If the professional accountant seeks to report their suspicions to the auditor of the entity or an appropriate regulator this could result in the client taking legal action against the professional accountant for a breach of contract and given the more limited perspective the professional accountant may have could lead to a misunderstanding regarding the suspected illegal act. Unlike an attorney, where attorney: client privilege is protected, a professional accountant does not enjoy such protection.</li> </ul>
36.	JICPA	<p>We agree with the proposal.</p> <p>In consideration of the subject matter of services provided to a non-audit client, requiring a professional accountant in public practice providing services to a non-audit client to report suspected illegal acts similar to a professional accountant in public practice providing services to an audit client would be overly burdensome. As they may not have appropriate access to management or those charged with</p>

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#	Source	Comment
		governance of an entity, it may be difficult for them to comply with such requirements in practical terms. For these reasons, we believe that it would be inappropriate to apply the same requirements.
37.	KICPA	<p>We don't agree with the proposed requirement for the professional accountant in public practice providing professional services to an audit client of the firm, or a network firm to disclose suspected illegal act to an appropriate authority. As an auditor, the accounting firm that provides audit service should identify and assess the impact of suspected or identified illegal act on financial statements or related risks, in accordance with auditing standards. In case such illegal act results in a material misstatement of the financial statements, the firm should modify the opinion in the auditor's report or disclaim an opinion on the financial statements.</p> <p>Imposing on the auditor additional requirement to disclose suspected illegal act to an appropriate authority, in addition to the requirement of auditing standards, can widen the existing expectation gap between users of audit report and auditors regarding audit engagement. In case a suspected illegal act is disclosed to an appropriate authority, the market may think that such illegal act has actually been committed. And the auditor's act of disclosing such act to an authority itself can cause an excessive and drastic impact on the capital market. This may lead to a wider expectation gap between users of audit report and auditors regarding audit engagement, e.g. misguiding them to believe that the detection of illegal act is included in the scope of audit engagement, negatively impacting the public interest.</p> <p>To the extent that an auditor performs the procedures requested by auditing standards with regards to identified or suspected illegal act, there is no need to define their obligations in addressing suspected illegal act differently from those of other professional accountants.</p>
38.	KPMG	<p>We see no reason why the standard should be different for an accountant providing services to a non-audit client from an accountant providing services to an audit client. The guidance in the Code should apply equally to both in respect of communicating suspected illegal acts to the appropriate level of management. In the event that appropriate action is not taken, the Code should provide guidance as to next steps which should include considering the requirements of local laws and regulation and obtaining legal advice on how to proceed. We see this as important since, as discussed in our response to question 3, local laws and regulations may have a different view as to how the balance between confidentiality and disclosure should be struck for auditors (who typically have a statutory responsibility) and for most advisors, including professional accountants, (who ordinarily do not, such relationship being limited to a contractual relationship with a client).</p>
39.	KRESTON	<p>Stakeholders are likely to have similar expectations of both an auditor and a professional accountant providing non audit services regarding the actions to be taken in respect of suspected illegal acts. As previously noted auditing standards already provide requirements for auditors. If there is any differentiation this should be determined by law.</p>
40.	MIA	<p>No we do not agree that should be a distinction between the standard for a professional accountant in public practice providing services to an audit client and the standard for a professional accountant in public practice providing services to a client that is not an audit client and</p>

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#	Source	Comment
		we think that there is no justification in the ED for proposing different requirements. We think that International Standards on Auditing (ISAs) are sufficient to cover any circumstances relating to audit.
41.	Mazars	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.
42.	MG	We agree that it may be appropriate to establish a standard for a professional accountant in public practice providing services to an audit client that differs from the standard for a professional accountant in public practice providing services to a non-audit client.
43.	NASBA	No. The nature or the level of service rendered to a client has no bearing on the accountant's duty to the public interest. We recognize that the inputs of information will differ based on the nature or level of the service rendered, but the output response should be the same. <sup>4</sup>
44.	PKF	No. The fact that the professional accountant may be providing services to an audit client or a non-audit client is not relevant. It is the professional accountant's response to encountering the suspected illegal act that is important, not whether the entity is subject to an audit requirement or not. It is the fact that the professional accountant is in public practice that is relevant.  The ED comments that "it is appropriate for an auditor to be required to disclose certain suspected illegal acts because of the auditor's role in safeguarding the public interest" but the very first sentence of Part A of the Code makes it clear that it is all professional accountants that should act in the public interest: paragraph 100.1 "A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest." It is therefore unclear why the IESBA considers it appropriate to include this distinction in the ED.
45.	RSM	Yes. We agree that it may be appropriate to establish a standard for a professional accountant in public practice providing services to an audit client that differs from the standard for a professional accountant in public practice providing services to a non-audit client.
46.	SAICA	Yes, we do believe that the standards should make this distinction. Professional accountants in public practice providing external audit services are regulated by legislation in South Africa and required by law to report unlawful acts or omissions. We believe that this legislation is sufficient in the South African context and we do not support further regulatory impositions on accountants in public practice who provide non-audit services.
47.	ZICA	The Institute supports the proposal, when a professional accountant in public practice providing services to an audit client should disclose illegal acts that affect the client's financial reporting, while a professional accountant in public practice providing services to a client that is not an audit client should only disclose illegal acts in relation to the scope of the engagement.

<sup>11</sup> Since the issue in this question centers on confidentiality, it is worth noting that the "principle of confidentiality imposes an obligation on *all* professional accountants," *IESBA Code, Confidentiality, Section 140.1*.



# **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?***

#	Source	Comment
1.	AAA	Yes. This is the appropriate requirement. However, there should also be some consideration of litigation risks to the auditor and possibly instituting appropriate safe harbor protections for the auditor (e.g. an auditor cannot be sued if he/she makes this disclosure in good faith).
2.	ACCA	<p>The auditor has a mechanism to report under ISA 250, and we would refer you to our answer to question 1. More generally, if the professional accountant has suggested that the client make a disclosure, for example to a regulator, and the client has not, then we must return to considering the need to disclose the matter in the public interest. Although failure of the client to make the disclosure might have an impact on the professional accountant's assessment of the public interest, there can be no 'bright line' rule about overriding confidentiality based purely on whether or not the entity itself has made certain disclosures.</p> <p>We have grave concerns over the introduction of a requirement – particularly in a global context – but would welcome guidance concerning overriding confidentiality in the public interest, and seeking legal advice concerning the legal protection that might exist in a particular jurisdiction.</p>
3.	AICPA	No. For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant in public practice. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate liability safe-harbor protections. If an entity has not made adequate disclosure to an appropriate authority in a situation where the auditor believes such a disclosure is warranted, we believe the auditor should be required to consider his or her continuing relationship with that entity
4.	APESB	<p>APESB agrees with the right for an auditor to override confidentiality and disclose certain suspected illegal acts to an appropriate authority, in the public interest, if the entity has not made adequate disclosure within a reasonable period of time after being advised to do so. In the Australian context, public company auditors are required by legislation (section 311 of the Corporations Act 2001) to report to ASIC of any contravention of the specified legislation.</p> <p>Where the entity has not taken action and it is in the public interest to disclose, another option available to the external auditor is to disclose the matter in the auditor's report, where it relates to the financial report.</p>
5.	BDO	No. As described above, we do not agree that the professional accountant should be required to disclose to an external authority.

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#	Source	Comment
6.	CalCPA (APAS)	<p>No. The entire foundation on which this ED is constructed is a house of cards. The question of legality is ultimately determined in a court of law, in many cases only after years of investigation and prosecution. Requiring an accountant to act based on suspicions imputes to the accountant knowledge that IS ALWAYS far outside the accountant's expertise, e.g. Is there sufficient evidence to prosecute? Is there sufficient evidence to obtain a conviction? Such questions are beyond the scope of any accountant's ability to answer.</p> <p>Moreover, accountants are not lawyers and as a matter of law, at least in certain countries, practicing law without a license is itself a criminal offense. How can our ethics possibly contemplate requiring an accountant to practice law by requiring the accountant to give a client legal advice, especially legal advice about a possible criminal act? This is an unconscionable idea. So, what should an accountant do when faced with suspicions about possible illegal acts that have been communicated to the client at all levels and the client has not responded? The accountant should consult with his/her own legal counsel and withdraw from the engagement.</p>
7.	CARB	<p>We do not believe that the Code, should 'require' a professional accountant to make a report. We believe that if this area is to be addressed in the Code that professional accountants should have a 'right' to disclose. Where there is a right and the professional accountant determines that, in the public interest, a report should be made then they should not be hindered by any obligation of confidentiality as set out in the Code. As stated before, we believe that reports should be made where there is a legal obligation to do so and in such circumstances the professional accountant will have legal protection from any charges of a breach of confidentiality.</p>
8.	CCAB	<p>We agree that professional accountants should have a right to disclose, where they consider that an override of the fundamental principle of confidentiality would be in the public interest, and the law permits it. Interaction with law, particularly anti-money laundering legislation, is likely to be complicated. The law must prevail and this interaction needs to be highlighted more strongly than it is in the draft.</p> <p>As noted above, we do not support a distinction between accountants serving different types of client or employer, in terms of whether there should be a requirement or an obligation and we do not believe that an obligation would be appropriate. An obligation of this sort has much more of the characteristics of a legal requirement rather than a behavioural ethical issue and it would sit uneasily in a code of ethics. In addition we believe that its effect would be counterproductive, undermining the role of the professional accountant as a trusted advisor and reducing the likelihood of the accountant becoming aware of a potential illegal act in the first place. This in turn would reduce the ability to counsel against the offence or, in the event that it continued to fruition, report it.</p> <p>In addition, an obligation moves further away from the principles based approach the code espouses and brings in more legalistic questions of scope and definition. A number of the matters in the draft (such as what a public interest matter is and what falls within the expertise of the accountant) are open to significant difference of view and would create difficulties if they had to be formally defined.</p>
9.	CGA Ca	<p>Please refer to our response to Question 2. We believe that under such circumstances, the proper course of action for the professional accountant would be to dissociate from such client and comply with the law of the jurisdiction.</p>

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10.	CICA	We agree that, in principle, 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.  However, we temper that agreement with a caution that it is very important to further develop and clarify what those reportable suspected illegal acts are and in so doing carefully consider the possible “chilling effect” of such a disclosure requirement on the trust relationship.  In addition, our comment is based on the proposed alternate framework that includes appropriate whistleblower protection.
11.	CICPA	Yes. We believe that will be helpful for professional accountants to act in the public interest
12.	CNDCEC	We agree with the proposal that, in serving the public interest, the auditor is required to override confidentiality if the entity, requested to disclose, has not taken appropriate actions to make it within a reasonable period of time.
13.	CPA Au	Please see our response to question 4.
14.	DE	Yes, I 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, I suggest observed the response of FRC about ISA , Audit Quality and Financial Instruments and G20 meeting .
15.	DTT	No, for the reasons stated above. We believe the auditor should follow the requirements in the ISAs. Management and those charged with governance are responsible for determining whether suspected illegal acts get reported to appropriate authorities.
16.	EFAA	Notwithstanding our concerns surrounding the definition of the public interest it seems appropriate that this would be a consideration that the auditor should make. Again we would suggest that this be a matter for professional judgement and not an obligation necessarily.
17.	EY	We do not support a requirement in the Code to override Confidentiality and disclose a suspected illegal act. In principle, we support illegal act reporting requirements for auditors but believe these requirements are better addressed through national law or regulation. In jurisdictions where such requirements exist, we believe the responsibilities of the auditor cease once the client has taken adequate steps to address an illegal act and it is not the auditor’s role to determine whether the client should disclose the matter to the appropriate authority.
18.	FAOA	Yes, but subject to applicable national law (see paragraph 2.2 above).
19.	FAR	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



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#	Source	Comment
		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
20.	GTI	<p>As noted above, Grant Thornton supports national laws or regulations requiring auditors to override confidentiality and disclose certain suspected illegal acts in the public interest to an appropriate authority if the entity has not made adequate disclosure within a reasonable period of time after being advised to do so, provided that such laws or regulations contain appropriate protections to those who make disclosure. However, for the reasons stated in the body of our letter, we do not believe that such a requirement should be set forth in the Code.</p> <p>Rather, we would support the Board providing for a right to disclose suspected illegal acts, coupled with providing guidance specifying when such disclosure should be made.</p>
21.	HKICPA	<p>We have substantial concerns with the above-mentioned proposal, which would require an auditor to override confidentiality and disclose certain suspected illegal act to an authority if the entity has not made adequate disclosure within a period of time after being advised to do so.</p> <p>We consider that the law and law enforcement mechanism in any given jurisdiction should have already reflected the public expectation on an auditor's disclosure of a suspected illegal act and therefore there is no need to impose additional obligations under the Code over and above what is required by the local law.</p> <p>Laws inherently differ between jurisdictions and many jurisdictions do not have an adequate level of whistle-blowing protection legislation in place. We consider it is necessary in order for the proposals to be effective that statutory whistle-blowing protection legislation be in place. The concern we have is that one size does not fit all and auditors in any given jurisdiction would have great difficulty to apply the proposals in the absence of the statutory whistle-blowing protection legislation. Hence, we consider the proposals may not result in the imposition of fair and equitable requirements on the part of auditors.</p> <p>Under current practice, the auditor would render a modified opinion under ISA 705 "Modifications to the Opinion in the Independent Auditor's Report" in case issuing a "clean" audit opinion under ISA 700 "Forming an Opinion and Reporting on Financial Statements" is considered inappropriate. The auditor may resign from an engagement if deemed appropriate. The issuance of a modified opinion or resignation of auditor would draw the attention of regulators, who are empowered to make inquiries or investigations by laws and regulations, to take necessary further action if they consider appropriate, depending on the nature of the modification. We consider this practice is more appropriate than the proposed requirement and help the accountants to act in the public interest.</p> <p>We are concerned that the proposed requirements could negatively impact on what should otherwise be a professional relationship between accountants and their clients. The proposed requirements may create the impression that a professional accountant is a "policeman" or "informant" and this may jeopardize the relationship between professional accountants and their clients and lead to mutual mistrust. This</p>

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		may indirectly affect the ability of auditors to provide a high quality of service and in turn unintentionally increase the professional risk that they bear.
22.	ICAA	No. See our response to Question 1.
23.	ICAEW	<p>No. As explained above, we believe that a requirement in the code to make external disclosure would not achieve greater disclosure and prevention of illegal acts because of the likely change in relationship and openness with the accountant, liability concerns leading to excessive work on assessing suspicion (and possible tipping off), and the complex interaction with national laws and other codes.</p> <p>All of these apply just as much to accountants providing audit services as others. In terms of openness, we are concerned with the effect this might have on particular types of audit work. For example, businesses being audited might be very reluctant to give an auditor full access to a risk register.</p> <p>Auditors are often given additional reporting requirements in respect of various matters in national law. Where legislators choose not to impose reporting requirements, they may be doing so at least partly on issues of civil rights and ensuring proper enquiry due process. Imposing additional requirements over and above this may circumvent that due process by national authorities.</p> <p>Of particular relevance to auditors would be what action is required in respect of cross-border clients or travels by the accountant, in respect of an act which would be illegal in one place, but not another. It is not impossible to imagine a scenario in which an auditor from one country is working on the audit of a branch in another country and suspects what may be an illegal act has taken place in a third country. This adds to complexity in determining whether the act is illegal, and which the appropriate authority is, particularly where countries are involved whose authorities have extraterritorial ambition.</p> <p>On the subject of identifying the appropriate authority, a concern was raised by some of our respondents as to where the accountant's responsibility stops. If the authority that the accountant thought was the appropriate one did not appear to take reasonable action, would this indicate that the authority was in fact not the appropriate authority, implying a need to report it elsewhere?</p> <p>In summary, therefore, we do not agree that it is in the public interest to include within the code, a requirement (rather than a right) to disclose to an appropriate authority. As noted in our comments on question 4 above, audits do have different characteristics than many other services but this, if anything, would mean that a different assessment might be made by the professional as to where a public interest disclosure would outweigh the duty of confidentiality. It does not warrant a differential treatment in terms of obligation to disclose within the code.</p> <p>We do support the inclusion of more discussion on when professional accountants might consider it appropriate to override the duty of confidentiality, and guidance for accountants as to what not to do in the face of suspected illegal activity. Further detail on this is included in paragraph 8 above. Such discussions might include an encouragement to auditors to explain why they resigned, which would deal with</p>

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		the concern in some quarters that auditors walk away rather than face up to illegal acts. This is included in legislation in some countries, including for example the UK and, going forward, Singapore.
24.	ICAP	As discussed in the answer to question 1, the professional accountant should be allowed to obtain legal advice from a law practitioner and, based upon such legal advice, if the professional accountant concludes that it would not be appropriate to escalate the matter to appropriate Authorities, he should be allowed to avoid it. However, if the professional accountant also concludes that such a suspected illegal act could be severe and can affect the public interest, while the legal advice does not support escalating the matter to appropriate authorities, the professional accountant may have to withdraw from the engagement.
25.	ICAS	No, we believe that the auditor should have the right to do so (as opposed to an obligation) where they believe that such an override of the fundamental principle of confidentiality would be in the public interest and the legal system permits such an action to be taken but should not be required to do so. The matter should then be left to the professional judgement of the auditor re the action to be taken. We would not be supportive of any potential change to the Code of Ethics establishing a more onerous obligation on auditors.
26.	ICJCE	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.
27.	ICPAC	Yes
28.	ICPAK	Yes
29.	ICPAR	Agree
30.	ICPAU	Yes, we agree with the proposal. We, however, recommend that an appropriate authority should be defined to include the relevant professional body.
31.	IDW	No. We refer to our accompanying letter. In our view, IESBA is not the appropriate body to address release from client confidentiality in the context of whistle-blowing
32.	IFAC SMP	We do not 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. This is not because we do not believe that this is not the 'right thing to do', rather it is because, in addition to the reasons set forth on the first page of this letter, the legal realities in many jurisdictions where there are no legal or regulatory protections mean that such a requirement would threaten to put many SMPs in the position of choosing between following these requirements, and being exposed to legal actions brought by clients and watching clients

#	Source	Comment
		move to non-professional accountants who are not subject to the same requirements. This poses a significant risk that such a requirement would be widely disregarded.
33.	IIA	We assume that “auditor” refers to the entity’s external auditor for its financial reporting audit. For SIAs that meet the disclosure requirements, the audit firm should follow the protocols and first discuss the SIAs with those charged with governance if the entity has not made adequate disclosure within a reasonable period of time, after being advised to do so. If those charged with governance do not make adequate disclosure within a reasonable period of time, then the audit firm should be required to override confidentiality and disclose these SIAs to an appropriate authority
34.	IRBA	<p>No we do not agree that an auditor should be required to override confidentiality and disclose certain suspected illegal acts to an appropriate authority, unless there are legal requirements and established processes in the jurisdiction for an auditor to report suspected illegal acts and a mechanism to identify the appropriate authority (regulator) to whom the auditor should report. Without such legal requirements, it may be difficult to enforce such a requirement in the Code for an auditor, or for an audit regulator to take disciplinary action against an auditor who having considered all the circumstances decides in their professional judgement that the suspected illegal act should not be reported to an appropriate regulator, or the auditor is unable to identify an appropriate regulator to report to.</p> <p>Consideration should also be given to whether the disclosures in the audited financial statements of the entity regarding material suspected illegal acts are appropriate. The auditor also follows the requirements in ISA 260 for escalating the suspected illegal acts by reporting to those above the level at which the suspected illegal act has been identified and / or to those charged with governance.</p> <p>Depending on the nature of the suspected illegal act, individual regulators may for example, include in Listing Requirements of a Securities Exchange or in Regulations to the Banks Act, in a particular jurisdiction, specific requirements for an auditor to report all material suspected illegal acts that may materially affect investors or create a systemic risk for the banking industry to the Securities Regulator or Bank Regulator respectively.</p>
35.	JICPA	<p>We agree with the proposal, provided that the reporting of suspected illegal acts that would have material effect on financial reporting has already been defined in laws and regulations of jurisdictions. When no such laws or regulations are in place, there may be situations where there is no appropriate authority to receive disclosures even when a suspected illegal act which would have material effect on financial reporting is identified. Therefore, if reporting be required for auditors, we recommend for the IESBA to clarify actions to be taken in such circumstances.</p> <p>In addition, when an auditor determines that a suspected act is highly likely to be illegal and discloses the matter to an appropriate authority, the auditor may be exposed to a risk of litigation by audit clients, if the investigation by the authority later turns out to be legal and when the disclosure causes disadvantage to them. We are concerned that auditors may be put under too much pressure when there is no legal basis</p>

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		for such disclosures. We therefore believe that each jurisdiction should be permitted to decide whether such disclosures should be required, in light of its prevailing laws and regulations.
36.	KICPA	As described in our response to question 4, we don't agree to require the auditor to disclose illegal act to an authority. The reason is same as the one provided in the response to question 4.  In case the entity has not made an adequate disclosure within a reasonable period of time after being advised to do so, it is more appropriate to request to terminate the audit engagement if it is allowed by applicable regulations.
37.	KPMG	Please refer to our responses to questions 1 to 4 above. Our suggested approach in the responses to these questions is in line with the requirements of ISA 250, Consideration of Laws and Regulations in an Audit of Financial Statements. Also, we believe that the requirements of ISA 250 appropriately set out the auditor's responsibilities when the entity does not take appropriate action after being made aware of a suspected illegal act by the auditor.
38.	KRESTON	The auditor should follow the procedures of ISA 250 and any relevant national law and regulations. There may not be an appropriate authority in some jurisdictions.
39.	MIA	No we do not support this requirement.  We think that this requirement is in contradiction with the relationship based on trust built between the auditor and his client. We think that the threat of the external reporting of suspected illegal acts by the accountant or auditor might seriously hamper building up trust in their relationship with the client or their employer and the subsequent sharing of information and cooperation.  We also think that this requirement will create an uneven playing field between professions. In our view this requirement would be outside the remit of the profession and it would be much better that such a requirement was enacted in legislation and constructed in a way where all professionals would be acting in the same way or all professionals delivering the same or similar services were subject to same requirements.
40.	Mazars	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.
41.	MG	No. For the reasons discussed in our General Comments above, we believe the decision to disclose a suspected illegal act to an appropriate authority ordinarily should lie with management and those charged with governance, not the auditor. Additionally, it should not be IESBA, but rather the appropriate legislative bodies in each jurisdiction who should decide whether to impose a requirement on or grant a right to an auditor to make such disclosures, accompanied by appropriate protective mechanism for the auditor
42.	NASBA	We have mixed views on this question. Please see our response to Question 3.

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#	Source	Comment
43.	PKF	No. This should be a right, not a requirement, and the right should be subject to legal protection in the particular jurisdiction. We further do not agree with the distinction of auditors and others. Under the proposals, the auditor would be required to check whether the entity had made adequate disclosure within a reasonable period of time (after the necessary reporting and escalation internally). We do not consider this to be appropriate as this puts the auditor in the chain of command of the entity, which impacts on the objectivity of the auditor and is contrary to one of the fundamental principles of the Code. As above, any professional accountant should have the right to report to management, those charged with governance or an appropriate authority as they see fit.
44.	RSM	No. We believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. The appropriate legislative bodies in each jurisdiction, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant.
45.	SAICA	Read in conjunction with our responses above, we do not believe that in South African context, it is appropriate for further legislation to compel the external auditor to override confidentiality.  Furthermore confidentiality should never be compromised unless evidence is absolute and the nature of the dishonesty is severe enough to raise anger in the minds of upstanding citizens.
46.	ZICA	Yes we do agree, so that an appropriate and timely action can be undertaken.

**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?***

#	Source	Comment
1.	AAA	The contributors believe that this is the appropriate requirement. Any accountant should feel morally obligated to report illegal acts that could impact others. However, we also believe this carries a greater burden for the professional accountant than for the auditor. First, they may not be experienced in making the further inquiries required to ascertain the legality or impact of the suspected act. Second, they may not have the access or authority to make the further inquiries, and thus may imperil their professional engagement if they attempt such inquiries or in subsequently discussing the issue with management. Finally, individual accountants may not have the same litigation protections as an audit firm.
2.	ACCA	Yes, we agree that the obligations should be the same. We have stated our support of the reporting provisions and guidance within ISA 250, and it would not be logical for a professional accountant within the same firm to avoid the obligations of the auditor. Professional accountants within audit firms who suspect non-compliance with the law may be expected to communicate with the audit team in order to determine how the suspected illegal act might impact the audit. Therefore, the auditor is expected to be aware of the suspicion.
3.	AICPA	Yes. We believe it would be appropriate for such individuals to report suspected illegal acts to the appropriate levels of management of a client, and possibly with those charged with governance, if management's response is not appropriate. If the suspected illegal act relates to the client's financial statements, however, it may be appropriate for the non-auditor to bring the matter to the attention of the audit engagement partner and for the engagement partner to escalate the matter, if appropriate.
4.	APESB	<p>APESB agrees that there should be no difference in standards for a professional accountant providing professional services to an audit client of the firm or a network firm. Subject to the public interest test, we support the professional accountant having a right to disclose a suspected illegal act.</p> <p>Where the client is also an audit client of the firm, the professional accountant would be more appropriately advised to notify the audit engagement partner or the firm's risk management function of the suspected illegal acts, following which the appropriate person in the audit firm would be expected to progress the matter. We note that the exposure draft, as currently drafted, is silent on the issue of cascading responsibilities and the passing of information between professional accountants within a firm. It would be useful for the Code to state who has the ultimate responsibility (e.g. audit engagement partner) for the disclosure to an appropriate authority and provide guidance for handling situations where opinions differ on the significance of the suspected illegal act or whether the relevant matter actually is a suspected illegal act.</p>

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#	Source	Comment
5.	BDO	Yes. We believe 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.
6.	CalCPA (APAS)	<p>As is evident in previous responses, we think this entire ED never should have seen the light of day, but in the context of its requirements, my answer is "yes".</p> <p>We can only read between the lines as to why the authors of this ED would propose that auditors bear a greater responsibility than accountants in general. It may be more likely that auditors are more likely to uncover suspected illegal acts because of the nature of an audit vs. other professional services provided by accountants to clients, but this not clearly the case. Accountants providing tax services would seem to be in the position of being likely to encounter suspected illegal activity, or do the authors of the ED consider tax evasion not to be an illegal activity?</p> <p>In any case, if the ED addresses accountants' ethical behavior, it matters not at all what kind of services are being provided. If the accountant encounters a suspected illegal acts/he has to deal with it.</p>
7.	CARB	See our response to question 4 above
8.	CCAB	The IESBA code of ethics is based around a set of fundamental principles that apply to all professional accountants on all of their professional and business activities. It provides additional independence requirements for those giving audit and other assurance opinions because of the nature of those opinions. However, the assurance opinions are not relevant to this matter of overriding confidentiality and we do not believe that a distinction is appropriate. All professional accountants should be in the same position in terms of assessing whether an override of the fundamental principle of confidentiality would be in the public interest.
9.	CGA Ca	As stated in our response to Question 4, we disagree with the idea of differential standards of care among the professional accountants on the basis of the nature of their work and accordingly believe that a professional accountant providing professional services to an audit client of the firm or a network firm should have the same obligations.
10.	CICA	We 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, unless the professional accountant is acting as a fiduciary, as noted above. We note that the professional accountant in this situation may have a "dual" path for escalation, one within the professional services firm and another within the client; it might be helpful to highlight this "dual" path. This situation is also an example where the professional accountant may encounter issues with differences in laws in different jurisdictions, and guidance on dealing with such situations would be helpful.
11.	CICPA	Generally speaking, if the professional accountant is providing a non-audit service, he/she usually doesn't have the same access to all information that an audit can usually have, and the work scope of him/her is also relatively limited, so the professional accountant usually cannot assume the same obligation as an auditor.



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#	Source	Comment
		In this case, we recommend the professional accountant to consider discussing with the audit engagement partner first.
12.	CNDCEC	Yes, we generally agree with the proposal that different solutions (obligation to disclose, right to disclose) depend on the different capacity of the accountant providing professional services to the client (audit engagement, non audit engagement, etc.) and on the circumstance that the client is, or not, an audit client of the firm or of the network. In this perspective we also agree with the circumstance that the proposal identifies, for each situation, different subjects to whom disclose the suspected illegal act (competent authority, entity's external auditor, professional body, ect.).
13.	CPA AU	Please see our response to question 4.
14.	DE	No. I think that is very important to be clear what's a auditor, because a professional accountant providing professional services to an audit client is auditor and I understand that need to have same obligations for audit services and principally the local regulators need to be have the list of organizations or personal that make this service, I think this.
15.	DTT	Yes, although we do not agree with the obligations stated in the ED. We believe the Code should include guidance for the professional accountant when encountering a suspected illegal act and that guidance need not vary based on the nature of the professional services provided
16.	EFAA	As previously stated we believe that all professional accountants should have the same responsibilities and we are unclear as to why being part of a network that includes the auditor would either increase or decrease the obligations in this regard.
17.	EY	If an accountant providing non-audit services to an audit client finds a potential illegal act, the accountant should ensure that the audit engagement team is aware of the matter. Consistent with existing professional standards, the auditor would take appropriate steps to inform management and, if necessary, the company's board or audit committee (or others who are responsible for corporate governance).
18.	FAOA	Yes. For example, every professional accountant should have the same duty as a member of the audit team.
19.	FAR	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.
20.	GTI	Grant Thornton agrees that a professional accountant providing professional services to an audit client of the firm or a network firm should have the same right as the auditor. Please see our response to question 5 for our views as to how this right should be set forth.

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#	Source	Comment
21.	HKICPA	<p>We consider there may be practical concerns in the case of a professional accountant providing professional services to an audit client of the firm or a network firm if that professional accountant has the same obligation as an auditor.</p> <p>Although non-audit services may be provided to an audit client by the same firm or by a firm within the same network, those services are provided by the concerned firm in a different capacity and accordingly may be served by a different functional team of the firm. Those professional accountants are usually provided with limited information sufficient for performing their services. The professional accountants who provide the non-audit services may not discuss their service-related information with the auditor without consent by the client due to the usual "Chinese Wall" arrangement. Accordingly, those professional accountants who provide non-audit services may not have sufficient client information or have the same access to management, or those charged with governance, as the auditor to be able to fulfill the proposed requirements applicable to auditors. We therefore consider it is not appropriate for a professional accountant providing services to an audit client of the firm or a network firm to have the same obligations as an auditor.</p>
22.	ICAA	As noted in our response to Question 1, we do not consider that the Code should be imposing obligations in this context. However, we do agree that the provisions identified for responding to suspected illegal acts should be expressed as equally applicable to all professional accountants, and that no distinction as identified in this question is necessary.
23.	ICAEW	<p>Yes, in as much as we believe that all professional accountants should be able to override the duty of confidentiality when they judge it to be in the public interest, rather than being obliged to disclose, as discussed above. However, if the different characteristics of an audit, discussed above, were to merit a differential level of disclosure requirement, the matter becomes more complex.</p> <p>If the other services are provided by the audit team, the matter becomes irrelevant. However, as is frequently suggested by s290 of the code as a safeguard, the other services will often be provided by a separate team, with separate reporting lines and a separate engagement letter. In those circumstances, if the non-audit service engagement partner considers the suspected illegal act might impact on the audit, he or she will have to take a decision taking all relevant issues into account. But in terms of whether there should be a requirement in the code, there can be no logic in distinguishing between, say, one set of non-audit services to an audit client and another, by the same (non-audit) staff, to a non-audit client.</p>
24.	ICAP	Only to the extent permitted in the Code of Ethics
25.	ICAS	Yes, we believe that they should have the same obligation but that this should merely be a right as opposed to a requirement to do so.
26.	ICJCE	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.
27.	ICPAC	Yes

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#	Source	Comment
28.	ICPAK	Yes
29.	ICPAR	Agree in regards to the reporting of a suspected illegal act that comes to their knowledge.
30.	ICPAU	Yes, we agree with the proposal.
31.	IDW	No. We refer to our accompanying letter. In our view the proposals may result in an undesirable impact on the accountancy profession, which would not serve the public interest as a whole
32.	IFAC SMP	We agree on the basis that the public will likely have an expectation that such matters be drawn to the attention of the audit partner by the firm. However, we also refer to our response to Q4 in which we discuss the different relationships and duty of care aspects involved
33.	IIA	Yes, where the audit client is providing audited financial statements to parties outside the entity (for example a listed company), we agree, the professional accountant's primary responsibility is to provide audit services and thus, should have the same responsibilities and obligations as the auditor. We have delineated elsewhere in our response what we believe those responsibilities and obligations.
34.	IRBA	<p>Generally agree, however, this will depend on the nature of the professional services provided to the audit client, and the relationship with the network firm.</p> <p>Ordinarily, a network firm within a jurisdiction that has laws that require an auditor to report suspected illegal acts, will have established internal arrangements for communication to the engagement partner responsible for the audit, of any possible suspected illegal acts identified in the course of providing those other professional services to an audit client. This is not a fool proof guarantee that all such instances will be communicated, but the professional accountant providing professional services to an audit client may indeed, detect material suspected illegal acts and alert the engagement partner responsible for the audit engagement.</p> <p>Where however the network firm providing the professional services is located in another jurisdiction they may be quite unaware of the engagement partner's responsibilities to report suspected illegal acts and fail to bring the suspected illegal act to the attention of the audit engagement partner.</p> <p>Without a global requirement such as that now being proposed as Section 225 of the IESBA Code, and convergence of different jurisdictions' Codes of Ethics with the IESBA Code, network firms in other jurisdictions that are not required to report suspected illegal act to an appropriate regulator, are unlikely to be aware of, or to communicate suspected illegal acts identified to the audit engagement partner in a jurisdiction that does have such requirements.</p>
35.	JICPA	We do not agree with the proposal.

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		It would be difficult, in practice, to impose an obligation to a professional accountant who provides non-audit services to an audit client. We believe that the IESBA should also consider whether it would be possible for a professional accountant providing professional services to an audit client of a firm or a network firm to communicate and consult with an engagement partner of the audit of the same audit client.
36.	KICPA	<p>As described in our responses to questions 4 and 5, we don't agree with the requirement of disclosure of suspected illegal act to an appropriate authority, whether it is a professional accountant providing professional services to an audit client of the accounting firm or an auditor.</p> <p>The professional accountants providing professional services to an audit client of the accounting firm, etc., are organizationally separated from audit engagement team to maintain independence, or other safeguards are applied to ensure independence in performing services. Considering such practices, imposing the same strict requirements (disclosure of suspected illegal act to an appropriate authority) on the professional accountant providing non-audit services to an audit client and on the professional accountant involved in audit engagement is not desirable even for the purpose of enhancing auditor independence.</p> <p>However, we also don't support imposing different requirements on an auditor and on a professional accountant providing non-audit services to a client that is not an audit client, for the purpose of imposing stricter requirements on an auditor to address suspected illegal act. If there is a reasonable level of procedure to be followed by a professional accountant to address the suspected illegal act of a client and it is possible to define such requirement or procedure in the Code, it is appropriate to impose same reasonable requirements on all professional accountants.</p>
37.	KPMG	There are no grounds for treating accountants providing professional services to an audit client differently from an auditor. So, please refer to our responses to questions 1 to 4 above.
38.	KRESTON	As noted above we do not agree with distinguishing the obligation of auditors and of professional accountants.
39.	MIA	Yes, we generally 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.
40.	Mazars	Yes, agreed.
41.	MG	We agree it would be appropriate for such individuals to report suspected illegal acts to the appropriate levels of management of a client, and possibly with those charged with governance, if management's response is not appropriate. However, we believe if the suspected illegal act relates to the client's financial statements, the non-auditor should bring the matter to the attention of the audit engagement partner and the audit engagement partner should escalate the matter, if appropriate.
42.	NASBA	The focus of this question is a bit confusing as it raises questions about the nature of the firm (non-network firm or network firm) as well the nature of the services provided to the client (non-attest services or audit services). However, our response is the same in both scenarios:

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#	Source	Comment
		neither the network nature of the firm nor the nature of the services provided to clients has any bearing on a firm's duty to respond. Also, please see our response to Question 4.
43.	PKF	<p>No distinction should be made between the responsibilities of professional accountants acting in the capacity of auditor and those that are not, nor on the basis of whether or not the entity is subject to external audit. All professional accountants should be subject to the same rules and requirements and should have the right to override confidentiality in situations where it is appropriate to do so.</p> <p>Accordingly we do not agree with certain requirements that relate to the auditor, e.g. the requirement in paragraph 225.18 to disclose the suspected illegal act under those circumstances to the entity's external auditor (see our response to question 8), nor do we 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 (see our response to question 4).</p>
44.	RSM	Yes. We believe it would be appropriate for such individuals to report suspected illegal acts to the appropriate levels of management of a client, and possibly with those charged with governance, if management's response is not appropriate. However, we believe if the suspected illegal act relates to the client's financial statements the non-auditor should bring the matter to the attention of the audit engagement partner and the audit engagement partner should escalate the matter, if appropriate.
45.	SAICA	No we do not agree. Where the professional accountant provides other services independence issues would have been resolved firstly. The firm/network would have had to make a decision as to whether they were going to supply the client with other services and this decision would have been documented extensively. We believe that as the professional accountant subscribes to a code of ethics, they are competent to have made such a decision and should therefore not be forced to have the same obligations as the auditor.
46.	ZICA	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, due to the fact that the professional accountant has also the role in safeguarding the public interest.

**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?***

#	Source	Comment
1.	AAA	It is conceivable that professional accountants could discover illegal acts unrelated to financial reporting in the process of tax or consulting engagements. Thus, it is appropriate to add “the subject matter of which falls within the expertise of the professional accountant”.
2.	ACCA	<p>This question should focus only on matters in relation to which there should be an ethical requirement placed on professional accountants. Their areas of expertise are only relevant with regard to their competence in evaluating the significance of their suspicions and, therefore, only indirectly in assessing the need to report their suspicions – either internally or externally. It would appear a reasonable assumption that a professional accountant preparing a tax computation for a client, and who suspects tax fraud, may be subject to different expectations concerning reporting to a taxation authority than an auditor who has similar suspicions. However, we would refer you to our answer to question 5, which expresses our concern regarding any regulatory requirement to override confidentiality.</p> <p>It is important that professional accountants are clear about their responsibilities, including how to comply with the fundamental principles of confidentiality and integrity. They require guidance that explains how to report internally, and the criteria for reporting externally (ie in cases where the public interest in reporting externally exceeds the public interest in maintaining confidentiality).</p>
3.	AICPA	For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the auditor. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on an auditor to make such disclosures, accompanied by appropriate liability safe-harbor protections. However, subject to our observations in General Comment No. 6, we believe it would be appropriate to require an auditor to consider encouraging a client to disclose to an appropriate authority certain suspected illegal acts that affect the client's financial reporting, or that relate to subject matters that fall within the expertise of other professional accountants at the firm, if management's response is not appropriate.
4.	APESB	<p>APESB agrees that the disclosure of suspected illegal acts should be limited to those acts that affect the client's financial reporting or subject matter which falls within the expertise of the professional accountant. This is important as the expertise of each professional accountant in public practice is different. Further these days firms provide a range of services that are not associated with financial reporting matters.</p> <p>Making a determination whether a breach of environmental protection regulations has occurred may not be within the expertise of the professional accountant, however once the breach is reported the professional accountant may have expertise in terms of assessing the</p>

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		appropriateness of the recording and reporting of the financial impact of such a breach. The Code could, for example, provide more guidance on reporting of financial impacts of social and environmental matters.
5.	BDO	As noted above, we do not support any form of external disclosure to be included in the Code. Rather we would support guidance for the professional accountant to encourage the entity to report to an appropriate authority suspected illegal acts that affect the entity's financial reporting and acts the subject of which fall within the expertise of the professional accountant. Although we do not support the external reporting aspect of the Exposure Draft, if the IESBA decides to implement it, the professional accountants' responsibilities should be limited to financial reporting issues that fall within their expertise.
6.	CalCPA (APAS)	No. Why should it matter whether the suspected illegal act has anything to do the accountant's professional expertise? Perhaps the accountant sees obviously drunk or otherwise impaired people getting behind the wheel of vehicles, or operating heavy equipment; clearly a danger to the public. Why shouldn't the accountant be required to act? Perhaps the accountant has come across evidence that the stated operating capacity of some product is less than what is advertised, creating mortal danger to a user operating the device at the advertised capacity? Such matters may not be within the accountant's expertise and yet a suspicion an illegal act has occurred would be warranted. Why should the accountant be exempted from following the ED on such matters?
7.	CARB	We are concerned that 'acts the subject of matter of which fall within the expertise of the professional accountant' could be interpreted too widely. We believe that it should be made clear that the subject matter should not only be within the expertise of the professional accountant but also within the ambit of the service provided or the function being performed.
8.	CCAB	We are concerned that 'acts the subject matter of which falls within the expertise of the professional accountant' could be interpreted in a wide range of ways, from matters the individual happens to know a lot about, right through to matters which accountants in general might be deemed to know about. This could be a particular problem if linked to an obligation (see above).
9.	CGA Ca	Consistent with our response to Question 1, we agree that the suspected illegal acts to be disclosed referred to in Question 5 should be only those that directly and materially affect the client's financial reporting, and for subject matter which falls within the expertise of the professional accountant.
10.	CICA	We disagree that disclosure should be limited to those acts that affect the client's financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant. As noted above, we believe that there may be other matters that have greater potential impact on the public interest than financial matters. The process for escalation of such "non-financial" matters would not likely be dissimilar, although it may be even more important to obtain legal advice in such situations.
11.	CICPA	No. In our opinion, every illegal act of the client will eventually affect its financial reporting, either directly or indirectly. So we suggest to further clarify which kinds of suspected illegal act, if not all, need to be disclosed.

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		Also, if the professional accountant is aware of other kinds of suspected illegal act, disclosing is also in the public interest, so they should have the right to disclose, and it will not breach the fundamental principle of confidentiality.
12.	CNDCEC	Yes, we agree with the proposal (see previous comment)
13.	CPA Au	CPA Australia does not support the imposition of a requirement to disclose to an external authority.
14.	DE	I suggest observed the question 5 and 6, because some activities the professional accountant need to be knowledge, experience, registration for exercise this activity, I suggest contact the local regulators for this aspect.
15.	DTT	No, because we do not believe disclosure should be required for the reasons stated in our general comments.
16.	EFAA	We believe that the issue is more complicated than that outlined. The determining factors are likely to be pertinent to the task in hand. Different engagements have different requirements. An auditor would necessarily look to auditing standards to determine his responsibilities. A professional accountant undertaking a taxation engagement may have specific tax requirements. Is it sensible to restrict this to financial reporting? On the other hand if the matter does not affect the clients financial reporting is it reasonable for the accountant to ignore this? The Professional accountant needs to know when the matter would fall within the scope and when it would not. Perhaps the clearer solution would be to have all suspected illegal acts addressed.
17.	EY	We believe auditor illegal act reporting requirements should relate to financial reporting issues and not to matters outside of the accountant's professional expertise.
18.	FAOA	Yes, but subject to applicable national law (see paragraph 2.2 above).
19.	FAR	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.
20.	GTI	If a professional accountant has identified a suspected illegal act and there is a legal or regulatory requirement to report the suspected illegal act to an appropriate authority, Grant Thornton agrees those affecting the client's financial reporting function or financial statements should be disclosed.
21.	HKICPA	The proposals would require disclosure of the following matters by a professional accountant in public practice: <ul style="list-style-type: none"> <li>o When providing services to an audit client: <ul style="list-style-type: none"> <li>❖ Suspected illegal acts that directly or indirectly affect the client's financial reporting; and</li> <li>❖ Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant</li> </ul> </li> </ul>



#	Source	Comment
		<p>o When providing services to a non-audit client:</p> <ul style="list-style-type: none"> <li>❖ Suspected illegal acts that relate to the subject matter of the professional services being provided by the professional accountant</li> </ul> <p>In recognising the wide range of specialisations that professional accountants have, we believe it is unrealistic to expect that professional accountants are experts in matters relating to all professional accountancy services. Although professional accountants may share a similar core common body of knowledge in certain areas (for example, financial reporting), the expertise of any one professional accountant may differ considerably from other professional accountants; because of the wide range of highly specialized services that professional accountants provide to clients.</p> <p>We appreciate that professional accountants should possess a background legal knowledge on discharging their responsibilities in engagements; however they are not, and should not be, expected to be legal specialists. We consider that professional accountants should not be expected to provide a "legal clearance" through the performance of their engagements.</p> <p>We consider that the definition of a "suspected illegal act" may be subject to interpretation that may be wider than intended. One example is the simple case of overtime in excess of statutory hours of local workers in a subsidiary in another country can be a suspected illegal activity in that country. Under the proposal the auditor of the holding company in another country may need to disclose this suspected illegal act to the relevant authority even if it has no jurisdiction on labour or anything in that country. We consider such arrangement is potentially disproportionate and onerous. There are also concerns of confidentiality restrictions imposed by local laws which may prevent one from reporting to a holding company in another country.</p> <p>Without necessarily agreeing to the proposed requirements and rights to professional accountants, we consider the disclosure by professional accountant in public practice providing services to clients (including audit and non-audit client) should be confined to a suspected illegal act in the professional accountant's own jurisdiction that relates solely to the subject matter of the professional services being provided by the professional accountant, and that a reasonable and informed third party would conclude the professional accountant should possess sufficient legal knowledge on the subject matter. In circumstances where the professional accountant has been specifically retained to provide services in dealing with a suspected illegal act especially under legal privilege (for example which may include forensic work), it would not be appropriate for the professional accountant to be under an obligation to report such a suspected illegal act unless otherwise required to do so by local laws.</p>
22.	ICAA	Agree, subject to our view that there should not be an obligation to disclose.
23.	ICAEW	In principle, 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. In the context of an ability to disclose rather than an obligation, any restriction would not fit with the public interest rationale and is unnecessary.

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		<p>Whether the matter is within the expertise or remit of the accountant is relevant in the context of an ability to disclose, but more in discussing the extent of determination of the degree of understanding required in the first place to have a reasonable suspicion. Where there is an obligation or expectation that there may be disclosure, accountants should be quite certain that they understand what is going on. This is naturally more likely to be easier where the matter falls within their area of expertise – where it does not, they are in no different position to any other citizen. We therefore suggest that the issue of the nature of the suspected illegal act be moved to a discussion on the level of suspicion. This would also deal with circumstances where it is unclear whether the matter does fall within the accountant's remit – for example, if the potential issue related to something the accountant does not personally deal with but another firm was carrying out diligence on, the current draft is unclear as to the action required.</p> <p>Were IESBA to continue to believe that an obligation should be imposed on accountants providing services to audit clients, the matter becomes more complex. Any obligation should be restricted to matters within the accountant's area of expertise (likely to relate to financial reporting, but not always) as those matters are the ones in which the accountant should have greater insight than others. As regards other matters, the professional accountant should be in the same position as regards overriding confidentiality, as anyone else within the relevant territory.</p>
24.	ICAP	Agreed. Materiality should also be considered.
25.	ICAS	We do not agree with the limited proposed scope. If the public interest is the determining factor then we believe that the scope should be extended to cover any suspected illegal acts which the professional accountant uncovers.
26.	ICJCE	<p>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.</p> <p>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.</p> <p>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.</p>
27.	ICPAC	No.

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		<p>Failure to report an illegal act, of any nature, even where stumbled upon accidentally, could result in the accountant being accused of unethical behavior with a view to assist/ collude with/ cover-up the culprit.</p> <p>Any act which is deemed to be illegal as defined by any effective regulation or law e.g. the employment of illegal immigrants in breach of immigration/ employment laws, the importation of raw materials not complying with domestic health and safety laws, the infringement of health and safety regulations in production (hazardous to factory manpower), the infringement of any patent/ intellectual property rights, the payment of bribes to any foreign parties/ associates in securing business, breach of environmental regulations relating to industrial waste, illegal use of client base personal data, price fixing, market manipulation, insider dealing, tax evasion et al.</p>
28.	ICPAK	Yes
29.	ICPAR	Agree
30.	ICPAU	Yes, we agree with the proposal.
31.	IDW	No. We refer to our accompanying letter
32.	IFAC SMP	<p>Subject to our response to question 5 and our following comments, disclosure should only be expected if it relates directly to engagement subject matter, is material, and is within the expertise of the professional accountant. A professional accountant working as or for an SMP or a professional accountant in business may have a broad role which would widen the scope of the new sections of the Code far more than what we think is intended. For example, a CFO (either employed by the company or outsourced to a SMP) may be responsible for areas that fall largely or completely outside the ambit of financial reporting such as, tax, treasury, human resources, occupational health and safety, business systems and process, IT, and the environment.</p> <p>Question 5 relates to an auditor disclosing matters to an external authority under certain circumstances. We note that the ISAs already deal with this to some extent and we question whether the ED is compatible with the ISAs, in particular the requirements of and approach taken by ISA 250. Hence, we suggest that the IESBA work closely with the IAASB on this matter. Most especially we note that ISA 250 explains the inherent limitations of an audit in this context, differentiates between different categories of legal provisions, and requires the auditor to consider the need to obtain legal advice in certain situations – but does not require the auditor break client confidentiality. The ED does not mention inherent limitations nor does it provide any form of de minimis consideration. Taken together, these omissions mean that the ED risks giving the impression that all suspected illegal acts, irrespective of their probable impact, will be followed through and potentially may ultimately be reported to the authorities. Clearly this is not the intent. Another major difference in the IESBA's and the IAASB's approach, which gives us grounds for concern, is that while the ISAs follow a risk-based approach and look at material matters the ED appears to require every suspicion to be followed up in the first instance before the professional accountant is required to consider the potential magnitude or public interest implications. Paragraph 225.5 does not even foresee the professional accountant to dismissing matters of a minor or insignificant nature. Furthermore, we wonder whether the reasonable steps to be taken in paragraph 225.5 is equivalent to the</p>

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		concept of reasonable assurance in the ISAs, and are unclear as to the level of suspicion that an accountant is required to reach, for example in cases where little firm evidence exists to allay or confirm the suspicion.
33.	IIA	<p>The SIAs to be disclosed referred to in question 5 should be those that affect the client's financial reporting, fraud, and those of such consequence that disclosure would be in the public interest, in accordance with IFAC Policy Position 5, issued in June 2012 on A definition of Public Interest.</p> <p>Also, PAs around the world have a wide range of knowledge, skills, experience, and expertise. Therefore, "acts related to the subject matter of which falls within the expertise of the professional accountant" need to be better defined.</p>
34.	IRBA	<p>Our response to question 5 indicated that we did not agree that suspected illegal acts should be disclosed to an appropriate regulator, unless the jurisdiction has legal requirements and processes imposing that requirement on professional accountant or auditor. A Code cannot impose that responsibility where the jurisdiction's legal and regulatory framework does not require such disclosure.</p> <p>Having said that, it is most probable that suspected illegal acts that materially affect the financial statements of the entity and auditor's reporting thereon are those more likely to be detected by an auditor and which are most likely to fall within the expertise of a professional accountant / auditor. There is nothing to prevent an auditor whose suspicions are aroused, from obtaining expert advice regarding another more complex or technical suspected illegal act in order to exercise their professional judgement in determining whether or not suspected illegal act has, or is likely to have, occurred.</p> <p>Suspected illegal acts may affect any aspect of a business and depending on the complexity of the suspected illegal acts that have caused, or are likely to cause, "material financial loss to the entity, or any partner, member, shareholder, creditor or investor of an entity in relation to his or her or its dealings with that entity" the evaluation of the possible impact will undoubtedly affect the professional accountant's / auditor's decision whether or not to disclose and the timing thereof:</p> <ul style="list-style-type: none"> <li>• to whom such disclosure should be made – whether to management and / or those charged with governance; and / or</li> <li>• to determine the appropriate regulator to report to, depending on nature of the suspected illegal act and the existence of jurisdictional requirements and established legal processes in this regard; and</li> <li>• to consider the implications for disclosures by management in the audited financial statements and "regulatory reporting matters" to include in the auditor's report thereon.</li> </ul>
35.	JICPA	<p>No, and we do not also agree with the proposal stated earlier in Question 5.</p> <p>If laws or regulations are in place for the disclosure of suspected illegal acts, then, the scope of suspected illegal acts would be explicitly defined under such laws and regulations. If there exists no laws or regulations for such disclosures, we understand that the determination as to whether a given act falls into a suspected illegal act to be disclosed would be left principally to individual professional accountant's</p>

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		<p>discretion, and it would not be necessary to involve a firm in its determination. From this standpoint, we are of the view that the following concerns or reservations should be clarified:</p> <ul style="list-style-type: none"> <li>• It would be necessary to clearly state that the expertise of a professional accountant should be attributed to the professional capability of an individual professional accountant.</li> <li>• If the scope of the illegal acts were to include those that are within the expertise of persons other than professional accountants, such as legal counsels or IT professionals, then the scope of illegal acts to be disclosed would be too broad for a professional accountant in public practice to deal with, and therefore, would be difficult to handle the matter in practice. We are also concerned that the role of an accounting firm could be misunderstood by others, that a firm is also expected to disclose a wide range of illegal acts to authorities.</li> </ul> <p>Given that different laws and regulations are in effect in various jurisdictions, it should be explicitly stated that each jurisdiction is to determine the scope of illegal acts to be disclosed.</p>
36.	JICPA	We agree with the proposal of IESBA. In addition, we are concerned that the meaning of suspected illegal acts applied to a professional accountant in public practice providing services to an audit client is ambiguous and may cause misunderstandings about the scope of the suspected illegal acts. Therefore, we recommend that the meaning of suspected illegal acts("suspected illegal acts that directly or indirectly affect the client's financial reporting") be further clarified.
37.	KPMG	ISA 250, Consideration of Laws and Regulations in an Audit of Financial Statements, sets out the auditor's responsibility with respect to laws and regulation and suspected illegal acts identified during the course of the audit. We believe that any requirements in the Code dealing with the auditor's responsibilities should be consistent with these requirements.
38.	KRESTON	No. Any requirements for disclosure should be determined by the appropriate authority. As noted previously it is difficult and probably inappropriate for the professional accountant to make judgements about the public interest.
39.	MIA	We think that the suspected illegal acts to be disclosed would be those that satisfy both conditions simultaneously, that is, those suspected illegal acts that affect both the client's financial reporting AND acts the subject matter of which falls within the expertise of the professional accountant.
40.	Mazars	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.
41.	MG	For the reasons discussed in our General Comments above, we believe the decision to disclose a suspected illegal act to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. Additionally, it should

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		not be IESBA, but rather the appropriate legislative bodies in each jurisdiction who should decide whether to impose a requirement on or grant a right to a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. However, subject to our observations included in the General Comments above, we agree, if disclosures were to be made, it would be appropriate to disclose certain suspected illegal acts that affect the client's financial reporting, or that relate to subject matters that fall within the expertise of other professional accountants at the firm.
42.	NASBA	Yes, but only in the same context discussed in Questions 1 through 4.
43.	PKF	No. Limiting this right to acts that affect the client's financial reporting and acts that fall within the expertise of the professional accountant has no justification. The right should extend to all such acts, the disclosure of which would be in the public interest. Further, the accountant should only be expected to report illegal acts that come to his or her attention in the course of his or her professional work and such matters should specifically exclude minor misdemeanours and acts of personal misconduct, except where reporting of these matters would be in the public interest. Also note our previously expressed concerns about the determination of what is in the public interest.
44.	RSM	We believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. The appropriate legislative bodies in each jurisdiction, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. However, we believe if disclosure were to be made, it would be appropriate to disclose certain suspected illegal acts that affect the client's financial reporting, or that relate to subject matters that fall within the expertise of other professional accountants at the firm.
45.	SAICA	Yes we do agree. However, with references to our responses above the professional accountant should make disclosure if required by law.
46.	ZICA	We agree that the suspected illegal acts to be disclosed, 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..

## 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?***

#	Source	Comment
1.	AAA	Yes, this is the appropriate path. However, we also agree that their responsibility should not stop there, in the unlikely event that the external auditor does not respond or is complicit in the illegal act (e.g. as was the case in Enron). The accountant thus may need to report an illegal act to the appropriate security regulator (e.g. SEC or PCAOB in the U.S); however, such reporting should also be mindful of the appropriate whistle-blowing standards in a country in question.
2.	ACCA	<p>There appears to be an assumption that the auditor can escalate matters further than another professional accountant. If so, then the professional accountant reaches the point at which external reporting, in the public interest, must be considered at an earlier stage. The option of reporting to the external accountant should be considered, but we are not in favour of this being a requirement. Requiring auditors to investigate another party's suspicion (which may not be related to the audit of the financial statements) is unjust and untenable. A requirement to report to the external auditor also opens up an inconsistency: where there is no external auditor, the professional accountant is 'expected to exercise' a right to report externally; however, if there is an external auditor (who considers it a public interest matter), external reporting becomes a requirement.</p> <p>The only relevant question is whether it is in the public interest that the external auditor is alerted (because it would enhance the quality of the audit). We propose that, if a professional accountant determines that it is in the public interest to report the matter to an appropriate authority, the professional accountant should also report to the external auditor. Given that the professional accountant has already disclosed the matter to the appropriate authority, the responsibility of the external auditor (once satisfied that the public interest has been served by the disclosure already made) would be within the scope of ISA 250. It would be unjust and untenable for the auditor to be burdened with responsibilities beyond those supported by existing law and regulation.</p>
3.	AICPA	For the reasons discussed in General Comment No. 5, we would support a requirement that professional accountants in public practice providing services to a client that is not an audit client of the firm or a network firm and professional accountants in business consider disclosing a suspected illegal act to the external auditor, provided that such disclosure would not violate any legal or contractual confidentiality or non-disclosure requirements applicable to the accountant's engagement or employment.
4.	APESB	APESB does not support the requirement to disclose suspected illegal acts to the client's external auditor when unable to escalate the matter within the client unless there is a legal obligation to do so. The requirement to disclose a suspected illegal act to the entity's external auditor places a higher standard on professional accountants than what is required of other professionals. While the professional accountant

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		should abide by the Code and spirit in which it is drafted, an obligation to disclose information places significant burden on the professional accountant with potential adverse consequences arising such as reduced competitiveness, loss of client trust and potential legal exposure for whistle-blowing and breach of confidentiality. For this reason, APESB believes that the professional accountant should be given the right to disclose a suspected illegal act when it is in the public interest to do so rather than an obligation.
5.	BDO	It would often be beneficial for the auditor to be made aware of a suspected illegal act for audit purposes and in turn the auditor could escalate this within the client. Therefore, in principle, we support disclosure to the external auditor provided that such disclosure would not contravene any legal or contractual duty of confidentiality.
6.	CalCPA (APAS)	No. The external auditor is not an appropriate authority. Whether there is another firm that is the auditor, or if there is no auditor, the auditor is in no better position to deal with a recalcitrant client the non-auditor professional accountant.
7.	CARB	As stated previously we believe that the Code should be restricted to providing a 'right' to report. Where the professional accountant determines that a report should be made we agree that he/she should have the 'right' to report to the external auditor. However, reports to the external auditor should not be made where this could be in breach of any statutory provisions.
8.	CGA Ca	We 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, assuming that such disclosure is not in contravention of any applicable law.
9.	CICA	We believe that a professional accountant providing professional services to a client that is not an audit client of the firm or a network firm should first attempt to escalate the matter within the client but if unsuccessful, should be required to disclose the suspected illegal act to the entity's external auditor, if any, unless the professional accountant is acting as a fiduciary, as noted above. Such information is likely to be necessary in order for the auditor to properly fulfill the audit function. In addition, the information may have an impact on the auditor's assessment of the continuance of the client relationship. We note, however, that the circumstances in which such a professional accountant is unable to escalate the matter within the client are likely to be limited.
10.	CICPA	Yes. We generally agree. However, it is unclear here how much more work does the professional accountant need to do. For example, is the professional accountant required or have the right to trace the issue and find how is the problem be resolved?
11.	CNDCEC	Yes, we agree with the proposal (see comment to Q6).
12.	CPA Au	Please see our response to question 4.
13.	DE	Yes, the audit firms have experience for this aspect principally in relation the structure and development for training and expertise, but I think that the professional accountant need to be have knowledge for discussed this process together external auditor.



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		I think that some activities cannot to elaborate for professional accountant for attend specific laws in your countries, is very important to be clear what's the activities that professional accountant can be made in relation the financial reporting, financial instruments for example in the regulators, principally local regions
14.	DTT	No. We disagree with any requirement to disclose a suspected illegal act to the external auditor for the reasons stated above. Moreover, disclosure to the external auditor may be in violation of a duty the accountant has to the client, including contractual arrangements between the accountant and client.
15.	EFAA	No. We do not believe that there should be a requirement in this regard. This decision is a matter of professional judgment that cannot be passed on to another professional accountant. There should be provision in the Code to allow the professional accountant in this circumstance to take legal advice and the Code should be amended as outlined in our response to question 4. It may be that after legal Counsel has been sought the professional accountant then believes that the auditor needs to be informed because it is now matter of public interest. This right should be allowed.
16.	EY	As discussed above, we would support a change in the Code to allow (but not require) illegal-act disclosure to a client's external auditors by accountants providing non-audit services to the client.
17.	FAOA	Yes, but subject to applicable national law.
18.	FAR	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.
19.	GTI	Grant Thornton 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, and is unable to escalate the matter within the client should be required to disclose the suspected illegal act to the entity's external auditor. The proposal appears to suggest that there is a distinction based on the premise that the professional accountant providing non-audit services will have a more restricted scope to escalate matters within a client's organization. There is an implication that because the audit involves interaction with those charged with governance (but specifically in the context of an audit of financial statements), they will be "closer" to management as a result and therefore will be in a better position to raise and escalate the discussion of a suspected illegal act. If a professional accountant providing non-audit services is not interacting with those charged with governance during their

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		assignment, this should not be viewed as a barrier to requesting access to senior management. It does not seem practical that the auditor should be required to escalate matters related to a suspected illegal act which another accountant has been made aware of.
20.	HKICPA	<p>We consider the role of a professional accountant in public practice providing services to a client that is not an audit client is more of a fiduciary nature towards the client and employer. We therefore consider that the 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 not be required to disclose the suspected illegal act to the entity's external auditor.</p> <p>As mentioned in our response to question 3, we consider the guidance included in paragraph 140.7 of the existing Code to be sufficient in the meantime to assist a professional accountant to understand what is meant by acting in the public interest.</p>
21.	ICAA	See our response to Question 1 concerning our view that these provisions should not be expressed as requirements. We do agree that the Code could identify the external auditor as a likely appropriate party with whom concerns could be raised. However, because we understand that such concerns can already brought to auditors, we consider that this would be a recognition of the existing landscape for audited entities, rather than any introduction of a new arrangement.
22.	ICAEW	<p>If the matter has a bearing on the subject of the audit, then it would clearly be appropriate for the accountant to be encouraged to inform the auditor. However, for reasons noted above, we believe that a requirement to report externally would be counterproductive. Although matters likely to be discovered by accountants would probably be at least potentially relevant to the audit, if the matter were not relevant to the audit, a requirement is even less appropriate.</p> <p>Other than considering the impact on the audit directly, it is unclear to us what the auditors are supposed to do with such a report. Presumably, the auditor must now make an assessment of whether the matter is a public interest one. If it is thought to be, the matter is now brought into the 'must be reported (by the auditor)' category, as drafted. This is inconsistent with the position if there is not an auditor (which is likely to be the case for most businesses around the world, by number if not size).</p> <p>If the auditor reports to certain authorities involved with, eg, anti-money laundering, they may not be able to feed back that they have made a report. As a practical matter, this will make it difficult for the accountant to determine if the matter has been dealt with properly.</p>
23.	ICAP	We would reiterate that the professional accountant should consider the prevalent laws in his jurisdiction before making such disclosure. Professional accountant may also have to seek the legal advice. In case, there is no legal bar or expected severe consequences, the 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 disclose the suspected illegal act to the entity's external auditor.

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24.	ICAS	We are not supportive of this approach which would place another burden on auditors. Such an approach would not be possible in certain jurisdictions where such disclosure is prohibited by professional confidentiality, secrecy or privilege requirements. Additionally, the proposals are not clear as to what would then be expected of the auditor
25.	ICJCE	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.
26.	ICPAC	Yes
27.	ICPAK	Yes
28.	ICPAR	Agree
29.	ICPAU	Yes, we agree with the proposal.
30.	IDW	No. We refer to our accompanying letter
31.	IFAC SMP	If the matter has a bearing on the subject of the audit, then it would clearly be appropriate for the accountant to be encouraged to inform the auditor. However, for the reasons set out in our response to question 5, this should not be mandated. We note that many SMEs are not audited and so this avenue of discharging an obligation to report would not be available to a professional accountant.
32.	IIA	No, as noted in our response to Q.1, PAIPPs providing non-audit services to a non-audit client should report SIAs to the EP who has the experience and responsibility to handle SIAs. The EP should report the SIAs in accordance with agreed upon process in the agreement with the entity, or to Internal Audit. Management of the entity is responsible for informing AEP on allegations related to financial reporting or those with financial reporting implications.
33.	IRBA	No, we disagree with a requirement imposed on 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, to disclose the matter to the entity's external auditor. This may be one of the possible options a professional accountant may determine is appropriate after due consideration of all relevant facts and circumstances, but should not be imposed as a requirement in the Code.

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		Moreover, a professional accountant whose firm is not the auditor of the entity and who is unable to escalate the matter within the client may not have sufficient knowledge and understanding of the full circumstances to determine that the alleged acts, are indeed suspected illegal acts. Disclosure of a suspected illegal act to the entity's auditor in such circumstances may be misleading and the professional accountant may then find he or she has violated the Code's confidentiality requirements and is in breach of their contractual engagement responsibilities to the client.
34.	JICPA	<p>We do not agree with the proposal.</p> <p>To override the fundamental principle of confidentiality and disclose suspected illegal acts to an external auditor, a professional accountant must obtain client's acknowledgement, when entering into an agreement for professional services, that such a case could nullify the confidentiality obligation.</p> <p>However, there would be many cases where no such consent can be obtained from a client in practice. Hence, the effectiveness of the proposed requirement is questionable. We therefore believe that, for professional accountants providing professional services to non-audit clients, their responsibility could be sufficiently discharged not by requiring them to disclose a suspected illegal act to the entity's external auditor, but by requiring them to discuss the matter with an appropriate level of management who can be expected to first deal with a suspected illegal act, as their responsibility could only be extended to communicating the matter with an appropriate level of management</p>
35.	KICPA	As described in our response to question 6, we don't support imposing different requirements on an auditor and on a professional accountant providing non-audit services to a client that is not an audit client for the purpose of imposing stricter requirements on an auditor to address suspected illegal act. If there is a reasonable level of procedure to be followed by a professional accountant to address the suspected illegal act of a client and it is possible to define such requirement or procedure in the Code, it is appropriate to impose same reasonable requirements on all professional accountants.
36.	KPMG	As noted in our covering letter, we do not believe it is appropriate for the Code to impose disclosure requirements on professional accountants. The decision as to whether disclosure is appropriate requires an assessment of the facts, circumstances and local requirements. This is elaborated on in our responses to questions 1 to 4 above. Given this, we believe that the furthest the proposals can go is to suggest that a professional accountant consider whether it is appropriate to disclose a suspected illegal act to the external auditor.
37.	KRESTON	No. It is not the role of the auditor to act as an investigator and there is no economic reward for filling this role. There are a significant number of entities globally that do not have an auditor and this provision introduces differences in how these entities are dealt with where there is a suspected illegal act.
38.	MIA	We do not agree that a professional accountant should be required to disclose the suspected illegal act to the entity's external auditor. It is unclear to us what the external auditors would then be required to do with such information.

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#	Source	Comment
39.	Mazars	<p>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.</p> <p>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.</p>
40.	MG	<p>We would support a requirement that professional accountants in public practice providing services to a client that is not an audit client of the firm or a network firm and professional accountants in business be required to consider disclosing a suspected illegal act to the external auditor, provided that such disclosure would not violate any legal or contractual confidentiality or non-disclosure requirements applicable to the accountant's engagement or employment. We also believe that if disclosure is considered to be appropriate, the external auditor be informed in a timely manner.</p>
41.	NASBA	<p>We believe all professional accountants have a duty to comply with laws and regulations in their respective jurisdictions regardless of the scope or level of service rendered to a client or employer.</p>
42.	PKF	<p>No. The professional accountant should deal with the suspected illegal act as he or she would deal with it as if there was no external auditor in office. This avoids putting a client that has an audit at a disadvantage to a client that does not have an audit and also avoids placing a requirement on the auditor to act on "second hand" information.</p> <p>Also, as set out in our response to question (4), we do not agree with the distinction between auditors and other professional accountants.</p>
43.	RSM	<p>We would support a requirement that professional accountants in public practice providing services to a client that is not an audit client of the firm or a network firm and professional accountants in business be required to consider disclosing a suspected illegal act to the external auditor, provided that such disclosure would not violate any legal or contractual confidentiality or non-disclosure requirements applicable to the accountant's engagement or employment. We also believe that if disclosure is considered to be appropriate the external auditor be informed in a timely manner.</p>
44.	SAICA	<p>We do agree that the professional accountant should have the option to report the suspicion to the external auditor for further investigation without the fear of being disciplined for breach of confidentiality. However, such an action should be an "option" and not a "requirement"</p>
45.	ZICA	<p>We have got no divergent views on the matter.</p>

## 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?***

#	Source	Comment
1.	AAA	The contributors believe that this is the appropriate path. However, given the difficulties stated above and the burden this would place on the professional accountant, such reports are very unlikely to occur. Such reports are more likely to arise if appropriate whistle-blowing legislation is in place. In addition, if an accountant can frivolously be sued for defamation in a country where he/she seeks to report an illegal act, expecting them to report such illegal acts is increasingly difficult. In other words, there has to be a well defined connection between expectations of reporting of illegal acts and legislative protections against retaliation for reporting of such illegal acts.
2.	ACCA	<p>We support the right to override confidentiality, but based on clear guidance concerning public interest considerations. Having a right to exercise is different to being expected to exercise that right. A decision to disclose certain suspected illegal acts to an appropriate authority would be made on the balance of judgement, and it would seem inappropriate to have that judgement tainted by the fear that the professional accountant might not be complying with a requirement of the Code.</p> <p>In many situations, the professional accountant would be exposed to liability if they disclose in the public interest when they should not have done so; but also if they do not disclose in circumstances in which they should have been 'expected' to do so.</p>
3.	AICPA	No. For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant in public practice. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate liability safe-harbor protections. In addition, as discussed in General Comment No. 6.5, we do not believe that there is any actual difference between a professional accountant's requirement and "right" to disclose certain illegal acts to an appropriate authority under the proposed standard, since the Exposure Draft states that the accountant generally would be "expected" to exercise that right
4.	APESB	<p>Where the disclosure is in the public interest, APESB supports the professional accountant having a right to disclose a suspected illegal act. We agree in principle with the right to override confidentiality. However, we disagree with placing an obligation or expectation on the professional accountant to do so. Creating such an obligation treats professional accountants as "quasi" regulators or whistle-blowers which is likely to create practical commercial difficulties for the professional accountant.</p> <p>This is particularly the case in SMPs where professional accountants are assisting and guiding clients to be up to date with their compliance obligations. Further there is likely to be a detrimental impact on the trusted advisor status that professional accountants often assume when</p>

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#	Source	Comment
		<p>assisting SMP clients. If the current IESBA proposals are adopted then some SMP clients may prefer to deal with lawyers for tax matters as they will have the protection of legal professional privilege.</p> <p>Finally, in some jurisdictions professional accountants may not be protected by whistle-blowing legislation which would prevent professional accountants from fulfilling such an obligation and there may also be personal repercussions.</p> <p>For SMP clients there are often limited levels of management and no requirement for an audit. Therefore based on these proposals the only option available to the professional accountant is disclosure of suspected illegal acts. This could place significant legal and administrative burdens on SMPs, for limited benefit.</p>
5.	BDO	No. As noted above, we do not support any form of external disclosure to be included in the Code. Furthermore, we do not discern a substantive difference between a requirement to disclose and a right to disclose since the Exposure Draft indicates that the professional accountant would be 'expected' to exercise a right.
6.	CalCPA (APAS)	No. See last paragraph of response to question 5
7.	CARB	As stated previously the Code should refer only to a right. It should not in any way or by any form of wording place an obligation to report on the professional accountant.
8.	CCAB	See response to question 5
9.	CGA Ca	We believe that the following tautology holds: Right to Report + Expectation to Report = Obligation to Report in so far as the instances we have detailed in response to Question 1. We are unsure what is missing from the left hand side of the equation to conclude that it implies a lower threshold than the right hand side of the equation. Again, we are not in favor of prescribing differential thresholds for professional accountants in public practice on the basis of the kind of services they are rendering to their clients and their obligations should typically remain consistent when confronted with identical situations.
10.	CICA	<p>We 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 disclose the matter to an appropriate authority, after exhausting other possibilities, unless the professional accountant is acting as a fiduciary, as noted above. However, we believe that such a professional accountant should have the same disclosure requirement as is required of an auditor, on the basis that if the "non-auditor" professional accountant is truly concerned that the public is at risk and has exhausted whatever escalation is available, then public protection should still be the overriding concern. In short, there should be a responsibility to disclose to the auditor because the auditor "needs to know" and to disclose to the appropriate authority in order to address public protection.</p> <p>In addition, our comment is based on the proposed alternate framework that includes appropriate whistleblower protection.</p>
11.	CICPA	Yes. We agree with that.

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12.	CNDCEC	We agree that a professional accountant providing professional services to a non 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; Due to the classification as a right, we consider as not appropriate the circumstance that the professional accountant is expected to exercise this right, and in so doing, transforming the “right” into a “duty”(please see general comments).
13.	CPA Au	As mentioned in our general comments we support the right to override confidentiality but not the requirement to do so. Further, we question whether an expectation can be imposed on what a professional accountant is to do with a right. Attaching a requirement on a right is not consistent with the concept of a right.
14.	DE	Yes, I agree that a professional accountant providing professional services to a client that is not audit client of the firm or a network firm should have a right to override confidentiality, observed the comments for questions numbers 7 and 8.
15.	DTT	No. For the reasons stated in our general comments above, we believe the obligation to disclose suspected illegal acts to an appropriate authority rests with management and those charged with governance. A right to disclose that includes an expectation that such right will be exercised creates a de facto requirement to disclose, which we do not support.
16.	EFAA	We believe that there should be a right but we do not agree that they be expected to exercise that right which we think is a matter for their professional judgment.
17.	EY	No, for the reasons discussed above.
18.	FAOA	Yes, but subject to applicable national law.
19.	FAR	See the answer to question 8, above
20.	GTI	As previously discussed, Grant Thornton is supportive of providing all professional accountants with the right to disclose a suspected illegal act to an appropriate authority if the professional accountant believes that the suspected act is of such consequence that disclosure of such act would be in the public interest, and the professional accountant would not be deemed to breach confidentiality as defined in the Code.
21.	HKICPA	<p>We agree in principle for the Code to afford a professional accountant providing professional services to a client that is not an audit client of the firm (or a network firm) the right to override confidentiality and disclose certain illegal acts to an appropriate authority, after considering all the facts and circumstances, in the public interest if the matter has not been appropriately addressed by the entity.</p> <p>However, based on the same reasoning as in our response to question 2, we consider that the decision on whether to make such disclosure to the authority should rest within the discretion of the professional accountant and the Code should not impose on the professional accountant additional requirements in terms of whether they need to explain their approach and reasoning should they choose not to make such a disclosure. Consistent with our response in question 2, professional accountants will need to think carefully before exercising a</p>



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#	Source	Comment
		discretionary right where there is no appropriate statutory whistle-blowing protection legislation in place, as the personal costs to them may outweigh any benefits achieved.
22.	ICAA	Yes, we agree that accountants should have this right, and that it is appropriate for the Code to identify that. We note that where the Code identifies an expectation that the right would be exercised, this would be equivalent to an obligation to disclose, which in our view is not appropriate for the reasons set out in our response to Question 1.
23.	ICAEW	We agree with an ability to override confidentiality (within the boundaries of the relevant legal framework). Indeed, the accountant should be encouraged to make disclosure where he or she believes that the public interest in disclosure outweighs the professional duty of confidence. However, we have major concerns with the wording as drafted. It is quite unclear what a 'right' that the accountant is 'expected to exercise' actually means. We assume that it is not intended to be an obligation, given the different wording used elsewhere, but it appears to be more than encouragement: an obligation by a roundabout route. We believe that this wording would be difficult for members to interpret and professional bodies to know how to enforce. It could increase the need for legal advice unnecessarily and should be amended..
24.	ICAP	Agreed only if it is genuinely a 'right' of such professional accountant and there is no threat of 'expectation for doing so' which hanging sword, in my view, nevertheless makes it an obligation instead of the right.
25.	ICAS	We are supportive of the professional accountant having the right to do so where they feel that such disclosure would be in the public interest and where an appropriate legal protection framework for whistleblowing is in place, but we do not support the proposal that they should be expected to exercise this right. Such an approach is effectively introducing a requirement to report.
26.	ICJCE	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.
27.	ICPAC	Yes
28.	ICPAK	Yes
29.	ICPAR	Agree
30.	ICPAU	Yes, we agree with the proposal.
31.	IDW	No. We refer to our accompanying letter.
32.	IFAC SMP	We agree in principle with a right (subject to the law). Indeed, the accountant should be encouraged to make disclosure where he or she believes that the public interest in disclosure outweighs the professional duty of confidence. However, we have major concerns with the wording as drafted. It is quite unclear what a 'right' that the accountant is 'expected to exercise' actually means. We assume that it is not

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#	Source	Comment
		intended to be an obligation, given the different wording used elsewhere, but it appears to be more than encouragement, rather an obligation by a roundabout route. It is vital that the wording is such that it is not interpreted as an obligation.
33.	IIA	<p>As noted in the proposal, the term used is SIAs because whether a matter constitutes an illegal act is ultimately a matter for legal determination. We assume that this question refers to SIA, not illegal acts.</p> <p>No, as noted in our response to Q.1, PAIPPs should report SIAs to the EP. The audit firm should have a right to override confidentiality to disclose certain SIAs (those that meet disclosure requirements) to an appropriate authority and be expected to exercise this right, only after the audit firm has reported the SIAs to those charged with governance, and concluded that the responses were not appropriate or adequate, and the required/appropriate disclosures have not been made within a reasonable time.</p>
34.	IRBA	Whilst agreeing 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, we do not agree that the professional accountant “be expected to exercise this right” as this effectively imposes a requirement. The professional accountant needs to consider all facts and circumstances surrounding the suspected illegal act identified, including the legal and regulatory framework in the jurisdiction before determining the appropriate action to take. Where the professional accountant determines it is appropriate to disclose the suspected illegal act to an appropriate authority, this should not be construed as a violation of the Code's confidentiality requirements.
35.	JICPA	<p>We do not agree with the proposal.</p> <p>We have concerns described in our response to Question 8, and have reservations about the extent to which the “right to disclose” would actually be exercised. Also, as we believe that a professional accountant providing professional services to a non-audit client should only be responsible for discussing the matter with the appropriate level of management who can be expected to first respond to the matter, those professional accountants should not have a right to disclose , or not be expected to exercise that right.</p>
36.	KICPA	We believe that local regulators should decide the details and subjects of confidentiality requirement for the professional accountant and the definition and scope of suspected illegal act, among others, in a way that best suits local laws/regulations and judicial environments. To that end, we ask you to remove the phrase ‘expected to exercise this right’.
37.	KPMG	We disagree for the reasons noted in responses to questions 1 to 4 above.
38.	KRESTON	There are a wide range of legal requirements regarding confidentiality and disclosure and it would be difficult for the proposals to be implemented consistently.
39.	MIA	In principle, we would agree that when in the professional accountant's opinion, the suspected illegal act is of such consequence that disclosure would be in the public interest, the professional accountant should have a right to disclose, subject to the law provisions in place.

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#	Source	Comment
		However we do not think that the professional accountant should be expected to exercise this right but that such a matter should best be left to the professional accountant's discretion after having applied his professional judgement.
40.	Mazars	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'.
41.	MG	No. For the reasons discussed in our General Comments above, we believe the decision to disclose a suspected illegal act to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. It should not be IESBA, but rather the appropriate legislative bodies in each jurisdiction who should decide whether to impose a requirement on or grant a right to a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. In addition, we do not believe that there is any actual difference between a professional accountant's requirement and "right" to disclose certain illegal acts to an appropriate authority as it has been drafted in the proposed standard, since the Exposure Draft states that the accountant "is expected to exercise that right in order to fulfill the accountant's responsibility to act in the public interest."
42.	NASBA	No. We fundamentally disagree with the notion that a private-sector standard setter is capable of creating rights. Please see our response to Question 4 and the General Comments above in the section, "Duty and Right to Disclose."
43.	PKF	Yes, we agree with the right to override confidentiality as stated, provided it does not result in a breach of local law. This allows the professional accountant in public practice to use his or her professional judgment, taking into consideration all relevant matters.  We do not agree with the additional expectation that the right should be exercised. Proposed paragraph 225.18 (and 225.19 where the client is an individual) states that the professional accountant is "expected to exercise this right" in order to fulfil their responsibility to act in the public interest. This is putting a condition on the right to override confidentiality which will be difficult for professional accountants in public practice to interpret in practice. The additional condition amounts to an obligation and is, therefore, more in the nature of a requirement, which we do not support. We suggest that this additional wording be modified or removed to eliminate any ambiguity and to assist with the practical interpretation of the paragraph.
44.	RSM	Please refer to our comments with respect to Question 2 above
45.	SAICA	No, we do not agree. We believe that the professional accountant should bring this suspicion to the attention of appropriate management and if the accountant believes it is serious enough and no further action has been taken have the right not an obligation to report it to the internal or external auditors. Forcing disclosure can have serious repercussions for the professional accountant's reputation and pose a risk to the accountant.
46.	ZICA	Yes we do agree.



**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?***

#	Source	Comment
1.	AAA	Any concerns of illegal acts should be reported to the external auditors. Only those in which the professional accountant has expertise should be reported to external parties. Otherwise, the accountant may incur significant legal liability for reporting in areas in which he cannot defend his expertise.
2.	ACCA	<p>As with question 7, this question should only be concerned with which suspected illegal acts the professional accountant should be 'expected' to disclose. It is not necessary to relate those acts to the subject matter of the professional services being provided. We would refer you to our answers to questions 7 and 9 above.</p> <p>There is also a danger that restricting the professional accountant's rights and responsibilities to report to the subject matter area in this way might be criticised if it is seen by the public as accountants trying to divest themselves of their reasonable responsibilities. It might also risk professional accountants losing sight of their responsibilities to safeguard fundamental ethical principles according to the conceptual framework.</p>
3.	AICPA	For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant in public practice. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate liability safe-harbor protections. However, subject to our observations in General Comment No. 6, we believe it would be appropriate to require a professional accountant to consider encouraging a client to disclose to an appropriate authority certain suspected illegal acts that relate to subject matters that fall within the expertise of the professional accountant, if management's response is not appropriate.
4.	APESB	APESB agrees that the suspected illegal acts to be disclosed referred to in question 9 should be restricted to those acts which relate to the subject matter of the professional services being provided by the professional accountant.
5.	BDO	As noted above, we do not support any form of external disclosure to be included in the Code. Rather, as stated above, we would support guidance for the professional accountant to encourage the entity to report to an appropriate authority suspected illegal acts that affect the entity's financial reporting and acts the subject of which fall within the expertise of the professional accountant.

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#	Source	Comment
6.	CalCPA (APAS)	<p>No. See answer to question 7. No matter how you slice it, the accountant rarely, if ever, has sufficient expertise to determine whether an illegal act has been committed.</p> <p>More to the point, even if the accountant could determine that an illegal act has been committed, is that of any value if a criminal indictment and conviction cannot be obtained? Do the authors of the ED really expect clients to just confess to authorities because their accountant has raised a concern about a suspected criminal act, so prosecutors can skip trials and move directly to the courtroom for sentencing by a judge?</p>
7.	CARB	See our response to question 7 above.
8.	CGA Ca	We strongly agree that the suspected illegal acts to be disclosed referred to in Question 9 should be restricted to only those acts that relate to the subject matter of the professional services being provided by the professional accountant. To expect otherwise would be to require client interaction to act as a “fishing expedition” or “witch hunt”, rather than a professional engagement.
9.	CICA	We disagree that disclosure should be limited to those acts that relate to the subject matter of the professional services being provided by the professional accountant. As noted above, we believe that there may be other matters that have greater potential impact on the public interest than those matters which are limited to the professional services being provided. The process for escalation of such “unrelated” matters would not likely be dissimilar, although it may be even more important to obtain legal advice in such situations
10.	CICPA	Please refer to our response of question 7.
11.	CNDCEC	Yes, we agree with the proposal (see comment to Q6).
12.	CPA Au	CPA Australia is of the opinion that accountants should have the right to make public interest disclosures about acts that relate to the subject matter of the professional services being provided but no requirement to do so.
13.	DE	Yes, I think that subject matter of the professional services being provided by the professional accountant need to clear for don't have problems in relation the consultation, audit services, experience and risk of activity, if not the IFAC could be have problems in this aspect, principally in relation the inspection of activities in the regulators.
14.	DTT	As noted in our response to question 9, we do not support any standard indicating that a professional accountant is expected to exercise a right to disclose. However, in terms of reporting suspected acts to management, we would not necessarily limit consideration to only those suspected illegal acts relating to the subject matter of the professional services. The professional accountant could learn of a suspected illegal act unrelated to the professional services being provided during the course of the engagement.
15.	EFAA	As we have already stated in our response to question 7 it would be appropriate for the professional accountant to judge for himself the action that should be taken if he suspects an illegal act has taken place. If we use the test of the reasonable informed party it would seem

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#	Source	Comment
		unprofessional for the accountant to be able to excuse himself from taking any action because of the type of services that were being supplied.
16.	EY	We support the establishment, through changes in national law, of illegal act reporting requirements for auditors, and we believe such requirements should be limited to illegal acts that impact financial reporting.
17.	FAOA	No (see paragraph 2.1 above)
18.	FAR	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.
19.	GTI	Grant Thornton agrees 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 because the breadth of suspected illegal acts either reported to or detected by the professional accountant could involve a multitude of considerations that have no significant impact on the services being provided to the client.
20.	HKICPA	Consistent with the reasoning in our response to Question 7, without necessarily agreeing to the proposed requirements and rights to professional accountants, we consider the suspected illegal acts to be disclosed, as referred to in question 9, should be confined to suspected illegal acts that relate solely to the subject matter of the professional services being provided by the professional accountant and in relation to which a reasonable and informed third party would conclude the professional accountant should possess sufficient legal knowledge on the subject matter.
21.	ICAA	Agree, subject to our view that there should not be an obligation to disclose.
22.	ICAEW	As question 7
23.	ICAP	Agreed
24.	ICAS	No, we believe that the scope should be wider than that proposed. We refer you to our response to question 7 above.
25.	ICJCE	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.
26.	ICPAC	No.

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#	Source	Comment
		<p>Failure to report an illegal act, of any nature, even where stumbled upon accidentally, could result in the accountant being accused of unethical behavior with a view to assist/ collude with/ cover-up the culprit.</p> <p>Any act which is deemed to be illegal as defined by any effective regulation or law e.g. the employment of illegal immigrants in breach of immigration/ employment laws, the importation of raw materials not complying with domestic health and safety laws, the infringement of health and safety regulations in production (hazardous to factory manpower), the infringement of any patent/ intellectual property rights, the payment of bribes to any foreign parties/ associates in securing business, breach of environmental regulations relating to industrial waste, illegal use of client base personal data, price fixing, market manipulation, insider dealing, tax evasion et al.</p>
27.	ICPAK	Yes
28.	ICPAR	Agree
29.	ICPAU	Yes, we agree with the proposal
30.	IDW	No. We refer to our accompanying letter. We support the approach taken in ISA 250 which essentially determines three categories of non-compliance with laws and regulations, each of which results in different reaction by the auditor
31.	IFAC SMP	Please refer to our response to question 7.
32.	IIA	<p>No, we do not agree that the SIAs to be disclosed referred to in question 9 should be restricted to the subject matter of the professional services being provided by the professional accountant. The SIAs to be disclosed should be those of such consequence that disclosure would be in the public interest, in accordance with IFAC Policy Position 5, issued in June 2012 on A definition of Public Interest.</p> <p>Please also see our response to Question 3.</p>
33.	IRBA	<p>Whilst it is likely that a suspected illegal act may be encountered in the course of the professional services being provided, it is possible that a suspected illegal act identified may be in respect of matters that are not related to the professional services being provided. It is recognised that a professional accountant may become aware of a suspected illegal act from any source, not necessarily only from the performance of the professional services being provided.</p> <p>As indicated in our response to question 9, the professional accountant needs to consider all facts and circumstances surrounding the suspected illegal act identified, including the legal and regulatory framework in the jurisdiction before determining the appropriate action to take.</p>
34.	JICPA	Although we do not agree with the disclosure as stated in our responses to Questions 8 and 9 above, if such disclosures were to be made, we believe that the suspected illegal acts to be disclosed should be those that are related to the subject matter of the professional services provided by professional accountants.



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#	Source	Comment
35.	KICPA	We agree with the proposal of IESBA.
36.	KPMG	As noted in our response to question 9, overriding the duty of confidentiality and disclosing suspected illegal acts, irrespective of whether they relate to the subject matter of the professional services being provided by the professional accountant should be addressed by local laws and regulations.
37.	KRESTON	It would be difficult for the professional accountant to differentiate between those acts that relate to the subject matter and other matters of which they become aware.
38.	MIA	We think that the suspected illegal acts to be disclosed would be those that satisfy both conditions simultaneously, that is, those suspected illegal acts that relate to the subject matter of the professional services being provided by the professional accountant AND those acts that affect the client's financial reporting.
39.	Mazars	Please refer to our answer to question 7 above
40.	MG	For the reasons discussed in our General Comments above, we believe the decision to disclose a suspected illegal act to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. Additionally, it should not be IESBA, but rather the appropriate legislative bodies in each jurisdiction who should decide whether to impose a requirement on or grant a right to a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. However, subject to our observations in the General Comments above, we agree, if disclosure were to be made, it would be appropriate to disclose certain suspected illegal acts that relate to subject matters that relate to the subject matter of the professional services being provided by the professional accountant
41.	NASBA	No. Please see the second paragraph of Applicability to Individual Professional Accountants and Accounting Firms, which expresses our view that the responsibility to disclose should not hinge on the nature of services being provided. However, we do agree as stated in the Legal Expertise of Accountants section, that the expectation for disclosure should be limited to those that fall within the subject matter expertise of the professional accountant. Also, to the extent the question relates to the creation of rights, please see our responses to Questions 9 and 12.
42.	PKF	No. Limiting this right to acts that affect the client's financial reporting and acts that fall within the expertise of the professional accountant has no justification. The right should extend to all such acts, the disclosure of which would be in the public interest. Further, the accountant should only be expected to report illegal acts that come to his or her attention in the course of his or her professional work and such matters should specifically exclude minor misdemeanours and acts of personal misconduct, except where reporting of these matters would be in the public interest. Also, note our previously expressed concerns about the determination of what is in the public interest.

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#	Source	Comment
43.	RSM	We believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. The appropriate legislative bodies in each jurisdiction, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. However, we believe if disclosure were to be made, it would be appropriate to disclose certain suspected illegal acts that relate to subject matters that relate to the subject matter of the professional services being provided by the professional accountant
44.	SAICA	Refer to response to question 4. Yes, we do agree. We do believe that if information comes to that accountant's attention that is not the subject matter of the professional services being rendered but that is a suspected illegal act, the accountant should report the matter to those charged with governance of the company.
45.	ZICA	The suspected illegal acts to be disclosed should be those acts that relate to the subject matter of the professional services being provided by the professional accountant (i.e. within the scope of the engagement)

**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?***

#	Source	Comment
1.	AAA	<p>We do not agree. Any accountant should feel morally obligated to report illegal acts that could impact others. However, unless adequate legal protections are available to deter retaliation, the requirement to disclose imposes significant cost on the accountant in business. Indeed, the Ethics Resource Center (2012) reports that retaliation on whistleblowers is rising, even in the US where Sarbanes-Oxley Act and Dodd-Frank Act protections were legislated. Studies indicate that even those who feel an act has great impact (moral intensity) are unlikely to report the act (Taylor and Curtis 2010, Taylor et al. 2012). Thus, when that act is ultimately discovered, the accountant who did not report may be punished, rather than, or in addition to, the perpetrator. This seems to be too great a burden to place on an accountant. We believe they should be encouraged to report, and provided mechanisms to facilitate anonymous reporting, but they should not be required to report.</p> <p>This also raises the question of how the accountant should report. The issue of confidential reporting should be raised. While accountants typically prefer to report internally if possible (Robertson et al. 2011), they may also feel more inclined to report if there is a confidential hotline available (Curtis and Taylor 2009, Taylor and Curtis 2010). Confidential reporting mechanisms can help to mitigate the perceived and actual risk of retaliation.</p>
2.	ACCA	<p>This is similar to the position underlying question 8 above although, in this case, it is a professional accountant in business who is unable to escalate the matter. Our answer to question 8 is entirely relevant in this context also.</p> <p>It is important that a professional accountant, whether in public practice or in business, takes ethical responsibility, and is equipped to judge whether or not any disclosure is in the public interest. If he or she determines that there is a sufficiently serious public interest matter, external reporting (accompanied by a report to the external auditor) should be encouraged, but always subject to taking legal advice.</p>
3.	AICPA	<p>For the reasons discussed in General Comment No. 5, we would support a requirement that professional accountants in public practice providing services to a client that is not an audit client of the firm or a network firm and professional accountants in business consider disclosing a suspected illegal act to the external auditor, provided that such disclosure would not violate any legal or contractual confidentiality or non-disclosure requirements applicable to the accountant's engagement or employment.</p>
4.	APESB	<p>APESB does not support the requirement to disclose suspected illegal acts to the external auditor when in doubt of the integrity of management unless it is in the public interest or there is a legal obligation to do so. The mandatory requirement to disclose a suspected</p>

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#	Source	Comment
		<p>illegal act to the entity's external auditor places a higher standard on professional accountants in business than what is required of other professionals in the business environment.</p> <p>The professional accountant in business when encountering challenging circumstances relating to a suspected illegal act should have the right to disclose the suspected illegal act, where in the professional accountant's judgment, the situation satisfies the public interest test. Given the nature of the relationship between auditor and client, disclosure to the auditor is unlikely to be considered a breach of confidentiality requirements.</p> <p>APESB suggest that the Code be revised to include a definition of appropriate authority and that the IESBA should consider whether to include the external auditor in that definition. Guidance on disclosure to the appropriate authority could then be used by the professional accountant when determining whether the disclosure is considered reasonable and to which authority the disclosure is most appropriate in a given circumstance.</p>
5.	BDO	For the same reasons as noted in our response to question 8, we would support this, although practically the professional accountant might not have a working relationship with the auditor. In this case, it might be an acceptable alternative to escalate this within the professional accountant's employer's own chain of command.
6.	CalCPA (APAS)	No. There are problems at so many levels it is hard to know where to begin. As noted in our response to question 8, the auditor is not the party to deal with the matter.
7.	CARB	See our earlier comments regarding the merits of a right versus an obligation or requirement and our response to question 8 regarding reports to the external auditor
8.	CGA Ca	<p>We do not think that the professional accountant in business enjoys special privileges relative to other professionals in business. It will be inappropriate for the professional accountant in business to assume the role of whistle blower suo moto without any legal requirement or immunity in a given jurisdiction. We believe that the professional accountant should make such disclosure only on specific inquiry from the external auditor or appropriate authority and, in such cases, the professional accountant should fully cooperate with the external auditor or the appropriate authority investigating such suspected illegal acts.</p> <p>That said, it is unclear what route the professional accountant should take in a circumstance (as detailed in paragraph 360.6) where the entity does not have multiple levels of management, or where the entity does not engage the services of an external auditor.</p>
9.	CICA	On the assumption that having "doubts about the integrity of management" means that the matter has not been appropriately addressed by the professional accountant's employer, we 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, for the same reasons as outlined in our response to question 8. However, disclosure outside of the organization (to

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#	Source	Comment
		the external auditor or an appropriate authority) should not be required simply because a professional accountant has unsubstantiated concerns about the integrity of management.
10.	CICA	On the assumption that having “doubts about the integrity of management” means that the matter has not been appropriately addressed by the professional accountant’s employer, we 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, for the same reasons as outlined in our response to question 8. However, disclosure outside of the organization (to the external auditor or an appropriate authority) should not be required simply because a professional accountant has unsubstantiated concerns about the integrity of management.
11.	CICPA	Yes. We generally agree. However, as discussed in our response to question 8, it is unclear here how much more work does the professional accountant need to do. For example, is the professional accountant required or have the right to trace the issue and find how is the problem be resolved?
12.	CIMA	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.
13.	CIPFA	In a larger organisation, we believe that the normal route would be to raise the matter with the internal audit function, or with the Chair of the audit committee. This route may not be possible in a smaller organisation, and in this case any disclosure action is likely to lead to a breakdown in the relationship with other senior management or owner of the business.
14.	CNDCEC	We agree that the disclosure to an external auditor becomes necessary particularly in several situations when the professional accountant in business should denounce internally any irregularities to the person who committed them. It could be also appropriate to specify in par. 360.6 that the professional accountant in business - that has the right to report the suspect of occurrence of an illegal act to the external auditor when he has already expressed his concerns to his superior - has the right to report to the entity’s external auditor after he has tried through all the other channels within the organisation.
15.	CPA Au	CPA Australia is of the opinion that disclosure to the external auditor should be a right and not a requirement.
16.	DE	No, I think that professional accountant and external auditor can be same person, the difference is the responsibility and registration for elaborated, discussed some important points about profession or in relation business. I understand that in the business the professional cannot to make decision about organizations, for this is important observed the structure of the entity.

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#	Source	Comment
		<p>If integrity of management should be required to disclose the suspected illegal act to the entity only external auditor, the competence and expertise of professional accountant in the organization need to be integrated for to know and to make process of inspection and observation of activities, for example internal audit services can be to make this, and I believe that this is the right process.</p> <p>I suggest that IFAC contact local regulators for this aspect.</p>
17.	DTT	No. We disagree with any requirement to disclose a suspected illegal act to the external auditor for the reasons stated above. Moreover, disclosure to the external auditor may be in violation of a duty the accountant has to the client or contractual arrangements between the accountant and client.
18.	EFAA	<p>Whilst accepting the objective of the ED we have some reservations as to how this would work practically.</p> <p>There may well be an issue as to why the matter could not be escalated further. Thereafter we would be interested in understanding from IESBA the purposes of informing the auditor. This would require the professional accountant in business to trust the auditor to do something appropriate and there may be instances where this level of trust is not in existence.</p>
19.	FAOA	Yes, but subject to applicable national law.
20.	FAR	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.
21.	GTI	Grant Thornton does not 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. We do support the professional accountant in business disclosing such acts when there is a legal or regulatory requirement to do so. We believe when the professional accountant encounters these challenges, they should consult with legal counsel to determine the best course of action on how to deal with the suspected illegal act.
22.	HKICPA	Our concerns as expressed in question 5 apply also to professional accountants in business. In addition, we note that many jurisdictions, including Hong Kong, do not require the person in charge of a company's finances to be a certified public accountant (or a "professional accountant"). If the effect of these proposals would give rise to companies viewing PAIBs akin to "policeman" or "informant", this would directly affect their competitiveness as compared with someone other than a professional accountant. There is also the possibility that, without appropriate statutory whistle-blowing protections in place, PAIBs, especially for those who are more senior and influential in society, who do not need an accounting qualification may terminate their professional accountant qualification in reaction to the potential effect of the proposals.

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#	Source	Comment
		<p>As the Code applies equally to PAIBs at all levels, and given our policy of converging with international pronouncements, we are not yet sure whether it might be appropriate for us to apply these proposals, if formalized to the Code, to junior staff, particularly in view of the fact that their CFO or Finance Director may not be a professional accountant.</p> <p>We also consider it may not be equitable to impose requirements, to the extent proposed, to professional accountants where comparable requirements are absent for lawyers, engineers, medical practitioners and other professionals. The proposals may also discourage the next generation from entering the accounting profession, which could jeopardize the ongoing development and sustainability of the profession.</p> <p>Accordingly, we have substantial concerns with the above-mentioned proposal, which would require a PAIB to disclose a suspected illegal act to the entity's external auditor, where he or she has doubts about the integrity of management</p>
23.	ICAA	No. See our response to Question 1.
24.	ICAEW	As question 8.
25.	ICAP	<p>A professional accountant in job or business should only disclose / report the suspected illegal act to his immediate next authority as per managerial hierarchy within the organization, in case this comes under his specified official duties. However, professional accountant in business should not be required to or expected to do so on the acts which are not related to his job's subject matter.</p> <p>Such a professional accountant should respond to the inquiries, if any, received from the external auditors and should not be required to report such matters at his own accord. This would be better to preserve the organizational decorum as well as his job's obligations.</p>
26.	ICAS	We are not supportive of this approach. Please refer to our comments to question 8 above
27.	ICJCE	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.
28.	ICPAC	<p>No.</p> <p>The professional accountant should be allowed to use his/ her professional judgment in deciding whether to disclose or not his/ her suspicions of illegal acts to the external auditors. Management integrity is quite often directly linked to auditor integrity and/or professional ethics and/or competence. Therefore, in cases where the professional accountant feels that he/ she cannot escalate the matter within the client, quite often this will also be the case with the external auditor.</p> <p>In such cases, it would be preferable for the professional accountant to have the right to report to an appropriate external authority directly, bypassing client/ external auditor reporting step.</p> <p>Examples where this may be the case can be SMEs whereby the people responsible for the appointment/ remuneration of the external auditors are the same individuals who are the initiators/ perpetrators of the illegal acts. A more specific example can be a private hospital,</p>

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		whereby the doctors (also directors) who appoint the external auditors also fail to pass through hospital books/ records a significant chunk of their earnings, as they recruit/ appoint own secretaries who are responsible for booking their appointments and receive cash/ issue receipts, contrary to standing hospital share agreements.
29.	ICPAK	Yes we agree
30.	ICPAR	Agree
31.	ICPAU	Yes, we agree with the proposal
32.	IDW	We do not view this as an appropriate or necessary measure.  In our opinion, a quality audit in compliance with the ISAs or equivalent national Auditing Standards already deals with compliance with laws and regulations in an appropriate manner. The relationship between the auditor and the accountant could be affected by such requirements.
33.	IFAC PAIB	We partly agree. As discussed under question 1, the PAIB Committee believes that following established mechanisms in an organization, when present, such as reporting to a designated compliance officer and beyond (to the governing body and possibly to designated external parties), should be the preferred method of reporting. Only when these mechanisms do not exist, or do not work properly, disclosure to the entity's external auditor may be appropriate. <sup>5</sup>  The consequences of using the concept of "informing the external auditor" should be further clarified in the guidance. Questions that may remain for some users include: What would happen next? What is the cost versus benefit? How should the identity of any internal whistleblower be protected? <sup>6</sup> How does this apply to entities without an external auditor?
34.	IFAC SMP	Please refer to our response to question 8.  However, it is unclear how the escalation process set out in paragraph 360.6 would end in the situation where the professional accountant may be in an SME with no additional layers of management through which the issue can be escalated, and the SME in question does not have an external auditor. Given the continuing increase in audit exemption thresholds and the resultant increasing numbers of entities dispensing with audit, such a situation may become more likely in years to come.  We understand from reading the Explanatory Memorandum that, in such situations, the IESBA would expect the professional accountant to default to exercising their right to report to an appropriate authority (paragraph 360.9), although this is not entirely clear from reading the ED.

<sup>5</sup> Based on the professional accountant in business' professional judgment, taking into account, for example, the level of legal protection in case of such a disclosure.

<sup>6</sup> This is especially important if the whistleblower is a professional accountant in business acting in accordance with another part of the Code.



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#	Source	Comment
		We suggest the IESBA considers this type of requirement more thoroughly before it finalizes changes to the Code. For example, without provisions to safeguard the interests of the individual professional accountant, (whistleblower protection etc.) we have some doubts whether the provision is practicable.
35.	IIA	<p>No. The PAIB who is unable to escalate the SIA within the client or who has doubts about the integrity of management should report the SIA to internal audit or to those charged with governance.</p> <p>An Internal Audit function which complies with the International Professional Practices Framework (IPPF) is independent of management, has a formal charter, and reports to senior management and/or those charged with governance. This is especially important if the PAs have doubts about the integrity or honesty of management, or suspect that management is involved in the SIAs.</p>
36.	IMA	We disagree with the statement that the accountant should be “required” to disclose the “suspected illegal act” to the external auditor. First, please see our response to question #2 above for our disagreement with using the word “suspected.” Secondly, if there is a “clear violation of the law” our Statement clearly recommends the accountant to “consult [his/her] own attorney as to legal obligations and rights concerning the ethical conflict.” Different situations and jurisdictions may lead to varied recommended outcomes and a blanket statement that an accountant should always breach confidentiality in these issues (as the IESBA proposed document suggests) is inappropriate. It is more appropriate for the accountant to seek professional legal assistance in these situations to determine the best course of action. Our suggestion to the IESBA would be to adjust the terminology from “require” to “may be permitted” or something similar.
37.	JICPA	<p>We do not agree with the proposal.</p> <p>Persons to be informed of a suspected illegal act should not necessarily be restricted to an external auditor. There may be situations, for example, where it may be appropriate to disclose a suspected illegal act to a legal counsel commissioned to oversee a whistle-blowing procedure of an entity. We therefore believe that the disclosure to an external auditor should not be required, and a professional accountant should be provided a selection of persons, such as an external auditor or a legal counsel, to be consulted, and should decide, within his or her own discretion, to whom the matter is to be reported.</p> <p>Furthermore, with regards to professional accountants in business, we believe that they should be expected to advise management of an employing organization to respond to the matter by using their governance mechanisms, such as whistle-blowing mechanisms, when they identify a suspected illegal act. Nevertheless, careful consideration would have to be given to various kinds of works assigned to professional accountants in business and diverse environments that they are situated in.</p> <p>There may be environments where in some jurisdictions entities often employ several professional accountants, and some of them may hold a position of CFOs or persons charged with governance, whereas in some other entities or jurisdictions, there may only be a limited number of professional accountants in business. Therefore, prescribing a blanket requirement for all professional accountants in business would impose an excessive burden and create situations that would be difficult for them to deal with in practice.</p>

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38.	KICPA	As described in our response to question 6, we don't support imposing different requirements on an auditor and on a professional accountant providing non-audit services to a client that is not an audit client for the purpose of imposing stricter requirements on an auditor to address suspected illegal act. If there is a reasonable level of procedure to be followed by a professional accountant to address the suspected illegal act of a client and it is possible to define such requirement or procedure in the Code, it is appropriate to impose same reasonable requirements on all professional accountants.
39.	KPMG	<p>Please refer to our responses to questions 1 to 4 above.</p> <p>It is important to emphasise that we believe that the professional accountant in business is in a different position from the accountant in professional practice. The proposals recognise this to an extent, but in circumstances where the accountant has no whistle-blowing protection the requirements are demanding, particularly for accountants in business who are in junior positions. Employees who have the courage to disclose the misconduct of their employers are likely to find the process very stressful, and may be placed under intense pressure from their employers to withdraw their allegations. It is also possible that their employment would be terminated. They may find themselves the subject of law suits for matters such as breach of their employment contracts and their duty of fidelity/confidentiality to their employer. In addition, it is not unknown for attempts to be made to discredit the character and integrity of whistle-blowers making it much less likely that they would ever find suitable employment in future, even where they are commended for their pursuit of transparency and justice. We also believe, consistent with our comments in our covering letter, that any disclosure requirement or right must be accompanied by statutory protection for the disclosing party for any disclosures made in good faith.</p>
40.	KRESTON	No, it is not the role of the auditor to act as the receiver of "whistle blowing "reports. Reporting should be to an appropriate authority subject to legal advice.
41.	MIA	<p>In principle, we would 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 have a right to disclose the suspected illegal act to the entity's external auditor. However we do not think that the professional accountant should be expected to exercise this right but that such a matter should best be left to the professional accountant's discretion after having applied his professional judgement.</p> <p>We note that ISA 240, which sets out the auditor's responsibilities relating to fraud in an audit of financial statements, already requires that the auditor shall make enquires of management to determine whether they have knowledge of any actual, suspected or alleged fraud affecting the entity. We would expect an entity's chief financial officer to be part of senior management and as such would be included within this requirement. However we would not expect more junior members of the accounting team to be part of this requirement.</p>
42.	MG	We would support a requirement that professional accountants in public practice providing services to a client that is not an audit client of the firm or a network firm and professional accountants in business be required to consider disclosing a suspected illegal act to the external auditor, provided that such disclosure would not violate any legal or contractual confidentiality or non-disclosure requirements applicable to

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#	Source	Comment
		the accountant's engagement or employment. We also believe that if disclosure is considered to be appropriate the external auditor be informed in a timely manner.
43.	NASBA	We believe the Exposure Draft's discussion of how an accountant in business might escalate is inadequate. It does not address other options such as using an anonymous hotline or available whistleblowing protections.  Also, please see General Comments above, particularly with regard to "Other Considerations" and the concerns expressed in the section "Duty and Right to Disclose."
44.	PKF	No, particularly if the sole purpose is for the professional accountant to discharge their own professional responsibility. As noted earlier, we would prefer that the accountant reports any suspicions to the appropriate authority directly. This is for the same reasons as we set out in our response to question 8.
45.	RSM	We would support a requirement that professional accountants in business be required to consider disclosing a suspected illegal act to the external auditor, provided that such disclosure would not violate any legal or contractual confidentiality or non-disclosure requirements applicable to the accountant's engagement or employment. We also believe that if disclosure is considered to be appropriate the external auditor be informed in a timely manner
46.	SAICA	We believe that this should be left to the judgment of the professional accountant. It must be stressed here that this should be an option open to the professional accountant and not a requirement in terms of the Code.
47.	ZICA	Yes we do agree, so that the entity's external auditor can take up the matter.

**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?***

#	Source	Comment
1.	AAA	This places the burden on the accountants to first attempt to resolve the issue within their organization. Indeed, most accountants prefer to follow this path (Robertson et al. 2012). However, we believe the accountant should be free to determine the most appropriate path for resolution. The accountant is in the best position to judge whether the most appropriate path is talking immediately with the external auditors, rather than subjecting oneself to possible retaliation from internal reporting,. Therefore, there is no need for the qualification “who is unable to escalate the matter within the client or who has doubts about the integrity of management” above.
2.	ACCA	This is a very similar situation to that of an accountant in a professional firm and our response to question 9 above is relevant here also. We support the right to disclose in the public interest, but this should be encouraged by suitable guidance, and not incorporated within the Code. To attempt to do so could have the unintended consequence of eroding trust in the accountancy profession, because judgement concerning whether or not to maintain confidentiality may be tainted by the fear that the professional accountant might not be complying with a requirement of the Code.
3.	AICPA	No. For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate liability safe-harbor protections. In addition, as discussed in General Comment No. 6.5, we do not believe that there is any actual difference between a professional accountant's requirement and “right” to disclose certain illegal acts to an appropriate authority under the proposed standard, since the Exposure Draft states that the accountant generally would be “expected” to exercise that right.
4.	APESB	Where it is in the public interest to disclose, APESB agrees that the professional accountant should have the right (as opposed to an obligation) to override confidentiality and disclose suspected illegal acts. We do not agree with making this right an expectation as this is akin to imposing an obligation.  The expectation to disclose certain illegal acts creates an obligation on the professional accountant to potentially override legal obligations. This may in turn result in exposure of the professional accountant to legal reprimands in certain jurisdictions.  APESB does not believe that the Code provides the protective mechanisms and accordingly it is unreasonable for the Code create a mandatory obligation for professional accountants to exercise this right. The alternative is for the Code to provide the professional

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#	Source	Comment
		accountant with the right to override confidentiality when it is the public interest and taking into consideration personal and legal ramifications of such a disclosure.
5.	BDO	No. As noted above, we do not support any form of external disclosure to be included in the Code.
6.	CalCPA (APAS)	Yes. Every member of society, with the exception of those that as a matter of law or professional ethics cannot do so, has the right to report illegal activity to authorities. We don't see employees in quite the same light as we see independent accountants. To preserve a person's or an entity's right to representation, an independent accountant's confidentiality privilege must be preserved, at least to the maximum extent permitted by law. An employee should not have his/her hands tied in this respect.
7.	CARB	See our response to question 5 above.
8.	CCAB	See response to question 5
9.	CGA Ca	Please refer to our response to Question 11.
10.	CICA	<p>We believe that a professional accountant in business should disclose the matter to an appropriate authority, after exhausting other possibilities, unless the professional accountant is acting as a fiduciary, as noted above. However, on the basis that the “non-auditor” professional accountant is truly concerned that the public is at risk and has exhausted whatever escalation is available, then public protection should still be the overriding concern and the “non-auditor” professional accountant should have the same disclosure obligations as a professional accountant who is an auditor.</p> <p>In addition, our comment is based on the proposed alternate framework that includes appropriate whistleblower protection.</p>
11.	CICPA	Yes. We agree with that.
12.	CIMA	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.	CIPFA	As discussed above, the concept of a ‘right’ is not useful. The question is what an accountant should or should not be required to do. Failure to disclose an illegal act that has material relevance to the professional responsibilities is in effect collusion with that act. It is not clear that the proposals in the draft do anything in practice to change the requirements on the individual here.

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14.	CNDCEC	Yes, we agree with the proposal (see comment to Q6).
15.	CPA Au	CPA Australia is of the opinion that all professional accountants should have the right to override confidentiality to make public interest disclosures but whether they exercise such a right needs to be based on individual professional judgement.
16.	DE	Yes, I agree that a professional accountant in business should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority.
17.	DTT	No. For the reasons stated in our general comments above, we believe the obligation to disclose suspected illegal acts to an appropriate authority rests with management and those charged with governance. A right to disclose that includes an expectation that such right will be exercised creates a de facto requirement to disclose, which we do not support
18.	EFAA	No we do not agree for the reasons outlined above.
19.	FAOA	Yes, but subject to applicable national law.
20.	FAR	See the answer to question 11, above
21.	GTI	Grant Thornton is supportive of providing all professional accountants, including those in business, with the right to disclose a suspected illegal act to an appropriate authority, if in the professional accountant's judgment, he or she believes that that suspected act is of such consequence that disclosure of such act would be in the public interest, and the professional accountant would not be deemed to breach confidentiality as defined in the Code.
22.	HKICPA	<p>We agree in principle for the Code to afford the PAIBs the right, after considering all the facts and circumstances, to override confidentiality and disclose certain illegal acts to an appropriate authority.</p> <p>However, based on the same reasoning as set out in our response to question 2, we consider that the decision on whether to make such a disclosure to an appropriate authority should rest within the professional accountant's discretion and the Code should not require the professional accountant to explain their decision on the exercise of that right. Consistent with our response in question 2, we consider that a professional accountant will need to think carefully about how and when to exercise a discretionary right, where they have no protection under the law from legal action. We consider there might be practical difficulties for professional accountants to exercise their discretionary right if they would likely need to bear personal liability for compromising their confidentiality obligation under an employment contract or under local laws and regulations.</p>

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#	Source	Comment
23.	ICAA	Yes, we agree that accountants should have this right, and that it is appropriate for the Code to identify that. We note that where the Code identifies an expectation that the right would be exercised, this would be equivalent to an obligation to disclose, which in our view is not appropriate for the reasons set out in our response to Question 1.
24.	ICAEW	As question 9.  We are particularly concerned that in many organisations where there might only be one professional accountant and therefore anything that implies an obligation would have the effect of turning the CFO (the most likely role for the accountant) into the internal whistle-blower. That may be how the organisation wishes to arrange matters but equally, it should be free to make other arrangements where circumstances dictate.
25.	ICAP	For a number of economic, organizational and legal justifications, a professional accountant in business should have a right to and be expected to report such suspected illegal acts only to the immediate next authority within his organization as per managerial hierarchy. However, as mentioned earlier, a professional accountant in business should not be required to or expected to do so on the acts which are not related to his job's subject matter.
26.	ICAS	We are supportive of the professional accountant in business having the right to do so where they feel that such disclosure would be in the public interest and where an appropriate legal protection framework for whistleblowing is in place, but we do not support the proposal that they should be expected to exercise this right. Such an approach is effectively introducing a requirement to report.
27.	ICJCE	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.
28.	ICPAC	Yes
29.	ICPAK	We agree. However the reporting to third parties should first be to the external auditor and if no action is taken then disclose to appropriate public authorities. Evidence of such disclosures should be kept by the professional accountant in business as evidence of having carried out the disclosures in an ethical manner.
30.	ICPAR	Agree
31.	ICPAU	Yes, we agree with the proposal
32.	IDW	Our members are generally limited to professional accountants in public practice, and therefore will not be directly affected by the proposal.

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#	Source	Comment
		<p>However, we do not believe that the Code is the appropriate place to govern whistle-blowing, nor do we believe that the proposals will have the desired impact in practice, particularly not in relation to accountants in business.</p> <p>As we have detailed elsewhere in this letter, we do not believe it is appropriate for the individual professional accountant to be left to decide on the various matters that the proposals would require that could lead to the proposed disclosure. A requirement for a PAIB to “escalate the matter”, a “right” to disclose and an “expectation to exercise the right” will not be effective measures in practice.</p>
33.	IFAC PAIB	<p>We partly agree. As discussed in the general comments, the PAIB Committee believes that the right to override confidentiality and disclose is already included in Section 140 of the current Code. In addition, and as discussed above, the committee proposes an “apply or be able to explain” approach rather than the proposed requirement in paragraph 360.9 of the Code. As indicated above, placing an expectation on how to exercise a right is not consistent with the concept of having a right. Therefore, our view is that professional accountants should not be required or expected to exercise the right but, instead, may be required or expected to exercise their judgment whether or not to disclose in accordance with the “apply or be able to explain” principle.</p>
34.	IFAC SMP	Please refer to our response to questions 9 and 11.
35.	IIA	<p>As noted in the proposal, the term used is suspected illegal acts because whether a matter constitutes an illegal act is ultimately a matter for legal determination by a court of law. We assume this to mean SIAs and not illegal acts.</p> <p>In the case of SIAs, the PAIB should have a right to override confidentiality to disclose certain SIAs to an appropriate authority and be expected to exercise this right only after the PAIB has reported the SIAs to those charged with governance, and concluded that the responses were not appropriate or adequate, and the required/appropriate disclosures have not been made within a reasonable time. However, protections for various potential violations (e.g., confidentiality requirements) need to be afforded to the PAs that took appropriate actions.</p>
36.	IMA	See our response to #11.
37.	JICPA	Please refer to our response to Question 2.
38.	KICPA	<p>We believe that local regulators should decide the details and subjects of confidentiality requirement for the professional accountant and the definition and scope of suspected illegal act, among others, in a way that best suits local laws/regulations and judicial environments. To that end, we ask you to remove the phrase ‘expected to exercise this right’.</p>
39.	KPMG	<p>As noted in our covering letter and in our responses to questions 1 to 4, we do not believe it is appropriate for the Code to impose disclosure requirements on professional accountants. The decision as to whether disclosure is appropriate requires an assessment of the facts, circumstances and local requirements. This is elaborated on in our responses to questions 1 to 4 above. Given this, we believe that the</p>



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#	Source	Comment
		further the proposals can go is to suggest that a professional accountant consider whether it is appropriate to disclose a suspected illegal act to an appropriate authority.
40.	KRESTON	The override of confidentiality should be determined by national law and regulation the introduction of the right would not lead to consistent application.
41.	MIA	<p>In principle, we would agree that a professional accountant in business should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority, subject to the law provisions in place.</p> <p>However we do not think that the professional accountant should be expected to exercise this right but that such a matter should best be left to the professional accountant's discretion after having applied his professional judgement.</p>
42.	MG	No. For the reasons discussed in our General Comments above, we believe the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. It should not be IESBA, but rather the appropriate legislative bodies in each jurisdiction who should decide whether to impose a requirement on or grant a right to a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. In addition, we do not believe that there is any actual difference between a professional accountant's requirement and "right" to disclose certain illegal acts to an appropriate authority as it has been drafted in the proposed standard, since the Exposure Draft states that the accountant "is expected to exercise that right in order to fulfill the accountant's responsibility to act in the public interest."
43.	NASBA	No. We fundamentally disagree with the notion that a private-sector standard setter is capable of creating rights. Please see our response to Question 4 and the General Comments above in the section "Duty and Right to Disclose."
44.	PKF	<p>We agree that a professional accountant in business should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority, as long as this does not result in a breach of local law. This allows the professional accountant in business to use his or her professional judgment, taking into consideration all relevant matters.</p> <p>We do not agree with the additional expectation that the right should be exercised. Proposed paragraph 360.9 states that the professional accountant is "expected to exercise this right" in order to fulfil his or her responsibility to act in the public interest. This is putting a condition on the right to override confidentiality which will be difficult for professional accountants in business to interpret in practice. The additional condition amounts to an obligation and is, therefore, more in the nature of a requirement, which we do not support. We suggest that this additional wording be modified or removed to eliminate any ambiguity and to assist with the practical interpretation of the paragraph.</p>
45.	RSM	Please refer to our comments with respect to Question 2 above.

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46.	SAICA	Yes, we do agree that a professional accountant in business should have a right to override confidentiality and disclose certain illegal acts to an appropriate authority but it should not be an expectation that such a right is exercised unless there is a legal requirement to do so or legal protection for the professional accountant who chooses to exercise this right.
47.	ZICA	Yes we do agree, because certain laws may compel disclosure to the authorities e.g. anti –money laundering laws.

**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?***

#	Source	Comment
1.	AAA	Professional accountants in business have a wider range of knowledge regarding company activities than a professional accountant or auditor from outside. Thus, the requirement of expertise need not necessarily apply here, as long as an illegal act in question falls within purview of an accountant's general expertise.
2.	ACCA	As stated in response to previous questions, when considering which suspected illegal acts should be disclosed, it is not always necessary to relate those acts to the subject matter of the professional accountant's expertise. Any restriction in the subject matter could be seen by the public as a means by which professional accountants may avoid their responsibilities. We believe that this restriction is artificial, although we acknowledge that a professional accountant would be well-advised to consider whether he or she has the expertise to identify a suspicion of illegality in areas with which they are relatively inexperienced.
3.	AICPA	For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on an auditor to make such disclosures, accompanied by appropriate liability safe-harbor protections. However, subject to our observations in General Comment No. 6, we believe it would be appropriate to require a professional accountant in business to consider encouraging an employer to disclose to an appropriate authority certain suspected illegal acts that affect the employer's financial reporting, or that relate to subject matters that fall within the expertise of the professional accountant, if the employer's response is not appropriate.
4.	APESB	<p>APESB agrees that where suspected illegal acts are disclosed, they should be limited to acts that affect the financial reporting, and acts the subject matter which falls within the expertise of the professional accountant. Without limiting the scope of the acts to those within the professional accountant's expertise, there is the potential that the professional accountant would be obliged to take on the role of investigator or forensic specialist, a role for which the professional accountant may not have the relevant experience and expertise.</p> <p>APESB is of the view that it would be useful for the Code to provide guidance on what would be subject matter expertise (other than financial reporting) for professional accountants given the diversity of roles they perform in the current business environment. Some professional accountant's subject matter expertise encompasses more general management responsibilities such as human resources, environmental and sustainability reporting, contracts management, or operations. For example, the responsibilities of a Chief Financial Officer (CFO) often extend beyond financial reporting.</p>

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#	Source	Comment
		Refer also to comments on question 7 above.
5.	BDO	See response to question 7.
6.	CalCPA (APAS)	No. Are we talking about the public interest or not? The public interest is not limited in this fashion.
7.	CARB	See our response to question 7 above.
8.	CCAB	See response to question 7 above
9.	CGA Ca	Subject to the law of the jurisdiction of the professional accountant's domicile, we agree that the suspected illegal acts to be disclosed referred to in Question 12 above should be acts that materially affect the employing organization's financial reporting, and for subject matter which falls within the expertise of the professional accountant.
10.	CICA	We disagree that disclosure should be limited to those acts that affect the employing organization's financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant. As noted above, we believe that there may be other matters that have greater potential impact on the public interest than financial matters. The process for escalation of such "non-financial" matters would not likely be dissimilar, although it may be even more important to obtain legal advice in such situations.
11.	CICPA	Please refer to our response of question 7.
12.	CIMA	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.
13.	CIPFA	Same as q 12
14.	CNDCEC	Yes, we agree with the proposal (see comment to Q6).
15.	CPA Au	CPA Australia is of the opinion that professional accountants should have the right to disclose acts that relate to the employing organisation's financial reporting and acts the subject matter of which falls within the expertise of the professional accountant, without a requirement or expectation to do so
16.	DE	Yes, I agree that the suspected illegal acts to be disclosed referred in question 12 above should be acts that affect the employing organization's financial reporting

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#	Source	Comment
17.	DTT	No. We do not support any standard indicating that a professional accountant is expected to exercise a right to disclose. However, with respect to disclosing a suspected illegal act to an appropriate person within the employer's organization, we would not necessarily limit consideration to only those suspected illegal acts relating to the employing organization's financial reporting or the subject matter that falls within the expertise of the professional accountant. Depending on the particular facts and circumstances, the professional accountant might encounter a suspected illegal act outside of his or her area of expertise where reporting the matter to his or her employer seems the appropriate course of action.
18.	EFAA	It would be appropriate for the professional accountant to judge for himself the action that should be taken if he suspects an illegal act has taken place.
19.	FAOA	Yes, but subject to applicable national law (see paragraph 2.3 above)
20.	FAR	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
21.	GTI	Grant Thornton agrees that the suspected illegal acts to be disclosed referred to in question 12 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 in business. In addition, when considering the types of illegal acts that the professional accountant should also consider disclosing to an appropriate authority due to the potential impact on the public interest, the IESBA should consider the OECD list of protected disclosures referenced above.
22.	HKICPA	<p>The proposals require disclosure of the following matters by a PAIB:</p> <ul style="list-style-type: none"> <li>• Suspected illegal acts that directly or indirectly affect the employing organisation's financial reporting; and</li> <li>• Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant</li> </ul> <p>Consistent with the reasoning in our response to Question 7, without necessarily agreeing on the proposed requirements and rights afforded to professional accountants, we consider the suspected illegal acts to be disclosed, as referred to in question 12, should be confined to those that relate solely to the employing organisation's financial reporting or, where professional accountants are working in other areas of business, those areas in relation to which a reasonable and informed third party would conclude the professional accountants should possess sufficient legal knowledge on the subject matter</p>
23.	ICAA	Agree, subject to our view that there should not be an obligation to disclose.
24.	ICAEW	As question 7

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#	Source	Comment
25.	ICAP	Agreed. However, applicable law and the materiality should also be considered for such disclosure.
26.	ICAS	No, we believe that the scope of the requirement should be wider. Please refer to our response to question 7 above.
27.	ICJCE	We refer again to the covering letter regarding our general concerns in relation to requiring disclosure of the suspected illegal acts
28.	ICPAC	<p>No.</p> <p>Failure to report an illegal act, of any nature, even where stumbled upon accidentally, could result in the accountant being accused of unethical behavior with a view to assist/ collude with/ cover-up the culprit.</p> <p>Any act which is deemed to be illegal as defined by any effective regulation or law e.g. the employment of illegal immigrants in breach of immigration/ employment laws, the importation of raw materials not complying with domestic health and safety laws, the infringement of health and safety regulations in production (hazardous to factory manpower), the infringement of any patent/ intellectual property rights, the payment of bribes to any foreign parties/ associates in securing business, breach of environmental regulations relating to industrial waste, illegal use of client base personal data, price fixing, market manipulation, insider dealing et al.</p>
29.	ICPAK	Yes. We agree. However, any other act that a professional accountant is required to report on by country law like money laundering should also be disclosed.
30.	ICPAR	Agree
31.	ICPAU	Yes, we agree with the proposal
32.	IDW	As explained elsewhere, disclosure is a matter that should be governed by legislation and not the Code. In our view, the approach taken by the IAASB in ISA 250 is appropriate for the auditor. In respect of other professional services, it would be appropriate for the legislator to define specific circumstances and matters for disclosure as appropriate in the particular jurisdiction
33.	IFAC PAIB	We partly agree. With regard to the first bullet point of paragraph 360.9 (acts that affect financial reporting), it should be noted that financial reporting is not necessarily related to a professional accountant in business' specific expertise and responsibilities within his or her organization. The second bullet point only partly repeats the general formulation as used on page 8 of the explanatory memorandum that says: "the IESBA is of the view that such acts are those that are related to the expertise and responsibilities of the professional accountant in his or her particular role." The committee recommends the IESBA replace both bullet points with this more general formulation.
34.	IFAC SMP	Per question 7 in principle, although we believe such delineation could be more subjective for a professional accountant in business and, in some situations, inappropriate. For example, the accountant may not have expertise and/or responsibilities specifically related to financial reporting within their organization.

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#	Source	Comment
35.	IIA	<p>No, we do not agree that the SIAs to be disclosed referred to in question 12 above should be limited to acts that affect the employing organization's financial reporting, and acts the subject matter of which falls within the expertise of the professional accountant. The SIAs to be disclosed should be those of such consequence that disclosure would be in the public interest, in accordance with IFAC Policy Position 5, issued in June 2012 on A definition of Public Interest.</p> <p>PAs around the world have a wide range of knowledge, skills, experience, and expertise. Therefore, "acts related to the subject matter of which falls within the expertise of the professional accountant" need to be better defined.</p> <p>Please also see our response to Question 3.</p>
36.	IMA	We believe that the current proposed language is too limiting and should not be used. Please see our responses to #1 and #2 for our opinion on the proper course of action for PAIB to take in the event of a possible breach of ethical conduct.
37.	JICPA	<p>We do not agree with the proposal.</p> <p>Since it is assumed that professional accountants in business would perform various services compared to professional accountants in public practice, the two types of suspected illegal acts to be disclosed should not be addressed in parallel. Acts the subject matter of which falls within the expertise of professional accountants in business should mainly be required to be disclosed, and acts that affect the employing organization's financial reporting, on the other hand, should be limited to those that professional accountants become aware of during the course of their work.</p>
38.	KICPA	We agree with the proposal of IESBA.
39.	KPMG	As noted in our response to question 12, overriding the duty of confidentiality and disclosing suspected illegal acts, irrespective of whether they affect the employing organisation's financial reporting or relate to the expertise of the professional accountant, should be addressed by local laws and regulations.
40.	KRESTON	As noted above we do not agree with the right to override confidentiality.
41.	MIA	We think that the suspected illegal acts to be disclosed would be those that satisfy both conditions simultaneously, that is, those suspected illegal acts that affect both the client's financial reporting AND acts the subject matter of which falls within the expertise of the professional accountant.
42.	MG	For the reasons discussed in our General Comments above, we believe the decision to disclose a suspected illegal act to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. Additionally, it should not be IESBA, but rather the appropriate legislative bodies in each jurisdiction who should decide whether to impose a requirement on or grant a right to a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional

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#	Source	Comment
		accountant. However, we believe it would be appropriate to require a professional accountant in business to encourage an employer to disclose to an appropriate authority certain suspected illegal acts that affect the employing organization's financial reporting, or that relate to subject matters that fall within the expertise of the professional accountant.
43.	NASBA	No, to the extent the question relates to the creation of rights (please see our response to Question 12), otherwise we agree (that the acts should relate to the financial statements and the expertise of the professional accountant).
44.	PKF	No. Limiting this right to acts that affect the employing organisation's financial reporting and acts that fall within the expertise of the professional accountant has no justification. The right should extend to all such acts, the disclosure of which would be in the public interest. Further, the accountant should only be expected to report illegal acts that come to his or her attention in the course of his or her professional work and such matters should specifically exclude minor misdemeanours and acts of personal misconduct, except where reporting of these matters would be in the public interest. Also, note our previously expressed concerns about the determination of what is in the public interest
45.	RSM	We believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. The appropriate legislative bodies in each jurisdiction, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. However, we believe it would be appropriate to require a professional accountant in business to encourage an employer to disclose to an appropriate authority certain suspected illegal acts that affect the employing organization's financial reporting, or that relate to subject matters that fall within the expertise of the professional accountant
46.	SAICA	Refer to our responses under question 10, 11 and 12.
47.	ZICA	Yes we do agree that the suspected illegal acts to be disclosed 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.



**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?***

#	Source	Comment
1.	AAA	We agree. The discussion of retaliation above addresses these ‘exceptional circumstances.’ In instances in which the accountant fears retaliation for their report, they should be exempt from the requirement.
2.	ACCA	As we have attempted to make clear throughout this response, we do not support the proposal that a professional accountant should be required (or expected) to disclose any suspected illegal acts to an appropriate authority, except where prescribed by legislation, in which case we would expect that legislation to include provisions to protect the professional accountant as appropriate. Therefore, we cannot comment on what exceptional circumstances would relieve a professional accountant of such a requirement (or expectation).
3.	AICPA	For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. National regulators, and not the IESBA, should decide whether to impose a requirement or confer a right on an auditor to make such disclosures, accompanied by appropriate liability safe-harbor protections. However, subject to our observations in General Comment No. 6, we believe it would be appropriate to require a professional accountant to encourage a client to disclose to an appropriate authority certain suspected illegal acts that relate to subject matters that fall within the expertise of the professional accountant, if management’s response is not appropriate. As part of that consideration, we believe that a professional accountant reasonably might take into account exceptional circumstances that weigh against making such a recommendation.
4.	APESB	APESB agrees that in exceptional circumstances a professional accountant should not be expected to exercise the right to disclose suspected illegal acts. In particular the professional accountant should not be expected to place themselves in harm’s way or to be subject to severe hardship as a result of the act of disclosure of the suspected illegal act
5.	BDO	As noted above, we do not support any form of external disclosure to be included in the Code.
6.	CalCPA (APAS)	<p>We’ve already taken the position that this entire ED is misguided, and that the accountant should not be so required in any circumstances except as required by law, but we will address the exceptional circumstances referred to throughout the ED as a concern for threats to physical safety.</p> <p>This is way too high a threshold. Whose physical safety? The accountant’s? His/her family? His/her pets? What about threats to personal property? Livelihood? Reputation? Harassment? When society makes it a crime for all its citizens to report suspected criminal activity,</p>

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#	Source	Comment
		accountants will be so obliged. Until that time, setting accountants up to shoulder this load, the costs to the accountant notwithstanding, is, dare we use the word again, unconscionable.
7.	CARB	As discussed previously a professional accountant should be required to comply with the relevant statutory provisions in reporting suspected illegal acts. The Code, if it addresses the issues other than in guidance, should restrict itself to providing a 'right' to report. In this case exceptional circumstances will not apply
8.	CCAB	<p>Exceptional circumstances are naturally more relevant for an obligation than a right and we assume that the requirement for accountants in business is intended to be a right (though the wording is unclear). Nevertheless, noting, as the discussion document does, that commercial circumstances should not be relevant does have a disproportionate effect on accountants in business, who are more likely than those in practice to be dependent on one source of income.</p> <p>In view of the keen interest in this complex and fundamentally important area, the CCAB bodies hope that IESBA will re-issue whatever its revised proposals are, following assessment of the consultation responses, for further comment.</p>
9.	CGA Ca	We agree with the proposals for exempting the professional accountants from disclosures in exceptional circumstances.
10.	CICA	We agree that in exceptional circumstances that a professional accountant should not be required, or expected to exercise the right, to disclose certain illegal acts to an appropriate authority. However, the professional accountant should be required to have taken measures to support the assertion that a threat was genuine, and not simply be excused from disclosure on the basis of a claim that any such threat existed
11.	CICPA	Yes. We agree with that
12.	CIMA	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.
13.	CNDCEC	Yes, we agree with the proposal (see following comments).
14.	CPA Au	<p>CPA Australia does not support the imposition of a requirement to disclose to an appropriate authority.</p> <p>Further, the proposed exceptional circumstances that may remove the expectation to disclose to an external authority appear to be based on the assumption that professional accountants will be in a position to assess threats in advance or that possible forms of retaliation will be evident to them prior to any disclosure. The experience of many whistleblowers does not support this view, regardless of whether there is an organisational policy or law against retaliation.</p>

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#	Source	Comment
15.	DE	Yes, I agree that in exceptional circumstances a professional accountant should not be required, or expected to exercise the right, I understand that the IFAC need to contact the local regulators
16.	DTT	We are not responding to this question because we do not agree with the requirement to disclose.
17.	EFAA	We agree that in exceptional circumstances as outlined in sections 225.14, 225.22 and 360.10 a professional accountant should not be obliged to disclose.
18.	EY	As we do not support changes to the Code to require illegal act reporting, we have no comment on the exceptional circumstances provisions included in the proposal.
19.	FAOA	Yes, but subject to applicable national law.
20.	FAR	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
21.	GTI	As noted in this letter, Grant Thornton does not support amending the Code to require or expect a professional accountant to exercise a right to disclose certain illegal acts to an appropriate authority. Therefore we believe the proposal of exceptional circumstances is not relevant.
22.	HKICPA	See answer to 15
23.	ICAA	Agree
24.	ICAEW	<p>As noted in paragraph 9, we do not agree with the inclusion of a requirement in a global code of ethics. We agree that professional accountants should be able to override the duty of confidentiality where they judge it to be in the public interest to do so, where the law permits it. However, in that context the exceptional circumstances are really part of the determination of whether disclosure is in the public interest.</p> <p>The factors that can be taken into account would need to be explained in more detail for an obligation, where any exception can be seen as an opportunity to circumvent the requirement, than for an ability to disclose, where it is (and should be explained as being) actually guidance on matters for the accountant to consider in making the determination of the disclosure/confidentiality balance.</p>

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#	Source	Comment
25.	ICAP	Agreed. However, professional accountant should be allowed to base his decision of disclosure in all cases on a specific legal advice and if such a legal advice does not provide a comfort in connection with making such a disclosure or explicitly prohibits from doing so, should also be considered as exceptional circumstances. In such circumstances, the professional accountant may have to withdraw from an engagement if he concludes that the suspected illegal act may affect the public interest materially.
26.	ICAS	Yes. There will always be exceptional circumstances where it would not be appropriate to expect a professional accountant to exercise a right.
27.	ICJCE	Please, see our response to question 2.
28.	ICPAC	No.  Whistle-blowers should be offered full confidentiality/ protection.  Anonymity in reporting could also be an alternative option (i.e. web-based reporting hotline, with the option to provide as many facts/ information as deemed necessary to support the allegation made), however, this may provide a forum for unfounded malicious attacks against persons/ corporate entities. In such cases, in-depth assessment of the allegations made and evidence/ information provided could determine seriousness/ validity of the allegations made.
29.	ICPAK	Yes we agree
30.	ICPAR	Agree
31.	ICPAU	Yes, we agree that in very exceptional circumstances, for example when a threat to the physical safety of the accountant exists, a professional accountant should not be expected to disclose certain illegal acts to the relevant authority.  However, we would propose that in addition to the requirement to document such matters, the professional accountant should be compelled to report to a relevant professional body.
32.	IDW	As stated in our covering letter, we do not believe that IESBA is the appropriate body to deal with this issue. We believe that the entire approach proposed is fraught with issues and we have grave concerns as to the workability of the proposals. Requiring an accountant to disclose information related to suspected illegal acts even in circumstances when that individual's physical safety or that of others would be threatened would be untenable – thus we appreciate that exceptions are required. However, it is likely to be just these very circumstances which the goal of the initiative seeks to address. In other words, if the more extreme cases are subject to exceptions the benefit of the proposals will be lost. Such provisions also open the door to misuse. In any case, as the IESBA itself explains, there are no provisions for protective mechanisms, which makes the likelihood of accountants taking up any “rights” to disclose unrealistic, notwithstanding the expectation set forth by IESBA.

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#	Source	Comment
33.	IFAC PAIB	We partly agree. As discussed above, the PAIB Committee is of the view that the professional accountant should not be required or expected to exercise the right but, instead, should be required or expected to exercise his or her <i>judgment</i> whether or not to disclose in accordance with the “apply or be able to explain” principle.
34.	IFAC SMP	We agree, though in essence the exceptional circumstances may in fact be part of the determination of whether disclosure is in the public interest. Requiring a professional accountant to disclose information related to suspected illegal acts even in circumstances when that individual's physical safety or that of others is likely to be threatened would seem untenable. We wonder whether the use of the word “exceptional” is a very high bar that is likely to be difficult for a professional accountant to justify when not in the position to know all of the facts and/or when there is no certainty in the law relating to the matter. This seems to be more the province of a lawyer rather than an accountant.
35.	IIA	<p>We agree that in those rare, exceptional circumstances, a PA should not be required, or expected to exercise the right, to disclose certain SIAs to an appropriate authority, for example in some countries, the “appropriate authority” may not be trustworthy or one's life could be threatened, or the risk of law suits, imprisonment and financial liabilities may be very high.</p> <p>Based on our recommendation, the PAIPP is required to report the SIAs to the engagement partner. In most cases, it is the audit firm, not the PA who would have to make the disclosure as the last resort</p>
36.	IMA	Yes, we agree. For some related discussion, see above responses, especially to #2.
37.	IRBA	<p>In the absence of laws or regulations requiring a professional accountant to disclose certain illegal acts to an appropriate authority there are bound to be “exceptional circumstances” when a professional accountant considering all relevant circumstances, determines that they are not required, nor wish to exercise a right, to disclose a suspected illegal act to an appropriate authority.</p> <p>There will always be an element of doubt whether or not a suspected illegal act will eventually be judged to be illegal when brought to court and all arguments both for and against the allegations are heard and considered. Consequently, a professional accountant has to weigh up all factors, including the personal risk of threats to life and limb of the professional accountant, the engagement team and any family members. In such circumstances, the professional accountant cannot be regarded as being in violation of the Code.</p>
38.	JICPA	As commented above, we do not agree that a professional accountant should be required to disclose, or expected to exercise the right to disclose, certain illegal acts in the absence of legislation that regulates disclosure. If the disclosure is required by laws or regulations, the accountant should comply with such laws and regulations. If the IESBA were to require disclosure as stated in the ED, it would impose an enormous burden on professional accountants when they are required to disclose, or expected to exercise the right to disclose, even in exceptional circumstances where there are threats to their physical safety.
39.	KICPA	We agree with the proposal of IESBA.

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#	Source	Comment
40.	KPMG	In view of our responses to questions 1 to 4 above, this question is not relevant
41.	KRESTON	If there were a right to disclose certain illegal acts then it would be appropriate in exceptional circumstances that the professional accountant should not be required to report.
42.	MIA	Please see our answer to question 12
43.	Mazars	We agree that there could be exceptional circumstances in which disclosure would not be expected (or required).
44.	MG	For the reasons discussed in our General Comments above, we believe the decision to disclose a suspected illegal act to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. Additionally, it should not be IESBA, but rather the appropriate legislative bodies in each jurisdiction who should decide whether to impose a requirement on or grant a right to a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. However, as indicated in our General Comments above, we believe it would be appropriate to require a professional accountant to consider encouraging a client to disclose to an appropriate authority certain suspected illegal acts that relate to subject matters that fall within the expertise of the professional accountant. As part of that consideration, we believe that it would be reasonable for a professional accountant to take into account exceptional circumstances that weigh against making such a recommendation.
45.	NASBA	No. We fundamentally disagree with the notion that a private-sector standard setter is capable of creating rights. Please see our response to Question 4 and the General Comments above in the section, “Duty and Right to Disclose.”
46.	PKF	Yes. The Code should apply under normal circumstances and when exceptional circumstances are encountered it is reasonable for the requirement to be modified.  We appreciate that where exceptional circumstances exist, it is likely that they relate to a matter that may be in the public interest to disclose, but the Code itself cannot offer any protection and in the absence of any protection available by local laws, the professional accountant should not be placed in such jeopardy.
47.	RSM	We believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. The appropriate legislative bodies in each jurisdiction, and not the IESBA, should decide whether to impose a requirement or confer a right on a professional accountant to make such disclosures, accompanied by appropriate protective mechanism for the professional accountant. However, we believe it would be appropriate to require a professional accountant to consider encouraging a client to disclose to an appropriate authority certain suspected illegal acts that relate to subject matters that fall within the expertise of the professional accountant. As part of that consideration, we believe that it would be reasonable for a professional accountant to take into account exceptional circumstances that weigh against making such a recommendation.

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#	Source	Comment
48.	SAICA	Yes, we agree. Refer to our response to question 12
49.	ZICA	We do 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. This should only be allowed where the consequences of disclosure are so severe and where it can be justified.

**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?***

#	Source	Comment
1.	AAA	<p>Specifically, the exposure draft states “Exceptional circumstances would arise where a reasonable and informed third party would conclude that the consequences of disclosure are so severe as to justify not exercising the right to disclose for example, where there would be threats to the physical safety of the professional accountant or other individuals.” Further, it prohibits consideration of circumstances of a commercial nature for professional accountants providing services, but does not prohibit this consideration for those employed by the business committing the illegal act.</p> <p>The prohibition of commercial consequences for accountants providing services to the company is appropriate, while that prohibition on the individual working for the business committing the illegal act would not be just. The accountant providing services to the company has, or should have, many other clients and therefore many other sources of income. The accountant working for the company has only one source of income, this employer, so that losing this job would constitute a complete loss of all income. This impacts not just the accountant, but also those who depend financially on the accountant, such as his or her family. Therefore, we agree the exclusion of commercial interests for public accountants providing services, and the absence of such an exclusion for accountants working for the company.</p> <p>However, the following requirement is appropriate: “If the professional accountant does not exercise this right the accountant shall consider whether to resign from the employing organization.” An accountant should not remain employed by an unethical organization simply for commercial consequences, any longer than is absolutely necessary to find other employment.</p>
2.	ACCA	<p>Please refer to our answer to question 14 above. In general, disclosure must be considered on the basis of the public interest in disclosure of the suspected illegal act, compared with the public interest in upholding the principle of confidentiality. There might be value in guidance explaining also how the public interest of disclosure may be weighed against the personal interest of the professional accountant in, for example, his own safety.</p> <p>An alternative approach might be to provide guidance that explains how the professional accountant may make a public interest disclosure to an appropriate authority, but explaining that an authority may not be ‘appropriate’ if, in the circumstances, the professional accountant has reason to believe that the fact of the disclosure will not be kept confidential by that authority. However, it might also be argued that the Code does not require provision in respect of exceptional circumstances, because if circumstances are truly exceptional, the professional accountant will make a personal judgement to breach the letter of the Code for the greater good. In fact, providing for exceptional circumstances within the Code does nothing to promote better judgement by the professional accountant, but is likely to legitimise non-disclosure on the basis of ‘exceptional circumstances’.</p>



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#	Source	Comment
		Proposed paragraph 225.14 concludes by saying that the professional accountant determines not only whether to terminate the professional relationship with the client but also whether it is appropriate to continue to provide professional services in the particular jurisdiction. Such action, if explained to clients in these terms, could be construed as insulting to clients in that jurisdiction.
3.	AICPA	<p>For the reasons discussed in General Comments Nos. 1-4, we believe that the decision to disclose a matter to an appropriate authority ordinarily should lie with management and those charged with governance, not the professional accountant. However, subject to our observations in General Comment No. 6, we believe it would be appropriate to require a professional accountant to consider encouraging a client to disclose to an appropriate authority certain suspected illegal acts that relate to subject matters that fall within the expertise of the professional accountant, if management's response is not appropriate.</p> <p>As part of that consideration, we believe that a professional accountant reasonably might take into account the types of exceptional circumstances described in the Exposure Draft when considering whether to encourage a client or employer to disclose suspected illegal acts to an appropriate authority. In addition, if the IESBA decides to move forward with the proposal as drafted, we believe the types of exceptional circumstances that relieve a professional accountant of a reporting obligation should be expanded to include, for example, circumstances in which disclosure would expose the accountant to significant legal risk due to the lack of liability safe-harbor and whistleblower protections.</p>
4.	APESB	<p>The professional accountant should be encouraged to consider factors in addition to those currently listed when determining if the circumstances are exceptional. For example, relevant considerations for the professional accountant are jurisdictions which have poor judicial systems or where penalties for disclosure could be severe.</p> <p>In some jurisdictions the consequences of disclosing a suspected legal act may have significant ramifications for the suspected guilty party and their families, which may not necessarily be commensurate with the suspected illegal act committed. This may also be true for employees of subsidiaries of Australian companies in foreign jurisdictions who may face prosecution abroad for allegations made in Australia. We note also that in certain developing economies, potential job loss could be considered an exceptional circumstance.</p> <p>APESB encourages IESBA to broaden the definition of exceptional circumstances to incorporate such circumstances and to include further guidance on determining what constitutes exceptional circumstances in different socio-economic contexts.</p>
5.	BDO	As noted above, we do not support any form of external disclosure to be included in the Code.
6.	CalCPA (APAS)	See answer to #14.
7.	CARB	See our earlier comments, our response to question 14 above.
8.	CCAB	See answer to question 14

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#	Source	Comment
9.	CGA Ca	<p>We consider the proposed description of the exceptional circumstances a professional accountant should not be required, or expected to exercise the right, to disclose certain illegal acts to an authority as appropriate. However, we would like to propose a mandatory requirement for the professional accountant to dissociate from the client or the employer, as the case may be, under such exceptional circumstances (where permitted by law).</p> <p>Other exceptional circumstances, in addition to physical safety, that ought to be included in the explanatory guidance should be threats to personal property or the financial ruin of the professional accountant.</p>
10.	CICA	<p>We believe that the exceptional circumstances described are appropriate, subject to our response to question 14 and subject to our previous comments with respect to the possible adverse impacts on the financial reporting system if appropriate whistleblower protection is not in place or where local legislation does not permit disclosure of protected information. A professional accountant should not be forced, when having acted in good faith and in compliance with professional standards, into becoming “unemployable” by virtue of being known as a whistleblower.</p>
11.	CICPA	<p>Whether a specific circumstance constitutes an exceptional circumstance is a matter of professional judgment, and the proposed changes of the Code gave some examples such as threats to the physical safety of the professional accountant or other individuals. We concern that the example might be abused, and suggest to give further guidance on what constitutes a specified circumstance.</p>
12.	CIMA	<p>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.</p>
13.	CNDCEC	<p>We agree with the proposal; it seems appropriate to also specify in par. 225.14 and par. 225.20, as exceptional circumstance that can bring the professional accountant in public practice not to be required to report in specific circumstances such as national security or defence or when there are so severe economic retaliations for the professional accountant to be ruined.</p> <p>We agree with the proposal; it seems appropriate to also specify in par. 360.10, as exceptional circumstance that can bring the professional accountant in business not to exercise the right to report, other serious actions such as legal persecutions, mobbing, even firing, blacklisting etc.</p>
14.	CPA Au	<p>Please see our response to question 14</p>
15.	DE	<p>Yes, I agree that in exceptional circumstances a professional accountant should not be required, or expected the right, I suggest that IFAC contact local regulators for to know aspects for this process.</p>

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#	Source	Comment
16.	DTT	We are not responding to this question because we do not agree with the requirement to disclose.
17.	EFAA	Yes they are appropriate.
18.	EY	As we do not support changes to the Code to require illegal act reporting, we have no comment on the exceptional circumstances provisions.
19.	FAOA	Yes, but subject to applicable national law.
20.	FAR	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
21.	GTI	Please refer to our response to question 14
22.	HKICPA	<p>The proposed provisions provide that in exceptional circumstances disclosure is not required or expected. Such exceptional circumstances would arise where a reasonable and informed third party would conclude the likely consequences of disclosure are so severe as to justify not disclosing. An example of such an exceptional circumstance would be threats to the physical safety of the professional accountant or others. Circumstances of a commercial nature, such as the loss of a client or income, would not constitute exceptional circumstances. The IESBA is of the view that commercial consequences to the professional accountant or others are not sufficient grounds to warrant justification for not disclosing.</p> <p>We understand that the exceptional circumstances that warrant non-disclosure would need to pass the "reasonable and informed third party test" where physical safety was provided as an example of a legitimate exceptional circumstance. While we agree that physical safety is an obvious example of a legitimate exceptional circumstance for non-disclosure, it should not be viewed as the only legitimate exceptional circumstance for non-disclosure. We consider the legal liability and related legal expense to be borne by the professional accountant should also be legitimate considerations for non-disclosure and should also be quoted as examples for exceptional circumstances.</p> <p>The proposals would also require the professional accountant to determine whether to terminate the professional relationship with the client (in the case of a professional accountant in public practice) or to resign from the employing organization (in the case of a PAIB) if the professional accountant determines not to disclose because exceptional circumstances exist. We understand that the laws and regulations of many jurisdictions do not require the person who takes charge of a company's finances to be a professional accountant. Possibly, some PAIBs may feel as if they would be obliged to cancel their professional accountant qualification, instead of resigning from the employing organization, to prevent them from being impacted by the proposed requirements.</p>
23.	ICAA	Our understanding of the exceptional circumstances as described is that threats to the physical safety of the professional accountant or other individuals are an example of such circumstances, which would mean in our view that such circumstances are not exclusively restricted

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#	Source	Comment
		to these threats. We consider that exceptional circumstances should be capable of including other matters, including where an accountant might identify significant legal or societal risks to themselves or their dependants. While the exposure draft has referred to circumstances of a commercial nature as not being exceptional, it has referred to matters which appear to relate to a single client or income of a single employer. We consider that the loss of all clients or of all earning capacity by a professional accountant, with consequent impact on the accountant's dependants, could constitute exceptional circumstances, and note that these are entirely possible outcomes for a whistleblower accountant.
24.	ICAEW	The fundamental principles in the code already require accountants to put duty ahead of self-interest. Exceptional circumstances should focus on significant threats to personal well-being, including the likelihood of protection by the authorities.
25.	ICAP	As stated in reply to question 14
26.	ICAS	The exceptional circumstances, as described, appear appropriate. However, please note our primary concern above
27.	ICJCE	We refer to our response to the previous question.
28.	ICPAC	No. Providing for exceptional circumstances would defeat the purpose of this ED, as proof/ validation of such circumstances will be almost impossible to establish. As a consequence, professional accountants will tend to (falsely) retrospectively maintain the existence of exceptional circumstances in order to offer explanations for failing to act when needed.
29.	ICPAK	We propose that an inclusion of weak regulatory frameworks to support/protect whistle-blowing as an exceptional circumstance should be added.
30.	ICPAR	Agree
31.	ICPAU	The description of the exceptional circumstances is sufficient and appropriate.
32.	IDW	As we do not agree that IESBA should deal with the issue of suspected illegal acts, we would simply point out that the exceptional circumstances singled out by IESBA are the very circumstances that the proposals would be needed to address thus the proposals fail because they lack the desired effect. As also noted above, the proposal in paragraph 225.15 that a professional accountant in public practice providing services to an audit client (but not a professional accountant in public practice providing services to a non-audit client, nor a professional accountant in business) shall in certain cases consider whether it is appropriate to continue to provide professional services in the particular jurisdiction is too extreme, and we do not understand the logic behind the idea that this should only apply if an audit client is involved and not a non-audit client.

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#	Source	Comment
33.	IFAC PAIB	<p>We party agree. The PAIB Committee believes that these circumstances are appropriate as examples but that professional accountants, through their professional judgment, should be able to determine for themselves what circumstances are exceptional, including, as mentioned above, retaliation or intimidation through the law (e.g., libel laws) or other forms of retaliation or intimidation in addition to physical threats or weak regulatory frameworks.</p> <p>In addition, the exceptional circumstances that may remove the expectation to disclose to an external authority seem to be based on the assumption that professional accountants will be able to assess all threats or forms of retaliation prior to them making any disclosure. The experiences of many whistleblowers do not support this view, regardless of whether there is an organizational policy or a law against retaliation.</p>
34.	IFAC SMP	<p>The fundamental principles in the code already require accountants to put duty ahead of self-interest. Exceptional circumstances should focus on significant threats to personal well-being, or of damage to the business or to personal property, or of financial ruin, all with due regard to the likelihood of protection by the authorities.</p> <p>In such circumstances, we also propose allowing the professional accountant the option to disassociate from the client, or employer, where permitted by law.</p>
35.	IIA	Yes, however, we recommend adding other examples of exceptional situations, such as: in some countries, the “appropriate authority” may not be trustworthy or corrupted; or the risk of lawsuits, imprisonment and financial liabilities may be very high.
36.	IMA	Yes, we agree with circumstances as described, but we would also widen the question of when it is appropriate for a PAIB to not disclose based on our responses above, especially to #2
37.	IRBA	<p>It is inappropriate to try to provide an exhaustive list of possible exceptions in a Code, one can merely establish the principle and it will then be up to the facts of the circumstances to be considered. Sections 225.14 and 225.20 appear to adequately describe such circumstances. Clearly in such circumstances the professional accountant / auditor reconsiders their client and engagement acceptance and continuance procedures as set out in Section 210 of the Code and determines whether or not to terminate the engagement and client relationship.</p> <p>We do not agree with the suggestion in Section 225.14 that the professional accountant considers whether it is “appropriate to provide professional services in the particular jurisdiction”. The fact that a particular client relationship and engagement is discontinued does not appear to be grounds for discontinuing the professional accountant’s public practice in a particular jurisdiction.</p>
38.	JICPA	As stated in our comments to Question 14 above, if the IESBA were to require disclosure, we 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.
39.	KICPA	We agree with what is proposed in the Exposure Draft of IESBA and ask IESBA to share more examples of exceptional circumstances.

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#	Source	Comment
40.	KPMG	Please refer to our response to question 14.
41.	KRESTON	The exceptional circumstances described in the proposal are appropriate.
42.	MIA	Please see our answer to question 12.
43.	Mazars	The distinction between threats to physical safety and commercial implications such as loss of income in the proposed Code appears fair and reasonable
44.	MG	Please see our response to Question 14 above
45.	NASBA	Yes, however please see our response to Question 14.
46.	PKF	<p>Should some of the proposals be adopted, we agree that the exceptional circumstances described in the ED should be “so severe as to justify not exercising the right to disclose” but we do not agree with the subsequent example of “threats to the physical safety of the professional accountant or other individuals”. The thresholds need to be very clearly described. While we are supportive of an approach that encourages the exercise of judgement and principles, more examples are needed to illustrate practical application. There is an overall risk that different firms and accountants will interpret “exceptional circumstances” differently, or may well be subject to different jurisdictional requirements, resulting in an unlevel playing field (e.g. the risk of losing work or getting a reputation as a whistle-blower and the resulting damage to their business may cause accountants not to report), while others may take a more narrow view.</p> <p>Specifically, it is unreasonable to restrict the threat to just a physical threat to include physical and non-physical threats and include family members and associates.</p>
47.	RSM	Please see our response to Question 14 above.
48.	SAICA	Yes, we of the view that they are appropriate.
49.	ZICA	We have no comment here.

**Question 16**

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

#	Source	Comment
1.	AAA	These requirements mirror reasonable and prudent practices.
2.	ACCA	<p>The pertinent question here is whether the proposed documentation requirements would increase the quality of the ethical decision-making, and hence the impact of the decision-making in the public interest. In view of our overriding concerns regarding the reporting proposals, we are reluctant to comment on the documentation proposals. However, we would support appropriate guidance concerning the benefits of documentation for the professional accountant.</p> <p>The proposals seem to rule out using materiality while acknowledging that auditing standards use materiality when discussing documentation for audit purposes of suspected illegal acts for example. However, the proposed wording states that the level of documentation will be commensurate with the gravity of the suspected illegal act. This seems very similar to materiality (in its widest sense, rather than in the context of financial reporting or auditing). We believe that the proposals carry inconsistencies, and this jeopardises clarity.</p>
3.	AICPA	No. While professional auditing standards require the documentation of certain issues addressed in connection with an audit engagement, the Code does not currently impose similar documentation requirements on other professional accountants. We believe that, if the IESBA moves forward with the proposal, the standard should instead call upon a professional accountant to consider documenting such factors as his or her understanding of the suspected illegal act, the inquiries made by the accountant, and management's response.
4.	APESB	<p>APESB is supportive of the professional accountant documenting his or her decision making process. However, APESB suggests that documentation requirements be expanded to provide guidance on circumstances where management takes appropriate action to resolve the suspected illegal act as well as circumstances where management commits to act but fails to deliver.</p> <p>It is important that documentation principles be set out in such a way to ensure neutrality and unbiased recording of facts, so as to avoid any assumptions of necessary guilt or wrongdoing.</p> <p>APESB also recommends that IESBA provide guidance on the importance of applying professional judgment when assessing the extent of documentation required. IESBA should also provide guidance for the professional accountant to consult with legal or other professional counsel in determining how to proceed with documentation without prejudicing the legal process or the professional accountant.</p> <p>Documentation should be proportional to the suspected illegal act and the consequences of disclosure of such an act. The more serious the suspected illegal act, the more extensive the documentation should be. Guidance should also consider whether the professional accountant is qualified to document suspected illegal acts and whether the courts will accept this documentation as evidence. The potential</p>

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#	Source	Comment
		risk is that the actions of the professional accountant in these circumstances may inadvertently compromise the case for the prosecution and prejudice the investigation.
5.	BDO	No. The proposals seem disproportional. It should be sufficient to advocate the maintenance of 'appropriate' documentation. Consideration should also be given to the fact that if the professional accountant is subject to legal action in respect of a reported suspicion, the documentation may be legally discoverable in some jurisdictions.
6.	CalCPA (APAS)	Para 225.23 refers to reporting to the appropriate authority. Absent this reference, the documentation requirement is fine.
7.	CARB	We agree that the professional accountant should document his consideration and reporting (or otherwise) of any suspected illegal act.
8.	CGA Ca	We agree with the documentation requirements, as such requirements defend the position taken by the professional accountant and also help in resolving any issue arising out of the ethical and statutory obligations. We believe that such documentation should include inter alia description of suspected illegal acts, basis of such suspicion, steps taken to escalate the matter, final resolution and, when appropriate, the reasons for not disclosing such suspected illegal acts.
9.	CICA	We agree with the documentation requirements, subject to our response to question 14 and subject to including a specific provision that such documentation is the personal property of the professional accountant which may, in some cases, be subject to solicitor-client privilege.
10.	CICPA	Yes. We agree with that.
11.	CIMA	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.
12.	CNDCEC	We agree with the proposal in the case of professional accountant providing audit service; in the other cases, it could be appropriate to provide that the professional accountant is not required to prepare and, if required, to provide documentation, but he/she has the right to document the steps taken to respond to a suspected illegal act.
13.	CPA Au	<p>The proposed guidance describes illegal acts broadly as 'acts of omission or commission, intentional or unintentional, committed by an employing organisation, or by those charged with governance, management or employees of an employing organization which are contrary to the prevailing laws or regulations. Personal misconduct unrelated to the business activities of the entity is excluded'.</p> <p>The proposed guidance requires professional accountants providing professional services to non-audit clients and professional accountants in business to identify, confirm, report internally, report to an external auditor (if one exists) and advise the organisation to disclose illegal</p>



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#	Source	Comment
		<p>acts to an external authority. If the response from the organisation is not appropriate then the accountant, if it is in the public interest, has a right to disclose to an external authority and is expected to do so. However, the proposals provide this 'required' right only in relation to:</p> <ul style="list-style-type: none"> <li>• Suspected illegal acts that directly or indirectly affect the client's or employing organisation's financial reporting.</li> <li>• Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant.</li> </ul> <p>Despite the fact that only these illegal acts can/should be disclosed to an external authority the proposed process and the documentation requirements apply to all illegal acts. This we think imposes an enormous burden on professional accountants that is unjustified and imposes obligations that extend the scope of employment or engagements, without the agreement of the employer or client.</p>
14.	DE	Yes, I agree with the documentation requirements.
15.	DTT	<p>No. We strongly oppose the documentation requirements set forth in the ED. Clearly, it is important for the professional accountant when performing professional services to comply with the standards covering the provision of such services, including any documentation standards. When providing audit services, for example, the auditor should comply with the documentation standards in the ISAs. It is also important for firms to comply with the documentation requirements in ISQC 1. Whereas it is appropriate to include documentation requirements in these standards, we do not believe it is appropriate to have documentation requirements in an ethics code, a point we have made in response to the exposure drafts on proposed changes to Sections 290 and 291 of the Code.</p> <p>We do not believe the proposed documentation requirements appropriately fall within the IESBA's purview of promulgating ethics standards. At most, if the Board were to adopt additional guidance (not requirements) for professional accountants when encountering suspected illegal acts, the only reference to documentation we would support would be something along the lines of the statement in paragraph 100.20 of the Code, which provides "[i]t may be in the best interests of the professional accountant to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue."</p>
16.	EFAA	<p>It seems reasonable to document the decision whilst accepting that it is possible that any documentation of this sort may also lead potentially to the threats that have been outlined in 225.14, 225.20 and 360.10.</p> <p>That said, we are unsure as to IESBA's intention in this regard and hence to what purpose documenting the decision is? Is this to record the issue or to improve the ethical decision making process in question? We say this because the example given in the Explanatory Memorandum under "Documentation" states that IESBA is of the view that documentation requirements may be met by having a policy or procedure in place to address such (encountering a large number of immaterial suspected illegal acts) issues. This suggests to us that IESBA may see documentation of the act being replaced by a policy or a procedure. It would be of value to clarify the intention in this regard along with the use of the word "immaterial" when the ED has already proposed that materiality has little relevance in this regard.</p>
17.	EY	We believe documentation requirements are adequately addressed elsewhere in the professional standards.

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#	Source	Comment
18.	FAOA	Yes
19.	FAR	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
20.	GTI	<p>Grant Thornton generally agrees with the documentation requirements, although we believe that they should be modified as necessary to take into account the suggestions made in our letter that there should not be a requirement to disclose.</p> <p>We also believe that any documentation requirements must take into account local laws and regulations, including those related to applicable confidentiality laws or legal privileges (such as the attorney client privilege).</p>
21.	HKICPA	<p>We have substantial concerns with the proposed documentation requirements.</p> <p>We understand the IESBA is of a view that maintaining the proposed documentation is in the interest of the professional accountant. However, we are mindful that such requirements may require a disproportionate amount of work from the professional accountant. Moreover, there may a possibility that the documentation could be subpoenaed and used against the professional accountant and the client. Without being afforded with statutory "whistle-blowing" protection, there may be practical difficulties for professional accountants to implement the proposed guidance. Furthermore, some of the documentation may be privileged because consultation with legal counsel may have taken place to determine whether an illegal act has occurred and the appropriate authority to report, especially if it is cross-border.</p> <p>In the event that the IESBA were to adopt additional guidance (as distinct from requirements) for professional accountants when encountering suspected illegal acts, we would support the inclusion of something along the lines of the wording in paragraph 100.20 of the Code, which provides "[i]t may be in the best interests of the professional accountant to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue."</p>
22.	ICAA	<p>While we note that documentation can play a role in protecting the professional accountant's interests, we do not agree that it should be mandated in this context. In line with a principles-based approach, we consider that the Code could usefully identify the pros and cons of documentation in relation to suspected illegal acts, and encourage the professional accountant to consider the question of documentation in their specific circumstances.</p> <p>We note that one of the risks associated with documentation in this context is that of litigation from the client or employer, where the client or employer came into possession of the documentation. This problem would be pronounced where the accountant's suspicions turned out to be false. The typical absence of any privilege attaching to documentation in most jurisdictions would add to this risk.</p>
23.	ICAEW	Other than in respect of matters related to compliance with auditing regulation, the code generally advocates documentation as being in the interests of the accountant but does not require it. The proposals seem to be at odds with this, and disproportionate, given that there is no de minimis threshold at the start of the process. It should be sufficient to advocate the maintenance of 'appropriate' documentation.

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		This would also deal with a concern that, if the accountant is subject to legal action in respect of a reported suspicion, the documentation may be legally discoverable in some jurisdictions.
24.	ICAP	Agreed
25.	ICAS	We believe that the proposed documentation requirements are reasonable. However, we do have concerns that this approach might be moving the code away from its current position where it generally advocates documentation in the interests of the professional accountant but does not actually require it to be done.
26.	ICJCE	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.
27.	ICPAC	Yes
28.	ICPAK	Yes we agree
29.	ICPAR	Agree
30.	ICPAU	Yes, we agree with the proposal
31.	IDW	There is a danger that documentation requirements will result in a “cover your back” approach, if accountants seek to please the regulators, alternatively professional accountants may be led not to document certain “uncomfortable” aspects or matters. Ordinarily accountants who take such issues seriously would document specific matters for their own protection.
32.	IFAC PAIB	We agree. See our general comments regarding changing “requirement” into “apply or be able to explain.” However, the PAIB Committee is concerned over the proper security of such documentation, especially if it is determined that no illegal act took place and disclosure is not necessary. Some guidance on proper safeguarding of the documentation based on its sensitivity should be included in any changes to the Code.
33.	IFAC SMP	The proposals seem to be disproportional given that there is no de minimis threshold at the start of the process. It should be sufficient to advocate the maintenance of ‘appropriate’ documentation, which would likely vary between jurisdictions depending on local legal and other environmental factors. This would also deal with a concern that, if the accountant is subject to legal action in respect of a reported suspicion, the documentation may be legally discoverable in some jurisdictions.

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#	Source	Comment
		If the professional accountant's judgement proves to be wrong and the client takes legal action for damages caused, then the professional accountant has in effect just documented the case of the prosecutor. Given the litigious climate that many accountants find themselves operating and the increase in class actions, there is a real risk that Professional Indemnity insurance may become unobtainable in the future.
34.	IIA	<p>We recommend that the documentation also includes: the rationale for consulting the person(s) selected and the assessment and disposition of the responses and the advices.</p> <p>We also recommend providing guidance on documentation storage and retention in order to protect the PA. For example: Should a dated copy be kept by an independent person or by the audit firm at the time the decision was made? Is the PA or the audit firm required to reassess the situation periodically to determine if the decision not to disclose is still valid? How long should the documentation be kept?</p> <p>If the PA did not disclose the matter in exceptional circumstances, 225.23 also requires documentation on the rationale for:</p> <ul style="list-style-type: none"> <li>• Not disclosing the matter;</li> <li>• Not terminating the professional relationship;</li> <li>• Not resigning from the employing organization; and,</li> </ul> <p>Continue providing professional services to an audit client of the firm or a network firm</p>
35.	IMA	No comment.
36.	IRBA	<p>Currently the only documentation requirements in the Code are contained in Sections 290.29 and 291.29 that recognise documentation provides evidence of threats and safeguards considered and the auditor's or professional accountant's conclusions in meeting the Independence Requirements in the Code.</p> <p>The proposed Section 225.23 documentation requirements in the first two sentences seem appropriate to document the steps taken to establish the nature and materiality of suspected illegal acts and that support the professional accountant's / auditor's determination of disclosures to be made management, those charged with governance, in the financial statements and reported to an appropriate authority.</p> <p>However, the extensive "requirements" for documentation where the professional accountant determines that a suspected illegal act is not disclosed to an appropriate regulator seem excessive unless there is a legal or regulatory requirement for the professional accountant to report suspected illegal acts. The last bullet point that appears almost nonsensical.</p>
37.	JICPA	We agree with the documentation requirements, as documentation is one of the most useful means for a professional accountant to prove how he or she responded to the identified suspected illegal acts.
38.	KICPA	We agree with the proposal of IESBA

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#	Source	Comment
39.	KPMG	We believe it is difficult to impose documentation requirements on a professional accountant in business. Unlike auditors, professional accountants in business have no standards that address the preparation, review and retention of documentation. The approach to be applied by professional accountants in business should be dictated by local laws and regulation.
40.	KRESTON	The documentation requirements appear reasonable subject to the concerns expressed about the right to report and the complexity of assessing the public interest
41.	MIA	We agree with the documentation requirements proposed. However our agreement should not be interpreted as in any way contradicting our opinion expressed under the general comments section and elsewhere in our comment letter, but that in line with auditing standards and good practice we agree that the auditor should be documenting the results of the work and actions that he would be required to carry out as a result of the ED.
42.	Mazars	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.
43.	MG	No. While professional auditing standards require the documentation of certain issues addressed in connection with an audit engagement, the Code does not currently impose similar documentation requirements with the exception of documenting certain threats to independence and the safeguards applied, when safeguards are required, to reduce threats to an acceptable level. We believe that, if the IESBA moves forward with the proposal, the standard should instead call upon a professional accountant to consider documenting such factors as his or her understanding of the suspected illegal act, the inquiries made by the accountant, and management's response
44.	NASBA	Yes. Steps taken to report or escalate the matter, the professional accountant's conclusion about the response of management and TCWG (when known), and the decision about continuing a relationship with the entity all represent appropriate matters the accountant in public practice should document. However, we believe that greater clarity for documentation requirements for accountants in business is needed. For instance, accountants in business may be faced with the dilemma of complying with the documentation standard while at the same time creating a roadmap that is subject to legal discovery.
45.	PKF	No. Proposed paragraphs 225.23 and 360.15 require documentation of all responses to suspected illegal acts, which is not in accordance with the comments on 'Documentation' in the explanatory memorandum. The explanatory memorandum comments that "the level of documentation would be commensurate with the gravity of the suspected illegal act" but this is not repeated in proposed paragraphs 225.23 and 360.15. We agree with the explanatory memorandum in that the documentation required should be commensurate with (or appropriate to) the gravity of the suspected illegal act. This would avoid documentation of every suspected illegal act, especially where that act is minor or of little or no consequence. Requiring documentation of such acts would clearly be disproportionate.

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#	Source	Comment
46.	RSM	No. While International Standards on Auditing require the documentation of issues addressed in connection with an audit engagement, the Code does not currently impose similar documentation requirements with the exception of documenting certain threats to independence and safeguards applied, when safeguards are required, to reduce threats to an acceptable level. We believe that, if the IESBA moves forward with the proposal, the standard should instead call upon a professional accountant to consider documenting such factors as his or her understanding of the suspected illegal act, the inquiries made by the accountant, and management's response.
47.	SAICA	<p>Yes, we do agree and believe that all decisions with regards to the reporting or non-reporting as required should be documented. This response is given in context to the responses provided above.</p> <p>We believe that it is a good idea for any documentation kept to be vetted by an attorney as a safeguard against reprisals. One should document reasons for non-action backed up by evidence of real life threats, should exposure occur at a later stage from another source and the accountant would then require this as a justification for non-action.</p>
48.	ZICA	We support the documentation requirement, this would act as future evidence in case of any litigations.

**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?

#	Source	Comment
1.	AAA	<p>The changes require the consideration of past illegal acts or questionable issues in the client continuance decision. This is appropriate.</p> <p>In sections discussing professional accountants employed in business, there appears to be a conflict in the message. For example, section 300.5 states “Established ethics policies and whistle-blowing procedures that have been communicated to all employees may be useful to achieve the objective of establishing and maintaining an ethics-based culture. Such procedures help to encourage ethical behavior and increase the likelihood of senior management being alerted to a problem in time to prevent serious damage.” This appears to authorize professional accountants to use anonymous hotlines to communicate the existence of illegal activities. However, section 300.15 requires “professional accountant shall discuss the matter with the appropriate level of management. If the response to the matter is not appropriate, the professional accountant shall escalate the matter to higher levels of management to the extent possible.” This precludes anonymous reporting by these professionals.</p> <p>The proposed changes to Section 140 address confidentiality of information obtained by the professional accountant. We suggest the IESBA add clarification to paragraph 140.7, which addresses circumstances in which the accountant may disclose confidential information. Section (a) provides guidance on situations in which the client authorizes the disclosure of information.</p> <p>It is unclear whether sections (b) and (c) of paragraph 140.7 discuss situations in which the accountant does not need consent from the appropriate party to disclose confidential information. The proposed standard seems to imply that client consent is not necessary under the circumstances outlined in sections (b) and (c). If this is the case, one contributor proposes another situation in which the auditor can disclose without client consent. It seems logical that if an audit client has been sued and the plaintiff’s attorneys approach the auditor, the auditor may not be able to obtain client consent to cooperate with a valid subpoena in such a case.</p> <p>A second suggestion for Section 140 involves the list of situations in which the accountant can disclose information in 140.7(b)(i). We suggest the IESBA consider the insertion of more specific wording involving disclosure of documents or providing evidence in legal proceedings. Is the intent to require disclosure during all phases of legal proceedings, or should disclosure be mandated only under a valid subpoena or similar order from an authoritative body? Such wording could be similar to an exception to client confidentiality in the AICPA Code of Professional Conduct Rule 301 involving subpoenas (AICPA 2012).</p>
2.	ACCA	<p>We do not agree with the proposed changes to the existing sections of the Code, largely due to reasons already explained throughout this response.</p>

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#	Source	Comment
3.	AICPA	No. We believe that any changes to the existing sections of the Code discussed in the Exposure Draft should be consistent with our “General Comments.” In particular, we do not believe that Section 140.7 of the Code should be amended to require professional accountants to comply with the requirements of proposed Sections 225 and 360, as currently drafted.
4.	APESB	<p>As noted above APESB has some major concerns with this exposure draft as it is creating mandatory obligations on professional accountants to override the fundamental principle of confidentiality. APESB is of the view that IESBA should address the concerns noted above in its deliberations of the respondents’ comments.</p> <p>Apart from the objections described in this paper and the use of an undefined term “questionable issues” in paragraphs 210.2 and 210.3, APESB agrees with the proposed changes to the existing sections of the Code. Instead of “questionable issues” we propose the use of “matters with the potential to develop into suspected illegal acts”.</p> <p>As a general principle APESB agrees that where new sections are to be inserted into the Code, existing sections of the Code should be amended to incorporate reference to such sections.</p>
5.	BDO	No. Given the fact that we do not support fundamental parts of the Exposure Draft, commenting on proposed changes to existing sections of the Code would not be constructive.
6.	CalCPA (APAS)	Yes
7.	CARB	We are not in a position to comment on the proposed changes to the Code as we believe that it should be to be fundamentally reviewed in light of the comments above.
8.	CGA Ca	We believe, without prejudice to our reservations regarding the desirability and appropriateness of the proposals in the present ED, that the proposed changes to the existing sections of the code are properly aligned to the objectives and the requirements of the present ED.
9.	CICA	<p>We note that several of the “consequential changes” refer to “unethical” behaviour/acts (for example, 150.1, 210.5) as opposed to “suspected illegal” acts. In addition, there appear to be references to a requirement to resign/terminate (for example, 100.22, 210.5, 300.15, ) as opposed to a need to consider whether resignation/termination is necessary (225.3, 225.14, 225.19, 225.20, 225.23, 360.3, 360.10, 360.15). These references appear, at least on the surface, to create some uncertainty as to which provisions apply in what circumstances and we suggest reviewing them for consistency and clarity.</p> <p>We also note that it is proposed that the final sentence of 100.21 be deleted. We suggest that it might be more helpful to retain the reference to fraud as an example, but refer to the provisions that address suspected illegal acts for further guidance and retain the reference to seeking legal advice.</p>



#	Source	Comment						
		<p>Paragraphs 200.9 through 200.13 of the Code address changes in professional appointments and refer the predecessor accountant to the client confidentiality provisions (section 140) of the Code. The client confidentiality provisions include proposed amendments which refer to the proposed suspected illegal acts disclosure provisions. However, it is not clear whether the predecessor accountant has a responsibility to disclose suspected illegal acts to a possible successor accountant in addition to disclosure to an appropriate authority. We suggest that any such obligation should be clarified, preferably within paragraphs 200.9 to 200.13.</p> <p>The proposed provision requiring the professional accountant to determine the appropriateness of management’s response to the disclosure of the suspected illegal act does not sufficiently address the practicalities of doing so when a suspected illegal act is discovered while an audit, for example, is in progress. The proposal states:</p> <p>“Appropriateness of Action Taken</p> <p>The proposal requires the professional accountant to determine whether the response of the client or employing organization to the suspected illegal act is appropriate. The determination of whether the response is appropriate will require professional judgment and include a consideration of the nature and magnitude of the matter and factors such as whether:</p> <ul style="list-style-type: none"><li>- The matter has been adequately investigated;</li><li>- Remedial action has been taken to address the matter; and</li><li>- Appropriate steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training.”</li></ul> <p>According to this requirement, the professional accountant must ensure that all of the above actions have been taken before deciding what next steps he or she should take, including whether to continue with the audit. We suggest that more guidance should be provided as to what actions could be taken or what the next steps may be in such circumstances.</p>						
10.	CICPA	<p>Yes. We generally agree with these changes, however, there should be some literal changes, listed below:</p> <table><tr><th>Description</th><th>Comments</th></tr><tr><td>1. Section 225 is relevant to professional accountants in public practice, and Section 360 is relevant to professional accountants in business. However, in both the two sections, the phrase “professional accountant” is still used.</td><td><p>We noted in 2012 Handbook of the Code, in Part B, the phrase “professional accountant in public practice” is used, and in Part C, the phrase “professional accountant in business” is used.</p><p>We recommend the proposed changes use the same word with the existing Code.</p></td></tr><tr><td>2. 225.20</td><td>We recommend to add a comma as following:</td></tr></table>	Description	Comments	1. Section 225 is relevant to professional accountants in public practice, and Section 360 is relevant to professional accountants in business. However, in both the two sections, the phrase “professional accountant” is still used.	<p>We noted in 2012 Handbook of the Code, in Part B, the phrase “professional accountant in public practice” is used, and in Part C, the phrase “professional accountant in business” is used.</p> <p>We recommend the proposed changes use the same word with the existing Code.</p>	2. 225.20	We recommend to add a comma as following:
Description	Comments							
1. Section 225 is relevant to professional accountants in public practice, and Section 360 is relevant to professional accountants in business. However, in both the two sections, the phrase “professional accountant” is still used.	<p>We noted in 2012 Handbook of the Code, in Part B, the phrase “professional accountant in public practice” is used, and in Part C, the phrase “professional accountant in business” is used.</p> <p>We recommend the proposed changes use the same word with the existing Code.</p>							
2. 225.20	We recommend to add a comma as following:							

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#	Source	Comment	
		<p>.....</p> <p>If the professional accountant does not exercise the right to <u>disclose the</u> accountant shall consider whether to terminate the professional relationship with the client.</p> <p>360.10</p> <p>.....</p> <p>If the professional accountant does not exercise this <u>right the</u> accountant shall consider whether to resign from the employing organization.</p>	<p>.....</p> <p>If the professional accountant does not exercise the right to <u>disclose, the</u> accountant shall consider whether to terminate the professional relationship with the client.</p> <p>.....</p> <p>If the professional accountant does not exercise this <u>right, the</u> accountant shall consider whether to resign from the employing organization.</p>
		<p>3. 360.4</p> <p>If a professional accountant in business acquires, or receives, information that leads the accountant to suspect that an illegal act <u>has been committed</u> by an employing organization, or by those charged with governance, management or employees of an employing organization, the accountant shall take reasonable steps to confirm or dispel that suspicion.</p> <p>.....</p>	<p>If the suspected illegal act is being committed by the employing organization, what should the professional accountant do?</p>
11.	CIMA	Please refer to our responses to the previous questions where code references are made	
12.	CNDCEC	We agree with the proposed changes and suggest to consider what has been noted in previous comments.	
13.	CPA Au	CPA Australia does not agree with the proposed changes to the existing sections of the Code that impose a requirement or expectation to override confidentiality.	
14.	DE	Yes, I agree with the proposed changes to the existing sections of the Code	
15.	DTT	As we hope that the Board, after consideration of our overarching concerns with the approach taken in the ED, will reissue a significantly revised proposal, we believe it is premature to provide specific drafting suggestions at this time. We would welcome the opportunity to provide specific drafting suggestions on a revised proposal.	

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#	Source	Comment
16.	EFAA	<p>To the extent that these changes are in fact being made to make the provisions of the Code consistent we agree.</p> <p>That said, it appears that the changes proposed to section 210.5 go further than simply to conform to the revisions under this ED. In its extant form it was a clear and concise paragraph as follows:</p> <p>Extant 210.5</p> <p>A professional accountant in public practice shall periodically review whether to continue with a recurring client engagement.</p> <p>It has been changed to the following:</p> <p>Revised 210.5</p> <p>Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the professional accountant to decline the engagement had that information been available earlier. A professional accountant in public practice shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a threat to compliance with the fundamental principles may be created by a client's unethical behavior such as improper earnings management or balance sheet valuations. If a professional accountant in public practice identifies a threat to compliance with the fundamental principles, the accountant shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the professional accountant in public practice shall terminate the client relationship.</p> <p>This newly worded paragraph goes further than a conforming amendment and we are concerned about the introduction of this paragraph as it requires the Professional Accountant to consider unethical behavior such as improper earnings management or balance sheet valuations but does not clarify matters in this regard. Instead it has the effect of making such required determinations even more complicated to understand and therefore less likely to be implemented in the manner that IESBA intended.</p>
17.	EY	Please refer to our other question responses and our summary above.
18.	FAOA	Yes
19.	FAR	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.
20.	GTI	<p>Grant Thornton does not agree with the changes made to section 140 because we believe a professional accountant providing professional services to an audit client should only be required to disclose confidential information when there is a legal or regulatory requirement to do so. In such circumstances the duty of confidentiality may be overridden by statute, law, or a court of law.</p> <p>Furthermore, we believe the change to paragraph 210.2 referring to "questionable issues associated with the client" would be difficult to put into practice. What is considered "unethical" is greatly influenced by factors such as culture and business practice in a given region. For</p>

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#	Source	Comment
		example, certain activities are viewed as being unethical in one culture/region while acceptable in others. Therefore we believe the Board should consider providing additional guidance or examples as to what constitutes “questionable issues” beyond an illegal act.
21.	HKICPA	Please refer to our responses to other questions in the Exposure Draft for comments on the existing section of the Code.
22.	ICAA	We do not agree with the proposed changes to the existing sections of the Code, for the reasons expressed in our response to Question 1 and in our General Comments. We consider that these changes should be redrafted to remove the expression of obligations, and should rather be expressed as a principles-based document, identifying the appropriate actions to be taken, and the issues to be considered by the accountant in dealing with a suspected illegal act
23.	ICAEW	On the whole, yes. However, we have some concerns about the redrafting of paragraph 150.1 relating to association: <ul style="list-style-type: none"> <li>- ‘association’ is potentially very broad in application. It could be interpreted as preventing professional accountants being employed by any organisation who has ever undertaken a questionable act. Preventing accountants associating with those who act unethically may prevent them being able to eliminate or minimise the act. That would not be in the public interest.</li> <li>- ‘unethical acts’ is also unclear. Would ethical behaviour be measured in line with a corporate/professional code, or against personal values?</li> </ul>
24.	ICAP	Agreed
25.	ICAS	We are not supportive of the proposed changes in light of our comments above.
26.	ICJCE	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.
27.	ICPAC	Yes and No – see below
28.	ICPAK	Yes we agree
29.	ICPAR	Agree. It makes the document more comprehensive
30.	ICPAU	Yes, we agree with the changes.
31.	IDW	As explained in detail, we do not support the addition of sections 225 and 360, nor conforming amendments in sections 140.7, 140.8. Unethical Acts

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#	Source	Comment
		<p>The text in paragraph 100.21 that IESBA proposes deleting reflects ISA 250.19, but as far as we are aware has no equivalent for accountants not performing an audit. We do not appreciate why this should be deleted, as the accountant remains free to consider taking legal advice, irrespective of whether any specific reporting requirements or expectations exist.</p> <p>Paragraph 100.21 ought to clarify that a significant conflict is meant.</p> <p>Paragraph 150.1 ought to clarify that unethical behavior referred to in the last sentence is significant and not an isolated matter of a minor nature.</p> <p>The last sentence of paragraph 210.5 ought to include “unless prohibited by law” in relation to terminating a specific engagement as some appointments may be subject to legal stipulations.</p> <p>Paragraph 300.6 introduces the notion that a professional accountant in business (PAIB) has a duty to act in the public interest. The current Part C of the Code relating to PAIBs does not specify this. Indeed Section 300 discusses the various facets of responsibility from external parties to the employing organization and to the profession as a whole. The proposed changes may lead to confusion; we suggest in place of the phrase “public interest” this text be aligned to the rest of Section 300.</p> <p>Paragraph 300.15 essentially lowers the threshold above which accountants in business might need to resign from their employment from one of continual unethical behavior to a one-off occurrence. This whole issue needs to be handled more sensitively by IESBA. Resignation may be impossible for personal reasons. Threats to the accountant’s person or to others also need to be addressed, as do issues such as whether escalating the matter may mean “tipping-off” the perpetrator.</p> <p>In our opinion, stating that unethical behavior constituted improper earnings management or balance sheet valuations (paragraphs 210.5 and 300.6) is highly problematical. These are issues that need to be addressed by accounting standard setters. The audit implications are already covered appropriately by ISA 240. Generalization in the manner proposed is not helpful as regards public perception, since in every case the individual circumstances need to be taken into account by the auditor.</p>
32.	IFAC PAIB	No comments
33.	IFAC SMP	We agree.
34.	IIA	We agree with the proposed changes to the existing sections of the Code.
35.	IMA	See various responses above
36.	IRBA	<p>The final proposed changes to:</p> <ul style="list-style-type: none"> <li>Section 100 still to come from the earlier proposed changes to the Code to address ethical conflicts of interest are not reflected, so it is difficult to determine whether further changes are necessary;</li> </ul>

#	Source	Comment
		<ul style="list-style-type: none"> <li>Section 100.21: the proposed deletion of the final two sentences will depend on the final proposed wording of the proposed new Section 225;</li> <li>Section 140.7 and 140.8 (v): No comment subject to other general comments to be considered in finalising the proposed new Section 225;</li> <li>Section 150.1: completely disagree – “suspected illegal acts” are completely different from “unethical acts” and should not be used interchangeably; and</li> <li>Section 210.2 and 201.5: disagree with the proposed changes - “suspected illegal acts” are completely different from “unethical acts” and should not be used interchangeably.</li> </ul> <p>We have expressed several serious reservations in our comments above with regard to the proposed changes imposing a requirement, or the extending the right, of a professional accountant to override confidentiality principles in order to disclose suspected illegal acts identified at an entity that is an audit client or at a non-audit client, to an appropriate authority.</p> <p>This suggests that the IESBA needs to re-consider the proposed amendments and may require additional research and possibly re-exposure before finalising amendments to the Code that may not be possible to implement, or may be unenforceable in a Code as this may mitigate against convergence in some jurisdictions.</p> <ul style="list-style-type: none"> <li>Without legal or regulatory requirements in a jurisdiction, that require reporting of suspected illegal acts to an appropriate authority or regulator it is unlikely that the proposed changes, beyond the requirements to communicate to management or those charged with governance will be implemented ;</li> <li>In addition, unless suitable protection (indemnity) is provided for professional accountants / auditors who report suspected illegal acts in good faith, in the course of their audit or other professional services provided, they may be exposed to legal action taken against them by their clients.</li> </ul>
37.	JICPA	We do not agree with the proposed changes. We expect to see changes that would resolve our above mentioned concerns or reservations. After such changes are made, the proposed changes to the existing sections of the Code should be incorporated.
38.	KICPA	Other than the areas we highlighted in responses to the above questions, we agree with IESBA’s the proposed changes.
39.	KPMG	<p>For the reasons noted in our covering letter and the responses above, we believe that the proposed changes to the Code will need to be revisited. Having said this we have the following specific points:</p> <ul style="list-style-type: none"> <li>In paragraph 150.1, we are not sure why the example which has been added is needed. Inclusion of a single example of a matter which would affect the good reputation of the profession may discourage the accountant from considering other instances where the same might apply.</li> </ul>

#	Source	Comment
		<ul style="list-style-type: none"> <li>In paragraph 300.6, we believe the requirement for the accountant to act in the public interest has already been adequately set out in paragraphs 100.1 and 100.6 of the IESBA Code, and the reference here is not needed. Further, we do not agree with the inclusion of improper earnings management or balance sheet valuations as examples of matters that would lead the professional accountant to not engage in a business, occupation or activity. This is not consistent with the ISAs which consider these matters as indicators of management bias that need to be further investigated and addressed by the auditor.</li> </ul>
40.	KRESTON	We do not agree with the proposed changes as they will not necessarily bring clarity and consistency to dealing with suspected illegal acts.
41.	Mazars	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.
42.	MG	No. We believe that any changes to the existing sections of the Code discussed in the Exposure Draft should be consistent with our General Comments. In particular, we do not believe that Section 140.7 of the Code should be amended to require professional accountants to comply with the requirements of proposed Sections 225 and 360, as currently drafted.
43.	MNP	<p>The concept of suspected illegal acts in the ED is described as “[any] acts of omission...intentional or unintentional...which are contrary to the prevailing laws and regulations”.</p> <p>Placing an expectation for the auditor to report on any type of suspected illegal act is very broad in scope and does not appear to be consistent with the underlying principles that exist in current requirements. Specifically, in International Audit Standards (ISA) 240 and 250, the auditor’s responsibilities are limited to reporting fraud and non-compliance or suspected non-compliance of laws and regulations related to the audit of financial statements.</p> <p>Furthermore, ISA 250.5 identifies a number of practical limitations on the auditor’s ability to detect non-compliance of laws and regulations. There are many laws and regulations that relate principally to the operating aspects of the entity that typically do not affect financial statements and are not captured by the entity’s financial reporting systems. In addition, non-compliance may involve conduct to deliberately conceal information from the auditor (i.e. collusion, forgery, failure to record information and other acts of intentional misrepresentations). Most importantly, ISA 250.5 concludes that the further removed the act of non-compliance is from the events and transactions reflected in the financial statements, the less likely the auditor will become aware of it or will be able recognize the non-compliance.</p> <p>We believe the concept of “suspected illegal acts” is a significant departure from existing requirements set out in the ISAs and we are very concerned about the ability of the auditor to identify and address such a wide spectrum of potential of suspected illegal activities. The ED does not acknowledge the practical limitations discussed in ISA 250.5 for the auditor to identify suspected illegal acts that are unrelated to the financial reporting process. In addition, the ED is silent on how the broader expectation for the auditor to address all forms of suspected</p>

#	Source	Comment
		<p>illegal activities reconciles with the existing requirements in ISA 240 and ISA 250 that address only fraud or acts of non-compliance identified during the audit of financial statements.</p> <p>We are also concerned with the lack of clarity on the concept of “suspected illegal acts that are the subject matters which fall within the expertise of the professional accountant” in proposed paragraph 225.13. The ED’s explanatory memorandum provides an example of non-compliance with securities legislation to illustrate the concept described in 225.13. We have significant concerns implied by this illustrative example. Securities legislation is a very specialized area requiring the expertise of legal counsel with an active securities practice. A professional accountant serving in the role of auditor would possess only basic knowledge about limited aspects of securities law.</p> <p>For example, an auditor may obtain some working knowledge of securities legislation in order to assess whether the client is in compliance with its financial statement filing requirements. However, there are other requirements in securities legislation that are not related to financial reporting and would be outside of the expertise of the professional accountant. One example of this in Canada is the requirement for companies with mineral projects to file a report in accordance with National Instrument 43-101, Standards of Disclosure for Mineral Projects (43-101 Report). The determination of when a company is required to file a 43-101 Report includes an assessment of technical aspects of the mining project operations by the company’s chief geologist and legal counsel to determine if a reportable event was triggered. Reportable events that trigger a 43-101 Report are not normally recorded in the financial statements or captured by systems related to financial reporting. There are many other aspects of securities legislation such as insider trading and reporting and rules around raising capital in an exempt market that would not be captured by financial reporting systems and would fall outside the expertise of a professional accountant.</p> <p>In order to meet the expectations implied by 225.13, the auditor may have to broaden the scope of audit procedures to examine processes and systems not related to financial reporting. In the example above, this may include comprehensive reviews of the client’s compliance with securities legislation in areas that are outside of financial reporting. However, there may not be a practical way for an auditor to test compliance. For example, the auditor may not be able to access the necessary third party stock brokerage records to test for insider trading.</p> <p>Furthermore, the higher cost of an expanded audit scope may be burdensome for small to mid-sized organizations. Small-cap entities listed on junior markets and venture exchanges often struggle to raise the funds required to sustain operations. Recent uncertainties in the financial markets attributed to the U.S. fiscal cliff and the debt concerns in the European Union have made it increasingly difficult to raise funds in Canada for small-cap entities.</p> <p>The ED’s explanatory memorandum focuses on examples and application issues related to audit clients that are for-profit, publicly traded entities. We are concerned about the application of the ED to audit clients that are not publicly traded, including governmental and not-for-profit organizations (Non-Commercial Entities).</p>



#	Source	Comment
		<p>In Canada, Non-Commercial Entities report under different accounting frameworks<sup>7</sup> recognizing that there is no “one size fits all” solution. Even the application of the “public interest” test may require a different approach. The nature and operations of Non-Commercial Entities can differ significantly from for-profit publicly traded entities. For example, the nature, breadth and scope of regulations applicable to government operations may be more complex and more regulated compared to a for-profit publicly traded entity. In the case of a municipality, many aspects of municipal operations (e.g. bylaws, waste management, water management, taxation policy, policing etc...) would not be captured by the financial reporting processes and it would be impractical for an auditor to obtain sufficient expertise in all areas of regulation related to municipal affairs.</p> <p>One of the consequences implied by the ED is that the auditor may have to expand the scope of their audit. Generally, Non-Commercial Entities are subject to funding constraints and may be unable to secure additional funds outside of their budget to cover the costs of an expanded audit. Securing additional funding for an expanded audit scope would require approvals from government agencies in an era where governments are pushing for fiscal restraint and budget cut-backs. The scope of the financial statement audit may be strictly defined by regulation. In order to change the scope of the audit, the auditor may require additional regulatory approval.</p> <p>In conclusion, we have concerns that the requirements discussed above are too broad, unclear and may not be workable in practice. In addition, a large number of reporting issuers in Canada are listed on venture and junior capital markets. The costs of the proposed requirements appear to outweigh the benefits for these smaller entities. We have similar concerns about the practical application and financial burden of the ED for Non-Commercial Entities. We believe the IESBA should engage in further research and discussion of the kinds of issues we’ve identified, above.</p>
44.	NASBA	We do not support all of the proposed changes. We believe that our answers to the questions above should help you understand our concerns with the Exposure Draft.
45.	PKF	No. In respect of proposed changes that are unrelated to our comments above, we note that the term “unethical behaviour” (and related terms such as “ethics-based culture”) is used and it appears that this term relates to the honesty and decency of the employing organisation or client, rather than its compliance with any rules or standards for conduct or practice. The use of the term “unethical behaviour”, where it relates to honesty and decency, should be defined in the Code as it has different meanings and may be interpreted differently in different jurisdictions.

<sup>7</sup> In Canada, there are three accounting frameworks applicable to Non-Commercial Entities:

- Accounting Standards for Private Enterprises
- Accounting Standards for Not-For Profit Organizations
- Public Sector Accounting Standards

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#	Source	Comment
46.	RSM	No. We believe that any changes to the existing sections of the Code discussed in the Exposure Draft should be consistent with our “General Comments.” In particular, we do not believe that Section 140.7 of the Code should be amended to require professional accountants to comply with the requirements of proposed Sections 225 and 360, as currently drafted.
47.	SAICA	No we do not agree. As indicated in our responses above, we do not agree to most of the proposed changes to the code. In the South African environment we have laws that govern the reporting requirements of auditors which we believe is sufficient. The Companies Act also prescribes certain reporting requirements. We do not believe that imposing further reporting requirements on professional accountants would be in the best interest of South Africa or the profession.
48.	ZICA	We have no comments here

**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?***

#	Source	Comment
1.	ACCA	<p>In view of our overriding concerns regarding the reporting proposals, we are reluctant to comment in detail on the impact analysis. However, we note that the analysis focuses on the professional accountant in isolation. For many clients, the option is available to engage the services of unregulated service providers for services that might otherwise be purchased from a regulated professional accountant. There is a risk that the proposed regulation would act as an incentive for a client to disengage a regulated professional accountant, in favour of the unregulated provider.</p> <p>For larger clients, the choice, in some cases, may be between going to an accountant for advice on a particular issue, or going to a lawyer or other expert. Any perception (however misguided) that the use of an accountant, rather than a lawyer for example, may result in an increased risk of regulatory intervention will place the accountant at a disadvantage in tendering for the services. While it may very well be that, in practice, lawyers are under equivalent obligations to serve the public interest, there is nevertheless a perception in many cases that lawyers do offer a 'more discreet' service (eg the ongoing debates and litigation in the UK concerning legal professional privilege).</p>
2.	AICPA	<p>We commend the IESBA for undertaking an impact analysis and including the analysis in the Exposure Draft. There are aspects of the analysis that we do not fully understand, however, as well as other factors that are not reflected in the analysis and which we believe warrant greater consideration.</p> <p>The impact analysis identifies as "high" and "ongoing" the increased exposure of professional accountants to litigation, if they disclose suspected illegal acts to appropriate authorities and their suspicions turn out to be unfounded. Similarly, the analysis identifies the potential exposure of professional accountants to retaliation for making such disclosures as "high" and "ongoing," since not all jurisdictions would presently afford whistle-blowing protection to the accountants. These risks do not appear to be reflected, however, in the IESBA's actual proposals. In our view, they underscore why national regulators, which unlike the IESBA have the ability to confer liability safe-harbor and anti-retaliation protections on professional accountants, should determine whether to impose a requirement, or confer a right, on a professional accountant to disclose suspected illegal acts involving clients or employers to external authorities. See General Comment No. 2.</p> <p>In addition, the impact analysis states that, if the proposals were adopted, professional accountants in public practice who are not auditors and professional accountants in business would now have "have a process for confirming or dispelling suspicion of illegal acts." The proposals would require such professional accountants to "take reasonable steps" to confirm or dispel their suspicions, and identifies their obligations if they were unable to do so. However, they do not identify what steps or procedures would be considered "reasonable" to confirm or dispel an accountant's suspicions, other than to state that the accountant may wish to consult with others within his or her firm</p>

#	Source	Comment
		<p>or, on an anonymous basis, with a relevant professional body. Accordingly, the proposed standard does not appear to provide professional accountants in public practice who are not auditors or professional accountants in business with a specific “process” for confirming or dispelling their suspicions in situations involving suspected illegal acts. In practice, we believe some firms might be required to devote significant time and expense to developing new policies and procedures for satisfying their responsibilities under the proposed standards. These costs are not reflected in the impact analysis.</p> <p>The impact analysis also suggests that the proposals, if adopted, could lead to a possible reduction in the number of illegal acts because of the deterrent effect associated with a client’s or employer’s knowledge that a professional accountant providing non-audit services to a client that is not an audit client or a professional accountant in business would be expected to exercise his or her right to disclose certain illegal acts to an appropriate authority. While the proposals, if adopted, might have some deterrent effect, we believe the impact analysis should also acknowledge that the existence of such disclosure obligations might also chill communications between professional accountants and their clients or employers. This could reduce the quality of the services provided by professional accountants, with an adverse impact on clients, employers and other stakeholders. In addition, we believe the proposals, if adopted, would result in a significant, ongoing risk that clients and employers might turn to less qualified individuals and firms that are not professional accountants or composed of professional accountants for consulting and other non-audit services, since other service providers would not be subject to these inquiry obligations and potential disclosure requirements upon learning of a suspected illegal act. See General Comments Nos. 3-4. The impact analysis does not discuss this risk, which could have an adverse impact on the public interest, including but not limited to clients, employers, investors and other stakeholders.</p>
3.	APESB	<p>APESB supports the use of impact analysis in presenting stakeholder views and concerns. We believe the analysis as currently presented should be expanded to consider the following additional considerations. In particular, the professional accountant is potentially subject to:</p> <ul style="list-style-type: none"> <li>• Commercial impact from the loss of trusted advisor status particularly in the SMP environment;</li> <li>• Conflict between their obligations under local tax regulations and the Code, leading to the potential loss of registered taxation agent status due to a breach of client confidentiality;</li> <li>• Increased administrative, legal and compliance costs associated with documentation and disclosure actions;</li> <li>• The need to revise and reissue all engagement letters to responsibly notify the client of additional professional obligations which impact on the client relationship;</li> <li>• Reduced competitiveness compared to other similar-standing professional advisers not subject to comparable requirements;</li> <li>• Additional pressure arising from the creation of an expectations gap, where clients and the public will have an expectation that the members of the accounting profession will identify suspected illegal acts;</li> </ul>

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		<ul style="list-style-type: none"> <li>• Potential risk of damaging the forensic trail when investigating matters which could make evidence inadmissible in subsequent legal proceedings; and</li> <li>• Potential exposure to harm or adverse legal consequences.</li> </ul>
4.	BDO	<p>No. We do not agree with the impact analysis as presented since it does not adequately consider the resolution of high 'negative' impact issues, as described below.</p> <p>The analysis notes aspects of litigation and retaliation as high impact issues; however, it dismisses them as matters that only the law can solve. This is not a satisfactory resolution of the problem, although perhaps it is symptomatic of the fact that the IESBA is considering fundamental issues over which it has no mandate.</p>
5.	CalCPA (APAS)	No; it is a whitewash, presenting only the perceived benefits and none of the downside. Also, we think it is disingenuous in that the ED limits the crimes to be reported and provides a complete exemption where there is fear for physical safety.
6.	CARB	We believe that the impact analysis needs to be extended to consider additional impacts on professional accountants and their business, such as, the danger that the proposals could inhibit members of management and audit committees from holding a free and open dialogue with their auditor, and that professional accountants may be at a competitive disadvantage to other advisers who do not belong to IFAC member bodies.
7.	CGA Ca	We believe that the impact analysis as presented lacks the depth in so far as it relates to the professional accountants. For example, the analysis does not evaluate the impact of the proposals on the operational efficiency of the professional accountants or on the cost of their services to the public. The analysis is also silent on how the conflict between the legal obligations and enhanced ethical obligations under the proposals can be resolved, thus minimizing the true impact and cost to professional accountants, and in particular SMPs. We suggest a more comprehensive evaluation of the impact of the proposals on the SMPs and professional accountants working in emerging economies.
8.	CICA	<p>Our comments with respect to the need for whistleblower protection, possible impacts on professional liability insurance, possible consequences for the financial reporting system, and potential conflict with current legal requirements that may exist to protect information generally and more specifically in the case of fiduciaries, are included with our General Comments.</p> <p>We are also concerned that there may not have been consideration given to possible risk and liability impacts beyond those that affect professional accountants. There may also be risk and liability concerns for regulators that outweigh the potential public interest benefit in some circumstances. There may be increased risk and liability exposure arising from professional accountants taking civil action against the regulatory body if adequate legal protection from retaliatory action is not provided to them when they whistle blow (whether appropriately or inappropriately). There may be increased risk and liability exposure for the regulatory body arising from members of the public taking civil action against the regulatory body if they believe the professional accountant did not whistle blow because of the professional</p>

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		accountant's exercise of professional judgment in accordance with the provisions of the rules of professional conduct/code of conduct. There also may be increased liability exposure for both the professional accountant and the regulatory body when the regulatory body has been unable to take any disciplinary action against the professional accountant because he or she simply did not discover the possibility of illegal acts or is alleged to not have made sufficient or appropriate inquiries to determine whether there may have been a suspected illegal act.
9.	CICPA	Yes. We agree with that
10.	CIMA	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".
11.	CNDCEC	We agree with the impact analysis as presented in the exposure draft.
12.	CPA Au	As discussed in the general comments, CPA Australia is of the opinion that, the impact analysis presented in relation to the 'public interest' needs to be developed more adequately.
13.	DE	<p>Yes, I agree with impact analysis as presented, but I observed two points, that I don't know if the board agrees, as follows:</p> <p>1- In relation impact of analysis I think that client or employing obligation in relation magnitude of impact I think that high not moderate if considering the questions 4, 5 and 8, I have doubt for attend the point "A professional accountant shall maintain confidentiality unless there is a professional duty or right to disclose confidential information, when not prohibited by law, to comply with technical standards and ethics requirements" in the page 29.</p> <p>2- The other point about Process to be followed by professional accountant when encountering a suspected illegal act - Professional Accountants in Public Practice who are not Auditors I don't know if moderate is adequate, I think that is high because if have some problems in relation the decision who's the responsibility?</p>
14.	DTT	For the reasons stated above, we believe the IESBA's impact analysis has not sufficiently considered the ramifications or costs of this proposal, nor the fundamental changes in the nature of the relationship that professional accountants in public practice may have with their clients and that professional accountants in business may have with their employers, if this standard were to be adopted as proposed.
15.	EFAA	<p>Whilst we welcome the introduction of the Impact Assessment it seems clear to us that the presumption has been made that the public interest will be better protected because the provisions of the Code have been redrafted.</p> <p>We would argue that the public interest would only be better served if the provisions of the Code were more widely applied. IESBA itself recognises (in its Proposed Strategy and Work Plan 2010 – 2012) that work is still required in the areas of "Adoption and Implementation</p>

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		<p>Guidance” and “Convergence”. EFAA fully supports the work performed to date and recognises the importance of on-going work to address these matters. Therefore, whilst accepting the importance of what the proposed changes hope to achieve it is difficult for one to conclude that the drafting amendments will result in better protection of the public interest. This would result from a more widespread application of the Code itself together with increased appreciation of the Code and its value outside of the profession.</p> <p>Finally, we would note that the Impact Assessment has been prepared without differentiating between types of professional accountant. We have already stated that there could be a significant burden placed on SMEs and SMPs. The costs of the new proposals outlined in the ED may well outweigh the resulting benefits in terms of serving the public interest in the SME / SMP sphere. This issue has not been dealt with in the Impact Assessment.</p>
16.	EY	We believe there is further work needed in developing an appropriate proposal. We look forward to working with the IESBA in developing an approach that meets investors’ needs while maintaining the confidentiality of information exchanged during the accountant/client relationship.
17.	FAOA	Yes, see paragraph 1 above.
18.	FAR	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.
19.	GTI	Grant Thornton does not agree with the impact analysis as presented for the reasons discussed in our letter.
20.	HKICPA	<p>As mentioned to our response to the above questions, we consider the proposed requirements have the potential to bring a significant negative and detrimental impact to not only professional accountants in public practice or those in business, but also to the business community as a whole.</p> <p>For the reasons stated above, we believe the IESBA's impact analysis has not sufficiently considered the ramifications or costs of this proposal, nor the fundamental changes in the nature of the relationship that professional accountants in public practice may have with their clients and that PAIBs may have with their employers if this standard was to be adopted as proposed</p>
21.	ICAA	It is noted that the analysis makes reference to the fact that not all jurisdictions afford protection from retaliation to a professional accountant who makes a disclosure. However in our view the potential impact of this lack of protection has not been adequately identified in the analysis. We consider that the lack of such protection has an impact which makes an obligation to disclose unworkable.
22.	ICAEW	The scale of the impact analysis appears to be proportionate to the scale of the matter. However, we note that while it raises as high impact issues, aspects of litigation and retaliation, the narrative in the exposure draft dismisses them as matters that only the law can solve: hardly

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		a resolution of the problem. In addition, as will be apparent from our comments above, we believe the impact of loss of confidentiality to be significantly greater than medium
23.	ICAP	The general comments given at outset highlight certain areas which, in our view, have not been considered. These include the legal consequences which the professional accountant must consider at his jurisdiction, the enhanced costs and efforts connected with making such disclosure, economic realities in view of global recession, expected career losses, expected impact on profession's overall image etc. In our view a more detailed impact analysis should be made and carefully considered.
24.	ICAS	The impact on shareholders needs to be assessed. This is a very important constituent group because ultimately they are the true client of the audit process.
25.	ICJCE	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.
26.	ICPAC	Yes
27.	ICPAK	Yes we agree
28.	ICPAR	Agree and all the stakeholders have been addressed.
29.	ICPAU	Yes, we agree with the analysis.
30.	IDW	No this appears to be based on supposition and does not take adequate account of practicalities and the potential for unintended consequences. We do not believe this is helpful or likely to be an accurate reflection of impact in practice.
31.	IFAC PAIB	We partly agree. As discussed in the general comments, the PAIB Committee believes additional analysis on the future impact if the proposed changes to the Code are not implemented could further clarify the need for this additional guidance. In addition, the impact analysis could be expanded to also include professional accountants who sit in governance bodies, such as boards and policy-setting bodies.
32.	IFAC SMP	We believe that the impact analysis should be developed further to evaluate the impact of the proposals on the operational efficiency of the professional accountants or on the cost of their services. The analysis is also silent on how the conflict between the legal obligations and enhanced ethical obligations can be resolved, thus minimizing the true impact and cost, in particular to SMPs. We suggest a more comprehensive evaluation of the proposals on SMPs and on professional accountants working in emerging economies. In addition, we believe the impact of loss of confidentiality to be significantly greater than medium.
33.	IIA	We support the concept of providing impact analysis. However, this impact analysis is not reader-friendly because:



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		<ul style="list-style-type: none"> <li>- The rating of high, moderate and low are not aligned with the points. For example, on p.29, it is not clear if Low and One off is intended to be aligned with the last point in Public Interest or the first point in Professional Accountant.</li> <li>- Impact analysis is not consistently provided for each point; it is not clear whether the impact analysis for the previous point is also applicable to the next point. (see example on p.29)</li> <li>- Duration is missing for two impact analyses. (see p.30, p.32)</li> </ul> <p>Management and those charged with governance are also stakeholders that should be considered. They have the primary responsibilities for establishing processes for reporting (commonly known as Whistleblowing), confirming or dispelling (commonly known as investigating), evaluating and disclosing SIAs to meet legal and regulatory requirements. There are also several references in the proposed Code about escalating the SIAs to management and those charged with governance. Entities need to have a Code of Ethics for employees, board members, and applicable service providers, suppliers, distributors, agents, representatives, etc. that governs integrity, confidentiality, compliance, SIA/impropriety reporting, etc. requirements.</p> <p>Our suggested changes, if adopted would affect the impact analyses.</p>
34.	IMA	<p>Based on our reading of the released documents, there appears to be a discrepancy between the language on page 19 in the proposed document changes versus the appendix on page 31. On page 31, in the bottom section, the matrix states that a proposed change for accountants in “public practice providing services to a non-audit client and professional accountants in business,” “Disclosure will be permitted when certain conditions are met.” (italics ours). However, on page 19, the language says the professional accountant “shall disclose” (360.6 and 360.8) (italics ours). We suggest clarifying whether the IESBA truly means whether the accountant must or may disclose the situation and to make sure that both the actual document and the summarizing matrix are in full alignment on this issue.</p>
35.	IRBA	<p>We find the impact analysis of limited use and have concerns that the far reaching implications have not been fully considered, nor due regard being had to implementation in those jurisdictions that do not have a regulatory and enforcement framework, that supports disclosures to an appropriate regulator, and provides indemnity to a professional accountant / auditor who discloses suspected illegal acts in good faith.</p> <p>The public interest implications have not been clearly articulated.</p>
36.	JICPA	<p>We do not agree with the analysis presented. We believe that there would be other impacts that are related to our concerns or reservations described above.</p>
37.	KICPA	<p>We ask you to assess whether the proposed changes can lead to positive outcome in terms of benefit-cost analysis.</p> <p>To this end, we would like to ask you to make additional assessment of a potential negative impact on the public interest caused by the disclosure of inaccurate information and to incorporate the results into the impact on the ‘public interest’.</p>

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		In addition, we would like to request you to make assessment as to whether requiring the auditor to disclose suspected illegal act may result in a wider expectation gap between users of audit report and auditors about audit engagement and to incorporate the results into impact analysis to 'public interest'..
38.	KPMG	The impacts noted are highly subjective and in any case are incapable of quantification. Given that the successful implementation of the proposals is dependent upon the requirements of local laws and regulations, we believe that the impact of the proposals can only be addressed if they are compared to, and significant analysis is undertaken in respect of, the requirements of laws and regulations of a number of jurisdictions.
39.	KRESTON	The impact analysis identifies the key issues and stakeholders.
40.	Mazars	We have no observations on the Impact Analysis in addition to the points made earlier in this response.
41.	MG	<p>We appreciate that the IESBA conducted an impact analysis and included the analysis in the Exposure Draft. We generally agree with the analysis as presented, however there are aspects of the analysis that we do not believe have been appropriately addressed in the Exposure Draft.</p> <p>The impact analysis identifies as “high” and “ongoing” the increased exposure of professional accountants to litigation, if they disclose suspected illegal acts to appropriate authorities and their suspicions turn out to be unfounded. Similarly, the analysis identifies the potential exposure of professional accountants to retaliation for making such disclosures as “high” and “ongoing,” since not all jurisdictions currently provide protective mechanisms to the accountants. These risks do not appear to be reflected, however, in the IESBA Exposure Draft. We believe they underscore why legislative bodies in each jurisdiction, which unlike the IESBA have the ability to provide protective mechanisms for professional accountants, should determine whether to impose a requirement on, or grant a right to a professional accountant to disclose suspected illegal acts involving clients or employers to external authorities. We refer you to our General Comment No. 1.</p> <p>In addition, the impact analysis states that, if the proposals were adopted, professional accountants in public practice who are not auditors and professional accountants in business would now “have a process for confirming or dispelling suspicion of illegal acts.” The proposals would require such professional accountants to “take reasonable steps” to confirm or dispel their suspicions, and identifies their obligations if they were unable to do so. However, they do not identify what steps or procedures would be considered “reasonable” to confirm or dispel an accountant’s suspicions, other than to state that the accountant may wish to consult with others within their firm or, on an anonymous basis, with a relevant professional body. Accordingly, the proposed standard does not appear to provide professional accountants in public practice who are not auditors or professional accountants in business with a specific “process” for confirming or dispelling their suspicions in situations involving suspected illegal acts. In practice, we believe some firms might be required to devote significant time and expense to developing new policies and procedures for satisfying their responsibilities under the proposed standards. These costs are not reflected in the impact analysis.</p>

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		The impact analysis also suggests that the proposals, if adopted, could lead to a possible reduction in the number of illegal acts because of the deterrent effect associated with a client's or employer's knowledge that a professional accountant would be required to disclose a suspected illegal act, or expected to exercise his or her right to disclose a suspected illegal act, to an appropriate authority. While the proposals, if adopted, might have some deterrent effect, we believe the impact analysis should also acknowledge that the existence of such disclosure obligations might also have a detrimental impact on the communications between professional accountants and their clients or employers. This could negatively impact the quality of the services provided by professional accountants, which would have a pervasive adverse impact on all stakeholders.
42.	NASBA	We are pleased that the IESBA has the foresight of undertaking an impact analysis considering the fundamental changes contemplated in the Exposure Draft. We are hopeful that the analysis will address the concerns we have outlined above.
43.	PKF	No, we do not agree with the impact analysis. In particular, the impact analysis states that the magnitude of the impact of a client or employing organisation that faces a reduction in confidentiality arising from a disclosure is "moderate". This considerably understates the magnitude of the impact, as any client or employing organisation that is aware that confidentiality may not be maintained will behave quite differently from the situation where confidentiality will be maintained. The impact of this loss of confidentiality should be described as "high" at least.
44.	RSM	<p>We commend the IESBA for undertaking an impact analysis and including the analysis in the Exposure Draft. There are aspects of the analysis that we do not fully understand, however, as well as other factors that are not reflected in the analysis and which we believe warrant greater consideration.</p> <p>The impact analysis identifies as "high" and "ongoing" the increased exposure of professional accountants to litigation, if they disclose suspected illegal acts to appropriate authorities and their suspicions turn out to be unfounded. Similarly, the analysis identifies the potential exposure of professional accountants to retaliation for making such disclosures as "high" and "ongoing," since not all jurisdictions currently provide protective mechanisms to the accountants. These risks do not appear to be reflected, however, in the IESBA's actual proposals. We believe they underscore why national regulators, which unlike the IESBA have the ability to provide protective mechanisms for professional accountants, should determine whether to impose a requirement, or confer a right, on a professional accountant to disclose suspected illegal acts involving clients or employers to external authorities.</p> <p>In addition, the impact analysis states that, if the proposals were adopted, professional accountants in public practice who are not auditors and professional accountants in business would now "have a process for confirming or dispelling suspicion of illegal acts." The proposals would require such professional accountants to "take reasonable steps" to confirm or dispel their suspicions, and identifies their obligations if they were unable to do so. However, they do not identify what steps or procedures would be considered "reasonable" to confirm or dispel an accountant's suspicions, other than to state that the accountant may wish to consult with others within his or her firm or, on an</p>

#	Source	Comment
		<p>anonymous basis, with a relevant professional body. Accordingly, the proposed standard does not appear to provide professional accountants in public practice who are not auditors or professional accountants in business with a specific “process” for confirming or dispelling their suspicions in situations involving suspected illegal acts. In practice, we believe some firms might be required to devote significant time and expense to developing new policies and procedures for satisfying their responsibilities under the proposed standards. These costs are not reflected in the impact analysis.</p> <p>The impact analysis also suggests that the proposals, if adopted, could lead to a possible reduction in the number of illegal acts because of the deterrent effect associated with a client’s or employer’s knowledge that a professional accountant would be required to disclose a suspected illegal act, or expected to exercise his or her right to disclose a suspected illegal act, to an appropriate authority. While the proposals, if adopted, might have some deterrent effect, we believe the impact analysis should also acknowledge that the existence of such disclosure obligations might also have a detrimental impact on the communications between professional accountants and their clients or employers. This could negatively impact the quality of the services provided by professional accountants, which would have a pervasive adverse impact all stakeholders.</p>
45.	SAICA	<p>Yes, we agree with the impact analysis as presented and that there are other stakeholders that should be considered, however consideration should firstly be given to the comments raised above as the level of stakeholders differ from country to country. In South Africa if chartered accountants are subjected to such onerous reporting obligations and such legislation were to be passed the impact could be that organizations that are not transparent would then not employ chartered accountants as they currently do, but look at other professional bodies to fill such positions. This could very well put the chartered accountant brand in South Africa in jeopardy. We have already seen the diminishing numbers of registered auditors and we would not want to extinguish the chartered accountant profession totally. We should be relying on the chartered accountants who subscribe to a code of conduct and ethics to use their judgment and effect change within organizations and change the culture of non- compliance rather than leaving them to the mercy of other professional bodies who do not subscribe to the same high standards.</p>