

October 31, 2019

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

submitted electronically through the IESBA website

Institut der Wirtschaftsprüfer
in Deutschland e. V.

Wirtschaftsprüferhaus
Tersteegenstraße 14
40474 Düsseldorf
Postfach 32 05 80
40420 Düsseldorf

TELEFONZENTRALE:
+49 (0) 211 / 45 61 - 0

FAX GESCHÄFTSLEITUNG:
+49 (0) 211 / 4 54 10 97

INTERNET:
www.idw.de

E-MAIL:
info@idw.de

BANKVERBINDUNG:
Deutsche Bank AG Düsseldorf
IBAN: DE53 3007 0010 0748 0213 00
BIC: DEUTDE33XXX
UST-ID Nummer: DE119353203

Re.: Exposure Draft: Proposed Revisions to the Code to Promote the Role and Mindset Expected of Professional Accountants

Dear Ken,

We would like to thank you for the opportunity to provide the IESBA with our comments on the Exposure Draft „Proposed Revisions to the Code to Promote the Role and Mindset Expected of Professional Accountants”, hereinafter referred to as “the draft”.

In the Appendix to this comment letter we respond to the questions posed in the Explanatory Memorandum to the draft.

We have the following overall comments on the draft.

There are many matters in the draft with which we agree. Unfortunately, the responses in the Appendix to the questions posed in the Explanatory Memorandum dwell on those matters with which we have concerns, rather on those matters with which we agree.

Overall, we very much support that the draft continues to refer to professional skepticism in the context of audit, review and other assurance engagements only and adds a requirement and some application material to the Code to explain the role and mindset (the inquiring mind) expected of professional accountants for other professional activities. This approach retains the strength of the concept of professional skepticism for audits, reviews and other assurance engagements, but addresses the inquiring mind needed by professional accountants for other professional activities.

GESCHÄFTSFÜHRENDER VORSTAND:
Prof. Dr. Klaus-Peter Naumann,
WP StB, Sprecher des Vorstands;
Dr. Daniela Kelm, RA LL.M.;
Melanie Sack, WP StB

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We also generally support the proposals in relation to the determination to act appropriately and the use of the concept of an inquiring mind. Nevertheless, in relation to the latter, we do believe that the definition of professional judgment needs to be aligned closer to that of the IAASB by recognizing that professional judgment is about choosing appropriate courses of action. Our proposal in this regard shows that this can be done without disregarding the broader scope of the IESBA definition. We also note that the current treatment of bias appears to confuse that concept with sources of bias and propose that this be appropriately amended in the draft as we note in our response in the Appendix to this letter.

However, we have serious concerns with the introduction in Section 100 of the concept of “ethical values upon which the Code is based”, since these are not defined and therefore unenforceable, and the introduction, in the definition of professional behavior and in a requirement, of the professional accountant needing to behave in a manner that is consistent with the professional’s responsibility to act in the public interest, which is a nebulous concept that is unenforceable concept in all jurisdictions of which we are aware. As noted in our responses in the Appendix to Questions 1 and 3, in our view, the introduction of such requirements presumes bad faith among professional accountants, since appropriate application of the fundamental principles by professional accountants acting in good faith would lead to professional accountants to “doing the right thing” in virtually all cases. Furthermore, this unjustified need to appeal to such undefined, exhortatory concepts that can never be enforced by courts of law in most jurisdictions seems to effectively issue, to authorities overseeing the profession, a “blank cheque” with which to claim non-compliance of the accountancy profession with the Code under the presumption that the profession will often not seek legal redress in the courts. We therefore strongly recommend that both of these concepts be deleted from the draft.

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We would be pleased to provide you with further information if you have any additional questions about our response, and would be pleased to be able to discuss our views with you.

Yours truly,

Melanie Sack
Executive Director

Wolfgang Böhm
Technical Director Assurance Standards,
Director, International Affairs

4941/004

Appendix: Responses to Request for Specific Comments and General Comments by Question

Request for Specific Comments

Role and Values of Professional Accountants

1. *Do you support the proposals in Section 100 that explain the role and values of professional accountants as well as the relationship between compliance with the Code and professional accountants acting in the public interest? Are there other relevant matters that should be highlighted in these paragraphs?*

We support the proposals in paragraphs 100.1 A3 and 100.2 A1 to 100.2 A3 in Section 100, but not those in paragraphs 100.1 A1 and A2 for the following reasons.

First, we are convinced that replacing the guidance “to comply not only with the letter of the Code but also its spirit” with the guidance “to uphold the ethical values upon which the Code is based” significantly detracts from the quality of the draft. The former proposed de facto requirement was quite rightly removed because requiring professional accountants to comply with the spirit of the Code will be unenforceable by courts of law in most jurisdictions. The latter newly proposed de facto requirement suffers from the same problem because no explanation is given in the Code as to what the “ethical values upon which the Code is based” are. The list in 100.1 A2 does not qualify as “ethical values” because (a) is a requirement in the Code, (c) represents the fundamental principle of competence and due care, (d) is also required by the Code, and (b) on the use of business acumen is not an ethical value.

It is unclear to us what the purpose of the noted proposed wording in paragraphs 100.1 A1 and A2 is, because the fundamental principles, if appropriately applied, are more than adequately broad and strong enough to lead professional accountants acting in good faith to “do the right thing” in virtually all circumstances that professional accountants will face. There is really no need to appeal to “the spirit of the Code” or “ethical values upon which the Code is based”: such an appeal suggests that the Code is being written under the presumption of “bad faith” on the part of professional accountants. In our view, this unjustified need to appeal to such undefined, exhortatory concepts that can never be enforced by courts of law in most jurisdictions seems

to effectively issue, to authorities overseeing the profession, a “blank cheque” with which to claim non-compliance of the accountancy profession with the Code under the presumption that the profession will often not seek legal redress in the courts.

For these reasons, we strongly recommend deleting the words in the third sentence of paragraph 100.1 A1 beginning with “and involves upholding...”. To this effect, we also suggest deleting paragraph 100.1 A2, or substantially revising it so that its contents are in line with the other concepts in the Code.

Determination to Act Appropriately

2. *Do you support the inclusion of the concept of determination to act appropriately in difficult situations and its position in Subsection 111?*

We support the inclusion of the concept of the “determination” to act appropriately in difficult situations and its position in Subsection 111. However, we recommend that the word “determination” be replaced with “fortitude”, since the word “determination” has many different meanings in the English language and is likely to be mistranslated. In addition, the use of the word “fortitude” is more precise in this context.

Professional Behavior

3. *Do you support the proposal to require a professional accountant to behave in a manner that is consistent with the profession’s responsibility to act in the public interest in paragraphs 110.1 A1 (e) and R115.1?*

We do not support the proposal to require the professional accountant to behave in a manner that is consistent with the professional’s responsibility to act in the public interest in paragraphs 110.1 A1 (e) (i) and R115.1.

First, we do not believe that a requirement as in paragraph R115.1 or a de facto requirement through the definition of professional behavior in paragraph 110.1 A1 to behave in a manner that is consistent with the professional’s responsibility to act in the public interest is enforceable in courts of law in most jurisdictions because public interest is a nebulous concept that the courts expect laws, regulations and standards to define more clearly for particular sets of circumstances. Commensurate to our response to Question 1 above, we believe it is unclear as to what the purpose of the noted proposed wording in

paragraphs 110.1 A1 (e) and R115.1 is, because the fundamental principles, if appropriately applied, are more than adequately broad and strong enough to lead professional accountants acting in good faith to “do the right thing” in virtually all circumstances that professional accountants will face. There is really no need to appeal to “behave in a manner that is consistent with the professional’s responsibility to act in the public interest”: such an appeal suggests that the Code is being written under the presumption of “bad faith” on the part of professional accountants. As noted in our response to Question 1, in our view, this unjustified need to appeal to such an undefined, exhortatory concept that can never be enforced by courts of law in most jurisdictions seems to effectively issue, to authorities overseeing the profession, a “blank cheque” with which to claim non-compliance of the accountancy profession with the Code under the presumption that the profession will often not seek legal redress in the courts.

Second, we note that this requirement and the definition are actually inconsistent with the statement made in proposed paragraph 110.2 A1, which clarifies that the Code sets out the behaviors expected of professional accountants in meeting their responsibility to act in the public interest, because the proposed requirement and the definition effectively set a test of acting in the public interest beyond the required behaviors set forth in the rest of the Code through the fundamental principles and the related requirements and guidance.

For these reasons, we strongly recommend that the proposed addition to paragraphs 110.1 A1 (e) (i) and R115.1 (a) be deleted.

Impact of Technology

4. *Notwithstanding that the IESBA has a separate Working Group that is exploring the implications of developments in technology, are there any additional matters relating to the impact of technology beyond the proposals in paragraphs 110.1 A1(b)(ii), 113.1 A2 and 120.12 A2 that you consider should be addressed specifically as part of the Role and Mindset project?*

We agree with the proposed paragraphs related to the impact of technology in relation to the Code. We do not believe that there are any additional matters in this respect that need to be addressed specifically as part of the Role and Mindset project. Rather, we believe that any further requirements and

guidance ought to be based on the outcome of the work being undertaken by the Technology Working Group.

Inquiring Mind

5. *Do you agree with the concept of an inquiring mind as set out in the proposals in Section 120?*

We largely agree with the proposals made in Section 120 on the concept of an inquiring mind. However, we have identified two issues that require further improvement.

First, we believe that in paragraph 120.5 A3 the word “critically” should not be placed to modify the word “evaluate” because an evaluation is by definition a critical activity and the matter that requires being critical is the consideration (i.e., applying one’s mind) of whether the evaluation is needed. For these reasons, we believe that (b) should be reworded to state “Critically considering whether there is a need to evaluate the information obtained”. A further improvement in meaning could be achieved by changing “critically considering” (i.e., critically applying one’s mind) to have (b) read “Critically reflecting upon whether there is a need to evaluate the information obtained”.

Second, we believe that the definition of professional judgment in paragraph 120.5 A1 and in the IESBA Glossary is incomplete and is therefore not aligned with the IAASB definition. Missing is the wording included in paragraph 120.5 A2, which clarifies that exercising professional judgment is needed in order to make informed decisions about courses of action. The wording in paragraph 120.5 A2 suffers from the fact that it limits such decisions to determining the courses of action available, rather than actually choosing among reasonable courses of action. In this respect, the IAASB definition (whether in ISA 200 or in ISAE 3000 (Revised)) is more precise in that it clarifies that exercising professional judgment is about making informed decisions about the courses of action that are appropriate in the circumstances. The IAASB definition gets to the heart of what exercising professional judgment means: choosing an appropriate course of action from among reasonable courses of action available. Other changes could be made to align the definitions more closely without disregarding the broader scope of the IESBA definition. In this context, we do not believe that the adoption by the IAESB of the IESBA definition is an argument to appropriately augment and align the definition, particularly since the IAESB is now a

defunct organization. We therefore recommend that IESBA augment the definition in the Glossary and in paragraph 120.5 A1 so that it reads as follows:

“Professional judgment involves the application of relevant training, professional knowledge, and experience within the context provided by the IESBA Code and other relevant technical and professional standards in making informed decisions about the courses of action that are appropriate in the circumstances of the particular professional activity and the interests and relationships involved.”

Bias

6. *Do you support the approach to addressing bias? If so, do you agree with the list of examples of bias set out in paragraph 120.12 A2? Should any examples be omitted or new ones added?*

We agree with the list of examples of bias set out in paragraph 120.12 A2 and do not believe that any should be omitted, and have not identified any new ones that ought to be added. However, we suggest that in the first bullet point of paragraph 120.12 A2 the word “assessed” be replaced with “considered”, since professional accountants would apply their mind to the subsequent information, and only would need to evaluate it if this consideration resulted in the view that an evaluation is needed. Furthermore, in line with the use of the word “challenge” in paragraphs 111.1 A2 second bullet and 120.16 A2 first bullet third sub-bullet, and because challenging is a severe form of questioning that is only done when appropriate, the wording in paragraph 120.12 A3 should be changed to read “... or challenge, as and when appropriate, as part of...”.

However, we have concerns with how bias is dealt with generally within the Code in relation to objectivity in paragraphs 110.1 A1 (b), R 112.1, 120.12 A1, and 120.16 A2 second bullet. In our view, both the current and proposed description of objectivity does not appropriately distinguish between bias and sources of bias. We agree that conflicts of interest, undue influence and undue reliance affect objectivity. However, we note that these affect objectivity *because* they affect or may affect the bias of the professional accountant. In particular, conflicts of interest are an issue because of the threat they pose to an unbiased consideration of matters by professional accountants towards one of the conflicting interests; undue influence biases the consideration of matters by professional accountants in the direction of the influence; and

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undue reliance biases decisions about reliance towards reliance in an inappropriate manner. Consequently, conflicts of interest, undue influence and undue reliance are *sources of bias or potential bias*, not matters to be considered separately from bias. This implies that bias represents the converse of objectivity. We therefore suggest that the treatment of bias and its sources in paragraphs 110.1 A1 (b), R112.1 and 120.16 A2 be amended accordingly.

In addition, we suggest that paragraph 120.12 A1 be augmented to clarify that the risk of bias represents a risk that the fundamental principle of objectivity is not fulfilled.

Organizational Culture

7. *Are there any other aspects about organizational culture in addition to the role of leadership that you consider should be addressed in the proposals?*

We find this question to be a “leading question” because it only asks whether there are other aspects beyond the role of leadership that we believe need to be addressed, but does not address whether we agree with the proposals in paragraphs 120.13 A1 and A2 on organizational culture. Both paragraphs appear to assume that organizations may set “ethical values that align with the fundamental principles”. Perhaps this presumption needs to be explicit in an introductory sentence to paragraph 120.13. A1. We note that paragraph 120.13 A2 refers to the “ethical values of the organization”, which also presumes that organizations would set such values.

The introductory phrase in paragraph 120.13 A2 refers to an “ethical culture”: it is unclear what this might be. Is this a part of the organizational culture? Furthermore, that sentence uses the word “most”: this should be changed to “more”, since using superlatives in this way is not appropriate. We also gather that in (c), the organization’s ethical values are meant: this should be made explicit through the addition of the word “Organization’s” prior to “ethical”.

Request for General Comments

Small- and Medium-Sized Entities (SMEs) and Small and Medium Practices (SMPs) – The IESBA invites comments regarding any aspect of the proposals for SMEs and SMPs

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We have not identified any issues that relate to matters of concern solely to SMEs and SMPs.

Regulators and Audit Oversight – *The IESBA invites comments on the proposals from an enforcement perspective from members of the regulatory and audit oversight communities.*

As we are not from the regulatory or audit oversight communities, we do not respond to this question.

Developing Nations – *Recognizing that many developing nations have adopted or are in the process of adopting the Code, the IESBA invites respondents from these nations to comment on the proposals, and in particular on any foreseeable difficulties in applying them in their environment.*

As we are not from a developing nation, we do not respond to this question.

Translations – *Recognizing that many respondents may intend to translate the final changes for adoption in their own environments, the IESBA welcomes comment on potential translation issues respondents may note in reviewing the proposals.*

We have not identified any translation issues at this stage.