



THE INSTITUTE OF CHARTERED ACCOUNTANTS (GHANA)

P. O. Box GP 4268

Accra, Ghana

Tel.: 0288700101; 0288700111;

0288700222; 0288700333; 0288700444;

0544336701; 0277801422

E-mail: info@icagh.com; icaghana@gmail.com

Website: www.icagh.com

The Technical Director
IAESB
New York

26th August, 2015

Dear Sir,

Comments on exposure draft on Responding to Non-compliance with laws and regulations (NOCLAR)

Thank you for giving us the opportunity to comment on your Exposure draft: **Responding to Non-compliance with laws and regulations**. We submit herewith our comments and proposal for your perusal.

1. Where law or regulation requires the reporting of identified or suspected NOCLAR to an appropriate authority, do respondents believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement?

Comments

We generally agree with the principles the propose changes seek to put across especially as the standard has disaggregated the responsibilities across various categories namely:

- Responsibilities of professional accountants performing audits of financial statements.
- Responsibilities of Professional Accountants in Public Practice Providing Professional Services Other Than Audits of Financial Statements.
- Responsibilities of the Employing Organization's Management and Those Charged with Governance.
- Responsibilities of Professional Accountants in Business.

Approaching the standard this way offers a good avenue to deal with the specific issues affecting each of the categories. Under the proposed changes, paragraph 225.17 states "If it is determined that non-compliance has occurred or may occur, the professional accountant shall prompt them to take appropriate and timely actions, or may disclose the matter to an appropriate authority where required by law or regulation or where necessary in the public interest". This obviously supports the legal/regulatory environment.

Address all correspondences to: The Chief Executive Officer

ICAG is a member of:



However, we think that PAs in public service (government sector) face peculiar NOCLAR, which may have political implications. We are suggesting that IESBA should define clearly the regulations and reporting structures for this group of PAs especially those in developing countries where the politicians wield much power and influence.

2. Where there is no legal or regulatory requirement to report identified or suspected NOCLAR to an appropriate authority, do respondents believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances?

Comments:

We generally answer yes to the question 2. The standard appears to discuss a thought process that the PAs will need to go through to reach a decision on the specific actions to take. The requirement to also clearly document each step of the way the discussions are held, the judgements exercised, imposes some discipline that will enhance the quality of decisions reached in the absence of a clear legal framework requiring reporting NOCLAR to an appropriate authority.

In addition, the proposals ensure that PAs do not turn a blind eye to identified or suspected NOCLAR and that they do not, through their actions or inactions, bring the profession into disrepute. The objective of the proposals is to enable PAs to comply with the fundamental principles of integrity and professional behaviour. Also, the proposal seeks to be alerting management or, where appropriate, TCWG, to seek to:

- (a) Enable them to rectify, remediate or mitigate the consequences of the NOCLAR or suspected NOCLAR;
- (b) Deter the commission of the NOCLAR where it has not yet occurred.

Again, the proposal has some guidance on factors to consider in determining what constitutes the public interest in the context of responding to identified or suspected NOCLAR. Fulfilling these objectives will enable PAs to meet their over-riding responsibility to act in the public interest.

3. The Board invites comments from preparers (including TCWG), users of financial statements (including regulators and investors) and other respondents on the practical aspects of the proposals, particularly their impact on the relationships between:

(a) Auditors and audited entities;

- From an Audit perspective, the concern is on the section that summarizes “potential for unintended consequences”. The proposal notes that mandated disclosures could adversely impact the relationship between the client and PA, with the PA becoming a quasi-investigator or prosecutor in relation to NOCLAR. A consequence could be an adverse effect on the free flow of information between the client and the PA, which could be damaging to audit quality in particular. Whereas we note this to be a potential harmful impact, we note that an audit always has the risk of the client not disclosing full information especially when it comes to financial transactions. The consequences of a NOCLAR could however be more harmful and in extreme circumstances could have dire consequences for the perpetrators of those illegal acts as the locality’s justice system will now be involved. We do not however believe this would have a widespread effect on auditor information/misinformation as we have no evidence that the

pervasiveness of illegal acts is equal to or more widespread than financial malfeasance. The only problem we see is that with this proposal, there could be a perception created that the auditor becomes a quasi-investigator and is expected to uncover all NOCLAR which is unfortunately not the case.

These provisions could have both positive and negative impact on relationships depending on the issues at stake.

- On the positive note, most clients will appreciate a NOCLAR that comes to their attention through the work of the Auditor especially in instances where these issues have not come to their attention through their own internal control and compliance mechanisms they have established.
- The reverse can also be the case when the NOCLAR is of the nature that requires the auditor to go further to have the matter reported to an appropriate authority. We see from the review of the exposure draft that the standard prescribes a methodical approach to handling this issue to attempt managing the adverse consequences on the relationship. From practice however, it might be practically impossible for the auditor to continue in such a relationship. For the NOCLAR to get to the point of it being escalated to appropriate authority could raise further issues around the integrity of management and the auditor may have to evaluate whether they really want to continue the relationship. These provisions place an onerous task on the auditor to sometimes make a choice between keeping the relationship and living the ethical values and complying with the standards.

(b) Other PAs in public practice and their clients;

We agree with the proposal in the event that PA has evidence or suspects that management was involved, this may lead to PA having confidence in management (paragraph. 225.23) and taking further action and subsequently dissociating with the client. In the event that the PA is denied access to management and TCWG (ISA 225.45) and the PA discloses suspected or actual NOCLAR to appropriate authorities may also lead to comply with requirements, the client may see this as a breach of confidentiality.

(c) PAIBs and their employing organizations;

With respect to PAIBs and their employing organizations as regards NOCLAR issues, the PAIBs should use all their best endeavours to draw management or TCWG attention to NOCLAR or suspected NOCLAR and its impact on the organization. If the PAIB is finding it difficult to resolve NOCLAR issues with management and/or TCWG, and it is impacting on his professional ethics of integrity and professional behaviour as professional accountant, he may consider terminating his employment contract.

However, since it is not easy to get another job, particularly in the developing nations, the standard should consider a clause mandating local regulators to assist members when they choose this option in terms of persuading management to enforce the applicable laws and regulations, or claiming compensations for the victims, and bringing the breach to the attention of law enforcement agencies.

4. Do respondents agree with the proposed objectives for all categories of PAs?

Yes, the proposed objectives for the various categories make sense and address the specific needs.

Phrased in terms of the fundamental principles, the Board believes the Proposal's objective should be;

i. To enable PAs to comply with the fundamental principles of *integrity* and *professional behaviour*:

- **Integrity** – to be straightforward and honest in all professional and business relationships.
- **Professional behaviour** – to comply with relevant laws and regulations and avoid any conduct that discredits the profession.

ii. Secondly, it is, by alerting management or, where appropriate, TCWG, to seek to:

(a) Enable them to rectify, remediate or mitigate the consequences of the NOCLAR or suspected NOCLAR; or

(b) Deter the commission of the NOCLAR where it has not yet occurred.

ii. And thirdly, it is for PAs to take such further action as may be needed in the public interest. In this regard, the Board has proposed some guidance on factors to consider in determining what constitutes the public interest in the context of responding to identified or suspected NOCLAR (see paragraphs 225.4 and 360.4).

In all these instances, the objectives are fine but what happens if the NOCLAR is committed by both management and TCWG. We recommend the inclusion of law enforcement agencies that must be alerted.

5. Do respondents agree with the scope of laws and regulations covered by the proposed Sections 225 and 360?

The scope as stated in paragraph 225.5 is clear and gives the sufficient guidance to PA's. Paragraph 225.5 appears to be derived from International Standard on Auditing (ISA) 250 which establishes the scope of those laws and regulations that they should consider in their audit of the financial statements, i.e.:

- (a) The provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements; and
- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, but compliance with which may be fundamental to the operating aspects of the business, to an entity's ability to continue its business, or to avoid material penalties.

The proposal indicates for all other laws and regulations, PAs are subject to the same ethical expectations as ordinary good citizens in responding to identified or suspected NOCLAR.

We agree with the scope but we think the definition could further be expanded to cover agents and assigns of the client. Again, it appears the scope of the law seems to neglect those applicable to the management of public funds (those seeking public accountability and transparency). This should be looked at and incorporated accordingly, to expand the scope of laws and regulations to cover public financial management.

Specifically, Section 225.8 states that; this section does not address:

- (a) Matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders or the wider public;
- (b) Personal misconduct unrelated to the business activities of the client; and
- (c) Non-compliance with laws and regulations committed by persons other than **the client, those charged with governance, management or employees of the client**. The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Similarly, Section 360.8 also states that this section does not address:

- (a) Matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the employing organization, its stakeholders or the wider public;
- (b) Personal misconduct unrelated to the business activities of the employing organization; and
- (c) Non-compliance with laws and regulations committed by persons other than the employing organization or those charged with governance, management or employees of the employing organization. The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

The provisions of the subsection (c) of sections 225 and 360 technically exclude agents and assigns of the client. In practice however, there are so many instances where organisations use agents and other assigns who deal with third parties and other institutions for and on behalf of the client. In some cases, the third party may not even be aware of the fact that the people they are dealing are not actual employees but agents. In the light of this we think that the definitions there should include “agents and other assigns” of the client or employing organisation just as employees.

6. Do respondents agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR?

We agree. The risk exposures, the regulatory framework affecting the work of these categories of PAs makes it reasonable for differing approach be used to enable them sufficiently address the risks of NOCLAR that may come up in their duties. The differential approach enables each PA’s in their given circumstance to determine what action to take to address suspected or actual occurrence of NOCLAR. The four different categories of PA’s have different roles to play and operate in different circumstances in the financial sector. As such, the different categories have different abilities and influences when it comes to uncovering and disclosing potential NOCLAR.

7. With respect to auditors and senior PAIBs:

- (a) Do respondents agree with the factors to consider in determining the need for, and the nature and extent of, further action, including the threshold of credible evidence of substantial harm as one of those factors?**

We agree without any exceptions. The guidance given enables the PA to know the exact action to take given the circumstance and at what point in time to take action. For both Auditors and senior PAIB’s factors to consider include;

- The local legal and regulatory framework.
- The appropriateness and timeliness of the response of management and, where applicable, TCWG.
- The urgency and pervasiveness of the matter.
- Whether there can be continued confidence in the integrity of management and, where applicable, TCWG.
- Whether the NOCLAR or suspected NOCLAR is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the wider public.

Need

Substantial harm is one that results in serious adverse consequences to the entity, investors, creditors, employees or the wider public in financial or non-financial terms (see paragraph 225.21, last bullet).

Extent

Whether disclosure to an appropriate authority would be a proper course of further action would depend in particular on the nature and extent of the actual or potential harm from the matter to the wider public, including the investing public, creditors or employees.

(b) Do respondents agree with the imposition of the third party test relative to the determination of the need for, and nature and extent of, further action?

We agree with this especially given the nature of judgement required to reach some of the conclusion, the third party test provides an additional safeguard to the PA by compelling them to really evaluate their judgments and document them in a proper manner. Under this test, auditors would be required to take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available at the time, would be likely to conclude that they have acted appropriately in the public interest. This appears to be a way of achieving an “objective” view point by taking an external view of NOCLAR and determining whether the response is appropriate in the circumstances.

(c). Do respondents agree with the examples of possible courses of further action? Are there other possible courses of further action respondents believe should be specified?

We agree without exception. The examples are exhaustive.

(d). Do respondents support the list of factors to consider in determining whether to disclose the matter to an appropriate authority?

We agree with the factors especially the one relating to the safety of the PA. However, recommend that political and security factors must also be considered so that PAs would not suffer death and political victimisation as journalists.

8. For PAs in public practice providing services other than audits, do respondents agree with the proposed level of obligation with respect to communicating the matter to a network firm where the client is also an audit client of the network firm?

We agree, however, clarity may be required around confidentiality as to whether disclosing the information acquired on one assignment to another assignment team when the assignments are unrelated. However, an audit partner is particularly well suited to take this up and delve into NOCLAR to ascertain risks and the extent of NOCLAR as the PA might not be in a position to assess this.

9. Do respondents agree with the approach to documentation with respect to the four categories of PAs?

Yes we do agree without exception. This is because the approach does not seek to conflict with or override requirements in existing standards or regulation concerning PA’s responsibility in documenting issues (ISA 250), but also considers additional matters brought to light such as;

- How management and, where applicable, TCWG have responded to the matter.
- The courses of action the auditors considered, the judgments they made and the decisions they took, having regard to the reasonable and informed third party test.

Request for General Comments

- a. ***PAIBs working in the public sector*** – Recognizing that many PAIBs work in the public sector, the Board invites respondents from this constituency to comment on the revised proposals and, in particular, on their applicability in a public sector environment

The proposal is good but does not fit well for the public sector. Public sector audit is undertaken by Auditor General who has powers to report to Parliament. In Ghana, for instance, the Public Accounts Committee of Parliament discusses the Auditor General's report in public. The constitution of Ghana has clear rules on reporting NOCLAR. A different proposal would be appropriate for the public sector taking into account oaths of secrecy that public officials are required to undertake, and other requirements.

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

Training and assuring PAs of the support of national regulator when they report NOCLAR in any litigation is key to ensure compliance. The National Regulator would need to educate the general public of the existence of such a proposal to ensure acceptance. There will be the need to include the proposal in corporate governance rules so it receives the support of the companies and TCWG.

- c. ***Translations*** – Recognising that many respondents may intend to translate the final pronouncement for adoption in their environments, the Board welcomes comment on potential translation issues respondents may note in reviewing the revised proposals.

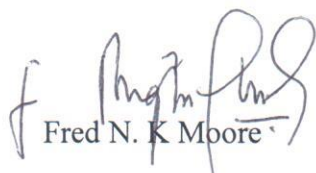
We would not have a translation issues in Ghana.

Conclusion

We hope the IESBA find this letter helpful in further developing the Exposure draft. We are committed to helping the Board in whatever way we can to build upon the results of this Exposure draft document. Please do not hesitate to contact us should you wish to discuss any matters raised in this submission.

Thank you.

Yours faithfully,



Fred N. K. Moore

Chief Executive Officer