

Consideration of laws & regulations (ISA 250 Revised) and Responding to Non-compliance with laws & Regulations (NOCLAR)



Back Ground

Responding to NOCLAR



- **Code of Ethics for Professional Accountants-** Professional accountant's responsibility in relation to NOCLAR-
- **Effective on July 15, 2017**
- **ISA 250 (Revised)**-Limited amendments in response to revised COE
 - Financial Period beginning on or after **December 15, 2017**; similar date for standards for other services



Back Ground



Code of Ethics for Professional Accountants

Introduction of specific provision

- Section 225- Responding to NOCLAR (Part B)
- Section 360- Responding to NOCLAR (Part C)



Amendments to existing standards

- Section 100-Introduction and fundamental principles
- Section 140- Confidentiality
- Section 150- Profession behaviour
- Section 210- ProfAZessional appointment
- Section 270- Custody of client assets



RESPONDING TO NON-COMPLIANCE



(a) Section 225- Responding to NOCLAR (Part B)

Applicable to PA in public practices

Purpose

- Responsibility when faced NOCLAR or suspected-Guided by **integrity** and **professional behaviour**
- **Definition**-Acts of omission or commission, intentional or unintentional committed by a client

Scope

Direct impact- May have **material impact** on **amounts** and **disclosures**

Indirect impact –Non-compliance may have an impact on the **operating aspects** of the business

Non-compliance **Costs**



RESPONDING TO NON-COMPLIANCE



(a)Section 225- Responding to NOCLAR (Part B) (continued)

Examples of laws and regulations

- The Anti-Corruption and Economic Crimes Act
- The Ethics and Anti-Corruption Commission Act
- The Bribery Act, 2016
- Securities, markets and trading
- Money Laundering
- Public Health and Safety/ NEMA
- Tax and pension liabilities
- Banking, Sacco and Insurance



RESPONDING TO NON-COMPLIANCE



(a)Section 225- Responding to NOCLAR (Part B) (continued)

Anti Money Laundering

Reporting institution- Financial institutions and designated non-financial business and professions

Designated non-financial business and profession-Legal and accountants

Section 42-Obligation to monitor and report

- Report within 7 days to centre from the date of transactions



Bribery Act 2016-13th January 2017

Reporting Acts of Bribery- obligation to report any knowledge or suspicion of instances of bribery within a period of **Twenty four (24) hour**. A person holding a position of authority in a private entity



RESPONDING TO NON-COMPLIANCE



(a)Section 225- Responding to NOCLAR (Part B) (continued)

Responsibility clients management and TCWG

Primary Responsibility-Lies with management, with the oversight of TCWG to ensure that the entity's operations are compliance with the provisions of laws and regulations

Examples of policies and procedures

- Operation procedures tailored to meet legal and regulations
- Developing code of conduct
- Training
- Internal audit/Compliance
- Audit Committee



RESPONDING TO NON-COMPLIANCE



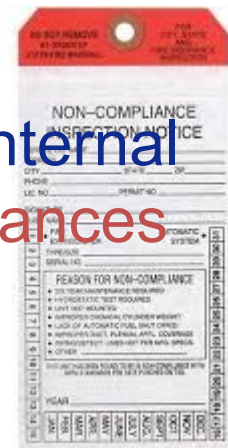
(a)Section 225- Responding to NOCLAR (Part B) (continued)

Responsibility of the Auditor

Required to comply with the following steps on a timely basis

i. Obtain an understanding of the matter

- Nature and circumstance
- Professional judgement and expertise to extent level of assignment- May consult on confidential basis
- Discuss with senior level management/TCWG/Internal audit/Group- Obtain clarity of facts and circumstances and to prompt any investigation



RESPONDING TO NON-COMPLIANCE



(a)Section 225- Responding to NOCLAR (Part B) (continued)

ii. Addressing the Matter

- Obtain clarity of facts and circumstances- Advice on timely appropriate and timely action including disclosing matter to appropriate authority if required by law.
- Consider legal and regulatory responsibility of TCWG- Where not clear recommend legal advice
- Professional accountant shall comply with applicable
 - ☐Laws and regulations
 - ☐Auditing standards
 - Identify and respond to non-compliance including fraud
 - Communication with TCWG
 - Implication on NOCLAR on the audit report



"We like to greet our Regulatory Compliance hires with one word."



RESPONDING TO NON-COMPLIANCE

(a)Section 225- Responding to NOCLAR (Part B) (continued)

iii. Determining whether to action with respect to Groups

- Report to group audit unless prohibited by Law
- Group engagement may consider other component standards

iv. Determining whether further action needed

- Assess appropriateness of TCWG/Management
- Consider if further action is required in the interest of the Public depending on legal frame work, urgency, how pervasive, likely hood of recurrence, actual or potential harm
- Exercise professional judgement take into account a reasonable and informed 3rd Party to consider potential harm to the public



"We only have a few rules around here, but we really enforce them."



RESPONDING TO NON-COMPLIANCE



(a)Section 225- Responding to NOCLAR (Part B) (continued)

v. Determining whether to disclose the matter to an appropriate authority

- Nature and extent of NONCLAR to stake holders, regulators and the public at large
- External factors such:-
 - Existence of adequate **protection** from civil, criminal or professional liability
 - **Physical safety**
 - **Structures** and ability of **authority**
- If disclosure deemed appropriate
 - Exempted from duty of **confidentiality** under Section 140



RESPONDING TO NON-COMPLIANCE



a)Section 225- Responding to NOCLAR (Part B) (continued)

Documentation

In addition to complying with relevant audit standards, PA should document

- How management/TCWG have responded
- How the course of action considered including judgements and decisions taken having regarded reasonable and informed 3rd Party
- How determination for further action was arrived taking into consideration the response by Management/TCWG



RESPONDING TO NON-COMPLIANCE



b)Section 360- Responding to NOCLAR (Part c)

Applicable to PA in business

c)Section 100-Introduction and Fundamental Principles

- Brings clarity taking into consideration introduction of Section 225 and 360
- Ethical Conflict- Clarifies that on exhaustion of all relevant possibilities a PA can **disengage** unless prohibited by law (**previously where possible**)



RESPONDING TO NON-COMPLIANCE



e) Section 140- Confidentiality

- Clarifies as fundamental principle of confidentiality
- Introduces a exception to disclose by virtue of professional and ethical standards

f) Section 210-Professional Appointment

Obliges a predecessor accountant where

- Clients obliges- to disclose honestly and unambiguously
- If client refuses- predecessor too disclose this fact to the proposed successor

f) Section 270-Custody of clients asset

Clarifies if involved in services of holding assets and becomes aware of a case of NOCLAR, the PA shall comply with Section 225. Previously advice to seek legal advice.



RESPONDING TO NON-COMPLIANCE



ACCOUNTANTS ACT

Professional misconduct

Disclosure of information not allowed without the consent of the client, or otherwise than required **by law** or in fulfilment of the requirements of a **quality assurance**.



ISA 250 (REVISED) CONSIDERATION OF LAWS AND REGULATIONS IN THE AUDIT OF FINANCIAL STATEMENTS



Scope

- Responsibility of auditor's to **consider** laws and regulations in audit of financial statements.
- Impact may have a **direct** or **indirect impact** on the FS.
- Highlights Responsibility of both **management/TCWG** and **auditor**.



Auditors Responsibility

Objective

- Obtain sufficient and appropriate evidence to those that have a direct effect on the FS
- Perform **specified audit procedures** to identify instances of **non-compliance** with **other** laws and regulations that **may have** material effect on FS
 - Inquiry with management
 - Inspecting correspondences
- Respond appropriately to identified ~~non-compliance~~ / suspected non compliance



ISA 250 (REVISED) CONSIDERATION OF LAWS AND REGULATIONS IN THE AUDIT OF FINANCIAL STATEMENTS

Requirements



Shall obtain a **general understanding** of:

- a) The **legal and regulatory framework**
- b) How the entity is complying with that framework.
 - **Remain alert**
 - Obtain **written presentation** from the management and TCWG that instances of non compliance (suspected) have been disclosed



ISA 250 (REVISED) CONSIDERATION OF LAWS AND REGULATIONS IN THE AUDIT OF FINANCIAL STATEMENTS



Audit Procedures When Non-Compliance Is Identified or Suspected

if becomes **aware**-the auditor shall obtain:

- nature of the **act** and the **circumstances**
- evaluate the **possible effect** on the financial statements

If the auditors **suspects**-

- **discuss** with management and TCWG and where relevant consider the need for legal advice.
- If **cannot** obtain sufficient appropriate evidence consider effect on opinion.

Impact on **risk assessment** and the **reliability of written representations**.



ISA 250 (REVISED) CONSIDERATION OF LAWS AND REGULATIONS IN THE AUDIT OF FINANCIAL STATEMENTS



Communicating and Reporting identified or suspected non-compliance

- Communicate to TCWG, **unless** they themselves are **involved**.
- If management and TCWGG are involved consider reporting to **next level of authority** like audit committee.
- Where no higher authority exists-Should consider the need to obtain **legal advice**
- If Non-compliance has **a material** effect and **has not been** adequately reflected in the financial statements, the auditor shall, express a **qualified opinion or an adverse opinion**.



ISA 250 (REVISED) CONSIDERATION OF LAWS AND REGULATIONS IN THE AUDIT OF FINANCIAL STATEMENTS



Reporting identified or Suspected Non- Compliance to an appropriate authority outside the entity

If the auditor has identified or suspect NOCLAR, the auditor shall determine:-

- Whether to report an appropriate authority outside the entity
- Circumstance under which to report

Documentation

- Audit procedures performed, significant judgements made and conclusion
- Discussions of significant matters related to non-compliance and TCWG and where applicable their responses e.g. minutes



RESPONDING TO NON-COMPLIANCE

DISCUSSION -1



Juma Anderson is audit manager at a local CPA Firm and has gone for a clearance meeting with FM of Shibe K Ltd, a multinational.

As he is sitting on the FC desks an innocent Junior clerk reveals some evidence that the company is maintaining two books of set.

He storms into the MD is office who brushes him aside saying that he should concentrate on the company he is auditing. Furthermore he admits to paying KRA officers so I should not worry. He also says that the Group MD who is located in UK is also aware as the funds raised from the other set of books are channelled back to the group. He also say some of the funds are used motivate staff.

1. What do you think are the key audit risks/Laws broken?
2. What should Juma Anderson do?



RESPONDING TO NON-COMPLIANCE



DISCUSSION-2

Kali Kenya Ltd sells goods to its Kali Nigeria Limited at 50% of the normal price. The same are reflected in the books properly and all export documents are available. The sales are material to the group. Management claims that they are helping promote their products in Nigeria entity

1. What is the audit risk?
2. What is the consideration for Non-Compliance with laws and regulation



RESPONDING TO NON-COMPLIANCE

DISCUSSION-3



Environ Limited deals with processing hides and skin which requires the use of chemicals which are deemed toxic. It is located up a hill near a residential area. Juma Anderson, who has just been promoted to a director has gone for a clearance meeting. As he is shown around he notices that the company is disposing of its residues to the nearby stream. As he was passing the residential area, he notices that the stream passes through the residential area and recalls seeing children playing in the stream. He confronts the MD who assure him that the necessary regulators have been taken care of. The MD says he needs the accounts urgently.

1. What do you think are the key risk facing this company?
2. What should the Partner do and the?



Thank you

