



WIRTSCHAFTSPRÜFERKAMMER

Körperschaft des
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Stellungnahme zu IFAC Code of Ethics, Code of Ethics for Professional Accountants - Exposure Draft July 2008

Die Wirtschaftsprüferkammer hat mit Schreiben vom 15. Oktober 2008 gegenüber dem International Ethics Standards Board for Accountants der IFAC zu dem Exposure Draft IFAC Code of Ethics, Code of Ethics for Professional Accountants, July 2008, wie nachfolgend wiedergegeben Stellung genommen:

Thank you very much for the opportunity to comment on the above Exposure Draft.

We will basically refrain from providing general comments regarding the Exposure Draft. Instead we will merely give our opinions on the questions posted on pages xii and xiii of the Explanatory Memorandum:

Question 1: The IESBA is of the view that identifying a requirement by the use of the word “shall” clarifies the Code and appropriately brings the language in line with that adopted by the IAASB. Do you agree? If you do not agree please provide an explanation.

We are concerned that the proposed changes from “should” to “shall” might increase the tendency of the past years for the Code to become more rules rather than principles based. We continue to support a principles-based approach, which requires a sound and reasonable professional judgement.

However, in order to support the Code in becoming more robust and to limit the opportunities for flexible interpretations by the professional accountants, we support the change from "should" to "shall" provided paragraph 100.11 will be drafted in a way which stresses the prominence to the overall principles. For details please see further comments to particular paragraphs below.

Question 2: The IESBA is of the view that separately presenting the objective to be achieved, the requirements designed to achieve that objective, and the application guidance as in the ISAs would not further improve the clarity of the Code. Do you agree? If you do not agree, please provide an explanation and an example of the separate presentation that you recommend.

Whilst the revised structure of ISAs may better suit standards that deal with procedures basically performed by professional accountants, we do not believe that such a structure would suit a principles-based Code primarily dealing with professional behaviour. We, therefore, agree that the clarity of the Code would not be improved if the IESBA were to adopt the structure used for ISAs.

Question 3: The IESBA is of the view that in exceptional and unforeseen circumstances that are outside the control of the professional accountant, the firm or employing organization, and the client, the application of a specific requirement in the Code may result in an outcome that a reasonable and informed third party would not regard as being in the interest of the users of the output of the accountant's professional services. Therefore, the Board is proposing that the Code include a provision that would permit a professional accountant, in such circumstances, to depart temporarily from that specific requirement. This would not be the same as provisions in the Code that address situations in which a professional accountant has inadvertently violated a provision of the Code. The departure would only be acceptable if all of the conditions set out in paragraph 100.11 are met.

(a) Do you agree that the Code should contain a provision that permits any exception to compliance with a requirement set out in the Code? If you do not agree, please provide an explanation.

We agree that the Code should contain a provision that permits exceptions where a variation from compliance with its detailed requirements is necessary. In a principles-based Code there may be situations, albeit rare, where compliance with a specific requirement may result in a failure to adhere to the fundamental principles. Consequently, we believe that an exception concept is needed that, with appropriate safeguards in place, would allow to override a single provision if such override would better serve the public interest.

(b) If you believe that the Code should contain a provision that permits an exception to compliance, are the conditions under which the exception would apply appropriate? Should there be additional or fewer conditions and, if so, what are they?

We agree that a provision that permits an exception to compliance is appropriate where such exception would better serve the public interest. However, as regards the detailed drafting we believe that the conditions are too stringent and too much focused on audit services.

Paragraph 100.11 limits any exceptions to those that are “exceptional and unforeseen circumstances that are outside the control of the professional accountant, firm or employing organization, and the client”. In our opinion, when circumstances are outside the control of the professional accountant, firm, employing organization or the client, it becomes irrelevant whether the circumstances were foreseen or unforeseen. We suggest deleting the reference to unforeseen circumstances. With respect to cases that are within the control of a client we refer to d) below.

Considering that this section of the Code applies to all professional activities of professional accountants, we wonder whether the requirement to discuss with those charged with governance will be applicable and appropriate in all kinds of situations that professional accountants may face. This refers for instance to situations where professional services are provided to individuals or to a component of an entity where the component is immaterial to the group accounts and the particular service is insignificant for the entity as a whole. Therefore, in our opinion, the discussion with those charged with governance should not be mandatory in all cases.

Additionally, depending on his or her position within the firm's hierarchy a professional accountant employed by the firm would generally refer the matter to the individual responsible for the service, ultimately the responsible partner, rather than directly discuss with those charged with governance. We suggest to clarify this.

We recognize that a disclosure may be appropriate in some specific cases. However, we do not believe that a mandatory disclosure of every application of the exception will be in the public interest. In our opinion there may be a risk that others outside the firm and the client may regard this disclosure as a revelation that the professional accountant did not comply with the Code, which would be misleading. We believe that the public interest is better served once the professional accountant and - in cases of assurance services - those charged with governance have considered whether the use of the exception and application of safeguards would meet the public interest.

(c) If you believe that the Code should not contain a provision that permits an exception, please explain how you would deal with the types of exceptional and unforeseen situations that may be covered by paragraph 100.11.

Not applicable.

- (d) Are there any other circumstances where you believe a departure from a requirement in the Code would be acceptable? For example, should an event that is within the control of one of the relevant parties qualify for an exception? If so, please provide an explanation and specific examples of the circumstances where you believe a departure would be acceptable.**

In our opinion, many corporate transactions, such as mergers and acquisitions, whilst certainly under the control of the client, bear the risk that applying the Code without any exception might lead to results which are not in the public interest.

Where, for example, the parent company of a large group acquires another group, the auditor of the parent has to be independent of all new subsidiaries (entities of the acquired group) as of the date of the acquisition. Consequently, if the auditor of the parent is providing non-audit services to the newly acquired entities, and if such services would be prohibited under the provisions of the Code, the auditor would have to terminate these services before the transaction date in order to be independent or otherwise resign from the audit of the group accounts. This would even be the case, when such a service is provided one day after the closing date of the transaction. In certain very large and complex merger situations such a result cannot be in the public interest. Rather it would be more appropriate to apply sufficient safeguards to mitigate these threats to independence.

Question 4: The IESBA is of the view that the proposed modification to focus the application of the conceptual framework throughout the Code, and the related documentation requirements in Sections 290 and 291, on threats that are not at an acceptable level will result in a more efficient and effective application of the framework approach. Do you agree? If you do not agree, please provide an explanation.

We agree and believe that focusing on threats that are not at an acceptable level is a significant improvement of the documentation requirements in Section 290 and 291.

Question 5: The IESBA is of the view that the selected point-in-time effective date with the proposed transitional provisions will provide the appropriate balance between firms and member bodies having sufficient time to implement the new standards and effecting change as soon as possible. Do you agree? If you do not agree, please provide an explanation of how you would revise the effective date or transitional provisions to achieve that balance.

We agree.

Comments on Other Matters Related to the Proposed Drafting Convention Changes

Special Considerations on Application in Audit of Small Entities

No comment

Developing Nations

Not applicable

Translations

No comment so far.