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Submitted electronically to [kathleenhealy@iaasb.org](mailto:kathleenhealy@iaasb.org)

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Dear Kathleen

***Comments on Proposed Amendments to the IAASB's International Standards:  
Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations***

The Independent Regulatory Board for Auditors (IRBA) is both the audit regulator and national auditing standard-setter in South Africa. Its statutory objectives are to protect the public by regulating audits performed by Registered Auditors and promote investment and employment in South Africa. The IRBA's statutory Committee for Auditing Standards (the CFAS) is responsible for assisting it to adopt, develop, maintain, issue and prescribe auditing pronouncements.

We appreciate this opportunity to comment on the proposed amendments to the International Standards – *Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations (NoCLAR)* developed by the International Auditing and Assurance Standards Board (IAASB).

Our comments, which have been prepared by a task group of the CFAS that comprises representatives from large firms and the South African Institute of Chartered Accountants, are presented under the following sections:

1. General comments;
2. Request for specific comments and responses;
3. Request for comments on general matters; and
4. Invitation for additional input.

In our comments, when commenting on the wording of specific paragraphs in the proposed changes to the ISAs, words that have been ~~struck-through~~ indicate a suggestion to delete and those that have been underlined are suggested additions to the text of the proposed changes to the ISAs.

Kindly e-mail us at [ivanker@irba.co.za](mailto:ivanker@irba.co.za) or [ychoonara@irba.co.za](mailto:ychoonara@irba.co.za) or phone directly on +27 87 940 8838 / +27 87 940 8867, if further clarity is required on any of our comments.

Yours faithfully

*Signed electronically*

**Imran Vanker**  
**Director: Standards**

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## 1. GENERAL COMMENTS

- a. We are generally supportive of the IAASB's view that amendments to the International Standards are warranted to address actual or perceived inconsistencies in the approach applied by auditors in identifying and dealing with instances of NoCLAR or suspected NoCLAR.
- b. The International Ethics Standards Board for Accountants (IESBA) Code of Ethics (the Code) is not applied by all jurisdictions, including those that have adopted the International Standards on Auditing (ISAs). Accordingly, these amendments will be beneficial for those jurisdictions that do not apply the Code.
- c. Furthermore, we are also of the view that the proposed amendments to the ISAs may not sufficiently reflect the level of work effort that is expected under the proposed revised Code. Requiring auditors to separately consult the Code in addition to the ISA requirements could create a risk that insufficient procedures will be performed in complying with the Code. Could a greater level of detail in work effort requirements be provided in the ISAs?
- d. Lastly, we noted that at times certain of the proposed ISAs used the phrase "legal or ethical duty or right" and at other times the phrase "legal or ethical right" is employed. We recommend that "legal or ethical duty or right" should be used consistently throughout the ISAs.

## 2. REQUEST FOR SPECIFIC COMMENTS AND RESPONSES

*The IAASB is seeking comments on the following specific matters:*

- I. Whether respondents believe the proposed limited amendments are sufficient to resolve actual or perceived inconsistencies of approach or to clarify and emphasize key aspects of the NOCLAR proposals in the IAASB's International Standards?*

### **Response:**

1. We are of the view that the proposed amendments are appropriate.

However, we have the following comments that we believe may further contribute to resolving actual or perceived inconsistencies of approach or to clarify and emphasize key aspects of the NoCLAR proposals:

### **Proposed ISA 250<sup>1</sup>**

#### **Paragraph 8a - Responsibility of the Auditor**

2. The paragraph highlights the fact that the auditor may have additional obligations under

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<sup>1</sup> ISA 250, Consideration of Laws and Regulations in an Audit of Financial Statements.

relevant ethical requirements regarding NoCLAR. It links the auditor's additional responsibilities under relevant ethical requirements to the possibility of obtaining further information that may be relevant to his/her work. We believe that this paragraph should be split and further enhanced to emphasize the fact that the auditor simultaneously has to comply with relevant ethical requirements and the auditing standards. We recommend that this paragraph be amended as follows:

- 8a. "The auditor may have additional responsibilities under relevant ethical requirements regarding an entity's non-compliance with laws and regulations. The auditor ensures compliance with relevant ethical requirements at the engagement level; including the engagement partner remaining alert for evidence of non-compliance with relevant ethical requirements by members of the engagement team as required by ISA 220<sup>2</sup>". [Include footnote that refers to ISA 220, par. 9-10]
- 8b. "Complying with any additional responsibilities under relevant ethical requirements regarding an entity's non-compliance with laws and regulations may provide further information that is relevant to the auditor's work in accordance with this and other ISAs (for example, regarding the integrity of management or, where appropriate, those charged with governance)".

#### **Paragraph 18 - Audit Procedures When Non-Compliance Is Identified or Suspected**

3. We recommend that the reference to the application guidance should include paragraph A13 and paragraph A12a.

#### **Paragraph 29 - Documentation**

4. We believe that the documentation requirements in ISA 250 do not sufficiently reflect the auditor's work effort as envisaged in the proposed amendments to the Code, when forming a conclusion as to whether there is a non-compliance or not. For example, in terms of Section 225.32 of the proposed NoCLAR amendments pertaining to significant matters, the auditor is required to document how management and, where applicable, those charged with governance have responded to the matter and the courses of action the auditor considered, the judgements made and the decisions that were taken, having regard of the reasonable and informed third-party perspective. There is no similar requirement in ISA 250.

#### **Paragraph A5a - Categories of Laws and Regulations**

5. The first sentence in paragraph A5a indicates that the bullets form part of a category but then doesn't go on to reference to which category they relate. We recommend that this paragraph be amended as follows:

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<sup>2</sup> ISA 220, Quality Control for an Audit of Financial Statements

- Split the examples, include a list of typical examples for category (a) legislation (those that have a direct effect), and category (b) legislation (those that have an indirect effect).
- Include the following additional examples in the list of laws and regulations that may often be relevant to the audit:
  - Breach of fiduciary duty;
  - Data protection;
  - Labour laws;
  - Tender process legislation; and
  - Protection of personal information.
- Include a disclaimer after the bullet points to clarify that this is not an exhaustive list and that the auditor will have to consider what represents relevant laws and regulations in the context of the particular engagement, the entity's industry, regulatory framework, and so on.

#### **Paragraph A18 - Evaluating the Implications of Non-Compliance**

6. Footnote 15 – update reference to the appropriate paragraph in ISA 706 (Revised)<sup>3</sup>.

#### **Paragraph A19 - Reporting Non-Compliance to Regulatory and Enforcement Authorities**

7. Currently the emphasis is that the auditor could consider obtaining legal advice. However, the focus must rather be on determining the nature and scope of the auditor's legal or ethical duty or right and the appropriate course of action in light of such duty or right; and then indicate that the auditor may consider obtaining legal advice in this regard. We recommend that this paragraph be amended as follows:
  - "If the auditor has identified or suspects non-compliance with laws or regulations, the auditor ~~may consider obtaining legal advice to~~ should determine the nature and scope, if any, of whether the auditor's ~~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. For example ..."
  - The second and third bullet points should be combined and reworded in the same manner as proposed in paragraph A92 of ISRE 2400<sup>4</sup>.

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<sup>3</sup> ISA 706 (Revised), Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report

<sup>4</sup> ISRE 2400 (Revised), Engagements to Review Historical Financial Statements

- Add the following sentence after the bullet points: “When making this determination, the auditor may consult on a confidential basis with others within the firm, a network firm, a relevant professional body, or may consider obtaining legal advice.”

### **Inconsequential Matters**

8. We believe that there are inconsistencies in the auditor’s response to the non-compliance between ISA 250 and the proposed IESBA NoCLAR amendments. In terms of the proposed NoCLAR amendments there is a level of severity that exists between matters that are not clearly inconsequential and significant matters. Although paragraph 22 includes reference to “other than when the matters are clearly inconsequential”, we recommend that the IAASB describes this as detailed in Section 225.8(a) of the proposed NoCLAR amendments. The auditor would also have to consider whether a matter is inconsequential much earlier in the audit process than what is currently inferred.

### **Conforming amendments to other ISAs, International Standards on Quality Control (ISQC 1), International Standards on Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs)**

We agree with the conforming amendments made, however, we have the following comments:

#### **ISQC 1<sup>5</sup>**

9. We recommend that the second sentence of paragraph A56 be amended to ensure consistency with the change made in the proposed ISA 250:
  - “In certain circumstances, the firm’s personnel may have the legal or ethical duty or right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality”.

#### **ISA 210<sup>6</sup>**

10. To ensure that the client understands the auditor’s responsibilities relating to an entity’s non-compliance with laws and regulations, the auditor should consider including suitable wording in this regard in his/her engagement letter with the client. We recommend that the following bullet point be included in ISA 210 paragraph A24:
  - “A reference to, and description of, the auditor’s legal or ethical duty or right to report identified or suspected non-compliance with laws and regulations to parties

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<sup>5</sup> ISQC1, Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements Requirements

<sup>6</sup> ISA 210, Agreeing the Terms of Audit Engagements

outside the entity”.

#### **ISA 240<sup>7</sup>**

11. Paragraph 8a

Please refer to comment under paragraph 2 dealing with ISA 250 paragraph 8a of this comment letter.

12. Paragraph A65 (third sentence)

We recommend that “financial institution” be changed to “entity”. A similar change should also be made to the first bullet point of paragraph A19 in proposed ISA 250.

#### **ISA 500<sup>8</sup> & ISA 580<sup>9</sup>**

13. The Code raises several questions regarding documentation on how auditors have executed their duties under the Code as well as how management has responded to actual or suspected non-compliance. We therefore suggest that it would be appropriate to consider amendments to ISA 500 and ISA 580. We recommend the following:

#### **ISA 500**

- Paragraph A26 be amended as follows-

“As noted in paragraph A1, while audit evidence is primarily obtained from audit procedures performed during the course of the audit, it may also include information obtained from other sources such as, for example, previous audits (in certain circumstances), ~~and~~—a firm’s quality control procedures for client acceptance and continuance and complying with certain additional responsibilities under relevant ethical requirements (e.g. regarding an entity’s non-compliance with laws and regulations). The quality of all audit evidence is affected by the relevance and reliability of the information upon which it is based.”

- Include a new paragraph A33a as follows:

“ISA 250 provides further guidance with respect to the auditor complying with any additional responsibilities under relevant ethical requirements regarding an entity’s non-compliance with laws and regulations that may provide further information that is relevant to the auditor’s work in accordance with ISAs, including the consideration of the reliability of information to be used as audit evidence.” [Include a footnote that refers to 250. 8a]

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<sup>7</sup> ISA 240, The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements

<sup>8</sup> ISA 500, Audit Evidence

<sup>9</sup> ISA 580, Written Representations

## ISA 580

- Include a new paragraph A24a as follows:

“The auditor may have additional responsibilities under relevant ethical requirements regarding an entity’s non-compliance with laws and regulations. Complying with those additional responsibilities may provide further information that is relevant to the auditor’s work and considerations under the ISAs, including possible concerns relating to the competence, integrity, ethical values or diligence of management, or about its commitment to or enforcement of these.”

## ISA 600<sup>10</sup>

14. We believe that the amendment proposed in ISA 220 should also be included in ISA 600 in order to ensure that the standard is aligned with the Code.

## ISRE 2400

15. Please refer to comment under paragraph 8 dealing with inconsequential matters.
16. Furthermore, we recommend that the second sentence of paragraph A92 be amended to ensure consistency with the changes made in proposed ISA 250:
  - “The practitioner’s ethical, legal, and regulatory responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may not apply, be overridden by laws or regulations, ~~or law, regulation, or R~~ relevant ethical requirements may include a duty or right to report to an appropriate authority. In certain circumstances, the practitioner may have the legal or ethical duty or right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality.”

## ISAE 3000 (Revised)<sup>11</sup>

17. Currently, ISAE 3000 (Revised) includes only one reference to identified or suspected NoCLAR (in paragraph 45(a)). We believe that in order to align the standard with the Code, additional requirements and application and other explanatory material should be considered to further contextualise the consideration of non-compliance with laws and regulations and also to ensure consistency in the work effort among practitioners, including those who are not bound by the IESBA Code.

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<sup>10</sup> ISA 600, Special Considerations-Audits of Group Financial Statements (Including the Work of Component Auditors)

<sup>11</sup> ISAE 3000 (Revised), Assurance Engagements other than Audits or Reviews of Historical Financial Information



- II. *The impact, if any, of the proposed limited amendments in jurisdictions that have not adopted, or do not plan to adopt, the IESBA Code. For example, would any of the changes to the IAASB's International Standards be deemed incompatible with the relevant ethical requirements that would apply in those jurisdictions?*

**Response:**

In South Africa we don't foresee any significant impact, since the IRBA has adopted the IESBA Code with some jurisdictional adaptations.

**3. REQUEST FOR COMMENTS ON GENERAL MATTERS**

- (a) *Preparers (including Small- and Medium-Sized Entities (SMEs)) and Users (including Regulators) — The IAASB invites comments on the proposed amendments to its International Standards from preparers and users.*

**Response:**

These comments do not include comments from preparers or users.

- (b) *Developing Nations — Recognizing that many developing nations have adopted or are in the process of adopting its International Standards, the IAASB invites respondents from these nations to comment on the proposed amendments to its International Standards, in particular, on any foreseeable difficulties in applying it in a developing nation environment.*

**Response:**

No comment.

- (c) *Translations — Recognizing that many respondents may intend to translate the final amendments to its International Standards for adoption in their own environments, the IAASB welcomes comment on potential translation issues respondents may note in reviewing the proposed amendments to its International Standards.*

**Response:**

No comment.

- (d) *Effective Date — It is anticipated that the effective date of 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.*

**Response:**

We agree with the effective date as suggested. However, we propose that the IAASB rather wait for the IESBA project to be finalised and then continue working on amending the ISAs.

#### 4. INVITATION FOR ADDITIONAL INPUT

- III. Should respondents be of the view that a more fulsome review of ISA 250 would nevertheless be beneficial in due course, the IAASB would need to consider the possibility of doing so in consulting on future Work Plans. Respondents are therefore asked for their comments, if any, on what further changes may be required to ISA 250 and why.*

##### **General**

1. The matters as already highlighted in paragraph 16 of the explanatory memorandum are worth exploring further.

##### **Paragraphs 12 – 17 - The Auditor's Consideration of Compliance with Laws and Regulations**

2. We believe that paragraphs 12 to 17 currently reflect the minimum work effort that the auditor would perform and do not necessarily encourage the auditor to perform further audit work in instances where there are heightened risks of non-compliance. Consideration should be given to expanding these paragraphs to sufficiently emphasise that auditors follow a risk-based approach when considering compliance with laws and regulations.
3. Considerations that are specific to Small and Medium-Sized Entities should be included, since the risk of non-compliance in such entities may be greater, owing to lack of understanding about and awareness of the relevant laws and regulations among management and those charged with governance.
4. As part of the audit procedures that the auditor will perform to help identify instances of non-compliance with laws and regulations, we recommend that paragraph 14(a) should include reference to inquiries of internal auditors as well as the entity's compliance officer, if applicable. Furthermore, paragraph 14(b) should include specific reference to both external communications with regulators as well as internal correspondence within the entity. Often auditors tend to neglect the internal correspondence aspects.

##### **Assertions**

5. Consideration should be given to more clearly contextualise the link between NoCLAR and the auditor's use of assertions in considering the different types of misstatements that may occur throughout the audit process. This includes, for example, which assertions could be affected by NoCLAR that have a direct effect on the determination of material amounts and disclosures in the financial statements. "Compliance" is not an additional assertion; rather the risk of material misstatement related to NoCLAR in relation to both categories of laws and regulation (as described in paragraph 6 of the standard) is an integral part of risk assessment and risk response throughout the audit.

6. Furthermore, the standard should clarify or further enhance the fact that when evaluating the possible effect of NoCLAR on the financial statements, the auditor would consider both the qualitative and quantitative effects of the non-compliance. However, the focus should be more on the qualitative considerations than the quantitative ones.

#### **Close calls**

7. ISA 570 (Revised) introduced auditor responsibilities around so-called “close-calls” in relation to going concern and for auditors to challenge the adequacy of disclosures for “close calls” in view of the applicable financial reporting framework. Consideration should be given as to whether NoCLAR in terms of ISA 250 warrants something similar. For example, depending on the facts and circumstances, the auditor may determine that additional disclosures about instances of NoCLAR are necessary to achieve fair presentation, even if no disclosures are explicitly required by the applicable financial reporting framework.

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