

NOCLAR

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Meaning and background



- NOCLAR is a short form for Non Compliance with Laws And Regulations
- It was issued by the International Ethics Standards Board (IESBA) in July 2016
- The pronouncement became effective from July 2017
- The new standard added sections 225 and 360 to the IESBA Code of Ethics

Key aim of section 225 and 360



A professional accountant in public practice may encounter or be made aware of non compliance or suspected non compliance with laws and regulations in the course of providing a professional service to a client. The purpose of this section is to set out the professional accountants responsibilities when encountering such non compliance or suspected non compliance and guide the professional accountant in assessing the implication of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the client including whether or not it's a public interest entity.

Why NOCLAR?



- Hiding behind 'client confidentiality'
- Easy way out
- Guidance lacking
- Responding vs reporting
- Professional accountants vs auditors
- Started with fraud, now NOCLAR



Key questions



- When should a professional accountant override duty of confidentiality and disclose NOCLAR to an appropriate authority
- How do you balance between acting in public interest and the principle of confidentiality
- What is reasonable for a public accountant to report within their role in the public interest

So then what's NOCLAR?



NOCLAR comprises:

- acts of omission or commission
- intentional or unintentional

Committed by

- a client
- TCWG
- management
- individuals working for or under the direction of a client

Contrary to the laws and regulations

Examples of such laws



- Fraud, corruption and bribery
- Money laundering, terrorism financing and proceeds from crime
- Securities market and trading
- Banking and other financial products and services
- Data protection
- Tax and pension liabilities and payments
- Environmental protection
- Public health and safety

Some jurisdictions have laws that govern how professional accountants should address NOCLAR. The laws may be more expansive than what is contained in the Code of Ethics. A PA has responsibility to obtain understanding of these laws and apply them in the course of his work.

Effects of non compliance



Non compliance can result

1. Material misstatement of financial statements resulting from
 - fines and penalties
 - litigation
2. Wider public interest implications in causing substantial harm (financial or non financial) to:
 - investors
 - creditors
 - employees
 - general public

Examples:

- fraud leading to financial loss
- Environmental law breached leading to health hazards etc

Exemptions



- Inconsequential matters in nature and impact, financial or otherwise need not be reported
- Personal conduct unrelated to business activities of the client
- Non compliance other than by
 - a client
 - TCWG
 - management
 - individuals working for or under the direction of a client

Responsibilities of a professional accountant



When a professional accountant comes across a matter, he has to;

- Obtain an understanding of the matter including the nature of the act, and the circumstances in which it has occurred
- Apply knowledge, professional judgement and expertise (You need not have a level of knowledge and judgement that exceeds that which is necessary to carry out the assignment in the normal cause work)
- Consult where a matter is not easily determinable

Responsibilities of a professional accountant



When a professional accountant suspects a non compliance to have occurred:

- Discuss the matter with the appropriate level of management
- Discuss the matter with TCWG

In deciding the appropriate level of management, consider;

- nature of the matter
- individuals actually of potentially involved
- the likelihood of the collusion
- potential consequences of the matter
- whether the level of management is able to investigate the matter and take appropriate action

The management level should be at least higher than the level at which the non compliance happened

Addressing the matter



Advise management or TCWG to take appropriate action timely to;

- Rectify, remediate or mitigate the consequences of the non compliance
- Deter the commission of the non compliance where it has not yet occurred
- Where required by law, disclose to an appropriate authority or where considered necessary in the public interest

Addressing the matter (cont'd)



- Consider whether clients management or TCWG understand their legal responsibilities (if any) in as far as NOCLAR is concerned. If they don't, advise on where to get material to read
- In addressing the matter, the professional accountant is required to comply with applicable
 - a. Laws and regulations
 - b. Requirements under auditing standards

Communication with respect to groups



- Where you are doing a group audit, over and above normal reporting requested by the group auditor, report to the group engagement partner of any incidences of NOCLAR unless a law prohibits
- The group engagement partner shall follow the provisions of this section in addressing the issue

Determining whether further action is needed



- Assess the appropriateness of the response from management or TCWG
- Consider the following
 - a) Is the response timely
 - b) Has the non compliance or the suspected non compliance been adequately investigated
 - c) Has action been taken or is action being taken to rectify, remediate or mitigate the consequences of any non compliance
 - d) Has action been taken or is action being taken to deter the commission where the non compliance has not already occurred
 - e) Has steps been taken to stop reoccurrence e.g training
 - f) Has the non compliance been reported to appropriate authorities

Determining whether further action is needed



Consider the following

- a) The legal and regulatory framework
- b) Urgency of the matter
- c) The pervasiveness of the matter throughout the client
- d) Whether you can continue to rely on the integrity of management or TCW after finding out the NOCLAR
- e) Possibility of recurrence of the non compliance

Further action



- Consult and where necessary obtain legal advice to weigh your options
- Report the matter to the authorities even when there is no legal or regulatory framework to do so
- Withdraw from the engagement where permitted by law
- Where you withdraw, provide information to the incoming auditor/accountant

Determining whether or not to disclose to the authorities



- don't disclose to the authorities if a law or regulation prohibits
- disclosure to an authority may be appropriate if
 - a) the entity is engaged in bribery (to secure large contracts)
 - b) regulated entity and the matter can cause a license to be withdrawn
 - c) entity is listed on the securities and the matter can disrupt the market
 - d) the entities products are harmful to the public
 - e) the entity is providing a scheme to help evasion of tax

Determining whether or not to disclose to the authorities



- Other important factors to consider before disclosing to the authorities
 - a) Is there an appropriate authority to receive the information and cause the matter to be investigated and action to be taken
 - b) Is there a robust and credible protection from civil, criminal or professional liability or retaliation eg witness protection laws, whistle blower protection laws etc,
 - c) Is there actual or potential threat to the physical safety of the professional accountant/auditor