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- please always indicate -

Exposure Draft: *Proposed Amendments to the IAASB's International Standards - Responding to Non-Compliance with Laws and Regulations (NOCLAR)*

Dear Ladies and Gentlemen

The WPK is pleased to take this opportunity to comment on the above mentioned Exposure Draft (hereinafter referred to as "ED"). Instead of answering each question individually we would like to give an all-encompassing response.

First of all we do view very positively the further alignment of the new IESBA Code of Ethics (hereinafter referred to as the "Code") with ISA 250 and appreciate the corresponding efforts undertaken by the joint IESBA/IAASB Working Group.

In accordance with our comments to the IESBA's ED to NOCLAR we would like to express our concerns because the Code of Ethics in our view still provides a (de facto) requirement to disclose a suspected or identified NOCLAR to an appropriate authority. Such disclosure would only be precluded "if it would be contrary to law or regulation". These requirements may bring about a distinct lack of legal certainty for auditors in jurisdictions where there is no legal system that provides for a clear understanding of what needs to be reported. **We are of the opinion that the question as to when and how auditors should report suspected or identified NOCLAR to an external authority or person, respectively, should be exclusively governed by the leg-**

islator of the jurisdiction concerned, but not by IESBA or IAASB, in order to provide auditors with legal certainty. In this sense the EU legislator recently adopted a provision in Art. 7 of its Regulation (EU) No 537/2014 which stipulates a possible reporting towards an external authority and takes effect in the 31 countries of the European Economic Area.

When discussing a possible override, one should bear in mind that confidentiality is a core principle that is also in the public interest. Confidentiality enables the extensive disclosure of facts and circumstances within the relationship between the audited entity and its auditor and therefore contributes to improving the quality of the auditor's work from which the stakeholders and the public benefit. In contrast, overriding confidentiality may run the risk of creating inappropriate disincentives for the audited entity to disclose information reluctantly or less comprehensively to the auditor. In other words, the relationship of the auditor and the audited entity might be affected negatively, also against the background of the aforementioned lack of legal certainty for the auditor.

In accordance with ISA 250.28 "the auditor shall determine whether the auditor has a legal or ethical duty or right to report the identified or suspected non-compliance to parties outside the entity". We welcome that the IAASB explains in ISA 250.A19 that „the auditor may consider obtaining legal advice to determine whether the auditor has a legal or ethical duty or right to report to parties outside the entity and, when applicable, the appropriate course of action in light of such duty or right“ and provides examples of three ways how jurisdictions can be configured. In order to alert the auditors directly that the requirement in ISA 250.28 might be precluded by legal provisions in some jurisdictions, we would suggest moving the explanation in 250.A19 directly into the requirement of ISA 250.28 to give this provision more prominence.

Furthermore, in the various references to Section 225.29 of the Code (Footnotes to ISA 250.A19, ISQC 1.A56, ISA 240.A65, ISRE 2400.A92) it should be noted that the relevant applicable laws in the respective jurisdiction particularly with respect to confidentiality must be observed with priority.

As in our response to IESBA we note the existence of loopholes and the lack of guidance within the ED with respect to cross-border situations, including group audits. For example, there are situations where a component audit takes place in a jurisdiction with a strict legal duty to preserve confidentiality, like in Germany, whereas the group audit is conducted in another country where an override of confidentiality would not be in conflict with the local laws in that country. Such types of situations become even more problematic where jurisdictions are involved where the legislation has an extraterritorial outreach (e. g. the US FCPA and the UK Bribery Act).

ISA 220.A8a was supplemented that "law, regulation, or relevant ethical requirements may require the auditor to request, prior to accepting the engagement, the predecessor auditor to provide known information regarding any facts or circumstances that, in the predecessor auditor's judgment, the auditor needs to be aware of before deciding whether to accept the engagement". We would like to point out that not ethical requirements but laws could require the auditor to do so. But there are jurisdictions where this would be an override of confidentiality. Against this background we would recommend either to renounce the amendment or to substantiate the explanation (similar to ISA 250.A19).

Moreover, the precise meaning of some terms remains unclear and will depend upon the individual interpretation of the auditors concerned, examples are "legal or ethical duty or right" (ISA 250.28, ISQC 1.A56, ISRE 2400.A92) and "under relevant ethical requirements" (ISA 250.8a, A17, ISA 240.8a, .43, .A65, ISRE 2400.A92).

The supplement in ISA 250.A12a seems dispensable, as the existing ISA 250.A13 already has left open, by which audit procedures information about non-compliance with laws or regulations can be obtained. The wording in ISA 250.A12a "... other than as a result of performing the procedures in Paragraphs 12-16 ..." only raises more questions.

The supplement in ISA 240.A65 („or other identified or suspected non-compliance with laws or regulations“) is in our view not necessary because ISA 240 is about Fraud. NOCLAR itself is addressed in ISA 250.

Regarding the effective date we agree that the amendments to the IAASB's International Standards would be aligned with the effective date of the NOCLAR standards, which the IESBA will determine in due course.

We hope that our remarks will be taken into consideration in the subsequent course of the proceedings, and we would be delighted to answer any questions you may have.

Kind regards



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