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# **Non-Compliance with Laws and Regulations (NOCLAR)**

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## **NOCLAR Introduction**

## **ICAP Code of Ethics**

## **NOCLAR Scope and Framework**

## **NOCLAR and Professional Accountants**

- Professional accountants engaged in audit**
- Professional service providers other than audit**
- Senior professional accountants in business**
- Other than senior professional accountants in business**

## **NOCLAR Implementation Challenges**

## **Question and Answers**

# NOCLAR Introduction

# Development of NOCLAR

## Consideration

- Regulatory and enforcement authorities concerns
- A lack of guidance in the Code about the thought process and relevant factors to consider

## Development

To create framework to guide Professional Accountants (PAs) in deciding how best to act in the public interest when they become aware of NOCLAR or suspected NOCLAR

## Issuance

- Issued in 2016
- Effective July 2017
- Contains two sections
  - 225 - Professional accountants in practice
  - 360 - Professional accountants in business

# Definition of NOCLAR

**Any act of omission or commission, intentional or unintentional, which is contrary to the prevailing laws or regulations, committed by Client, Employer, Those charged with governance (TCWG), Management, Individuals working for or under direction of a client or employer**

# Key intended outcomes of NOCLAR

- Comply with fundamental principles of integrity and professional behaviour
- Through altering management/ TCWG seek to:
  - Enable them to rectify, remediate or mitigate consequences of NOCLAR
  - Deter commission of NOCLAR
- Take such further action as may be appropriate in public interest



## 2. ICAP Code of Ethics

# ICAP Code of Ethics

- **ICAP member of IFAC**
- **IESBA an independent board of IFAC**
- **IESBA issues international code of ethics**
- **ICAP's code of ethics to be aligned to the international Code of ethics (IESBA issued code)**
- **Members and firms registered with ICAP must comply with the Code**



# ICAP & NOCLAR standard

- **NOCLAR adoption is under discussion of the Auditing Standards & Ethics Committee of ICAP**
- **Issuance of ICAP Circular No. 09 of 2017 on NOCLAR – Requested for members’ comments on NOCLAR related challenges**
- **NOCLAR highlighted during the seminars on the Companies Act, 2017 (held by ICAP in all major cities)**
- **Requested responses on NOCLAR adoption from members’ and practicing firms**
- **Coordinating with other international accountancy institutes on NOCLAR adoption status in their jurisdictions**
- **Consultative sessions for members’ awareness**
  - Islamabad – 19<sup>th</sup> March 2018
  - Karachi and Lahore - April 2018

## 3. NOCLAR Scope and Framework

# Scope – Professional accountants

NOCLAR applies to **all categories** of PAs

Professional accountants engaged in audit

Professional accountants engaged in other professional services

Senior professional accountants in business (PAIBs)

PAIBs other than Senior PAIBs

**Differential approach**

Specifies different but proportionate approach for each category of PAs

# Scope - Laws and regulations

## Scoped in

### **NOCLAR or suspected NOCLAR can relate to matters**

- Related to determination of amounts and disclosures in financial statements
- Fundamental to the operating aspects of entity

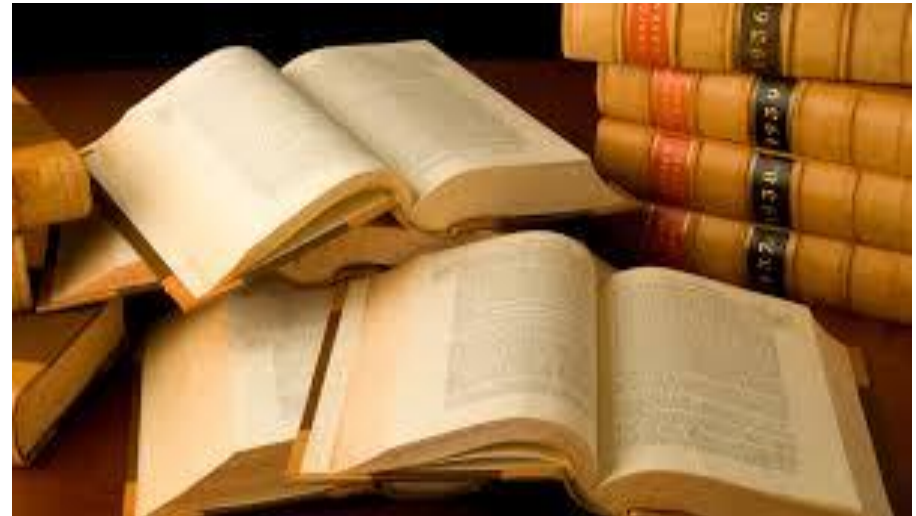
## Scoped out

- Inconsequential matters
- Personal misconduct unrelated to business
- Non-compliance committed by a party not controlled by client or employer

**No distinction between public interest and non public interest entities**

# Examples of laws and regulations

- Fraud, corruption and bribery
- Money laundering
- Terrorist financing
- Banking/financial products & services
- Public health and safety
- Data protection
- Tax and pension liabilities
- Environmental protection



# NOCLAR Framework

**Determine whether to disclose matter  
to an appropriate authority**

**Determine whether further action is  
needed**

**Address the matter**

**Obtain an understanding of NOCLAR**

**Identifies or suspects NOCLAR**

**Documentation**

# NOCLAR Framework

- **Management responsible** for compliance with laws and regulations
- **PA not to seek NOCLAR**
- **PA only responsible** to act when becomes aware of NOCLAR or suspected NOCLAR
- **PA to apply** knowledge, professional judgment and expertise in accordance with engagement / role
- **Follow the NOCLAR steps/ guidance** in accordance with the role i.e. auditor, tax consultant, CFO etc.
- **Limited circumstances** - reporting outside the entity

# NOCLAR - Public interest disclosure

## Whether the act causes substantial harm?

- Involves **serious adverse consequences** (financial or non-financial)
- To investors, creditors, employees or general public

### Examples:

- Financial fraud resulting in significant financial losses to investors
- Breaches of environmental laws/regulations that endanger health and safety of employees or public

**Only in case of substantial harm - Consider further factors for reporting to appropriate authority**



# NOCLAR - Public interest disclosure

**Key factors to consider for disclosure to appropriate authority**

**Precluded by  
law or  
regulation**

**Credible  
evidence of  
substantial  
harm**

**Existence of an  
appropriate  
authority**

**Legal  
protection for  
whistleblowing**

**Physical harm**

## **4. NOCLAR and Professional Accountants**

# Professional accountants engaged in audit

## Understand the matter

- Obtain understanding of matter – nature and significance of the matter
- Determine which legal/ regulatory obligations are triggered?

## Address the matter

- Discuss the matter with appropriate level of management/ TCWG
- Fulfill professional responsibilities (under ISAs)

## Assess response

- Assess appropriateness of management/ TCWG response for further action
- Consider various other factors

# Professional accountants engaged in audit

## Further course of Action

- **Disclosing the matter to an appropriate authority (even if not required by law)**
- **Withdrawing from the engagement**
- **If withdrawing, inform proposed successor of the NOCLAR**

## When to disclose to authority?

- **Disclosure to appropriate authority depends on nature and extent of actual/potential harm to stakeholders**
- **Decision depends on evaluation of factors**

## Exceptional circumstances

- **Imminent breach of law/ regulation that would cause substantial harm to stakeholders**
- **Make disclosure to appropriate authority**

# Professional accountants engaged in audit

## Documen- tation

- **Mandatorily auditors are required to document the matter**
- **How management / TCWG responded**
- **Courses of actions PA considered, judgments made, decisions taken**
- **Conclusion on the matter**

# Professional Service Providers other than Auditors

# Professional service providers other than auditors

## Understand and address the matter

- Seek to understand the matter i.e. nature of the act
- Discuss the identified or suspected NOCLAR with management / TCWG

## Communicate matter to the external auditor

- Communicate (if not prohibited by law or regulation) with:
- Audit client of the firm – shall communicate within the firm
  - Audit client of a network firm – shall consider communicating to the network firm
  - Other client - shall consider communicating the matter to the external auditor of the client

## Further course of action

- Consider whether further action is needed?
  - Disclosure to the appropriate authority or/and
  - Withdraw from the engagement and client relationship
- Further action will depend on various factors
- Imminent breach with substantial harm – Disclose to public authority
- Documentation - Encouraged

# Senior Professional Accountants in Business (PAIBs)



# Senior professional accountants in business

## Understand the matter

- Understand the nature of the act
- Application of laws/ regulations
- Potential consequences to employer
- Consider whistleblowing mechanism

## Address the matter

- Discuss the matter with immediate superior (if allowed under whistleblowing mechanism)
- If immediate superior is involved then discuss with next higher level of authority if allowed under whistleblowing mechanism)

## Fulfill Professional Responsibilities

- Take steps to ensure that matter is reported to TCWG
- Have consequences rectified, remediated, or mitigated
- Seek to deter the NOCLAR
- Determine the need to disclose to external auditor

# Senior professional accountants in business

## Further Action

- Assess appropriateness of the response of superiors and TCWG
- Determine if further action is needed in the public interest
- Must apply third party test

## Further course of Action

- Inform management of the parent entity in case of member of a group
- Disclose the matter to appropriate authority (even not required by law)
- Resign from the employment relationship

## Disclosure to appropriate authority

- Depends on nature and extent of actual/ potential harm
- Decision depends also on external factors

# Senior professional accountants in business

## Exceptional circumstances

- **Imminent breach of law that would cause substantial harm to stakeholders**
- **Make disclosure to appropriate authority**

## Documentation

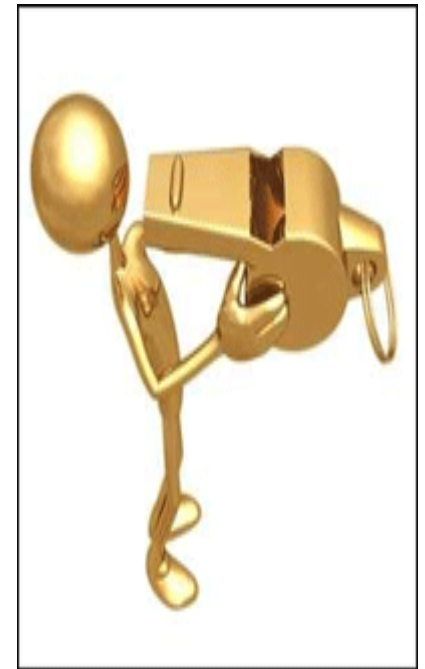
- **Encouraged to document, the matter, results of discussions, response of seniors, TCWG, courses of actions considered, judgments made, decisions taken**

# Other than Senior PAIBs

# Other than senior PAIBs

## Baseline actions

- **Understand the matter**
- **Escalate** to immediate superior or next higher level of authority; **or**
- **Whistle-blowing** - Use established internal whistle-blowing mechanism
- **Documentation** - Encouraged to document the matter, supervisor discussion and response, courses of action and decisions taken



# NOCLAR Implementation Challenges

# NOCLAR implementation challenges

- Alignment with the CA Ordinance 1961
- Legal framework and system for whistleblowers protection (Whistleblower's risk e.g. physical harm, unfair dismissal, loss of career)
- Lack of awareness of Public interest
- PAs are not legal experts and/or experts of operational laws
- Potential increase in cost, effort, resources



# Summary

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- **NOCLAR (ethical standard) under consideration for adoption**
- **Imposes obligations for all professional accountants**
- **However, does not increase scope of engagements / employment responsibilities. Does not require to search for NOCLAR**
- **Provides proportionate response framework to respond to NOCLAR**
- **Requires consideration of various factors before public interest disclosure of NOCLAR**
- **Allows breach of confidentiality to safeguard public interest**



# Question and Answers

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# Thank You