

Non-Compliance with Laws and Regulations

Financial Services Industry

Moshood Olajide

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Synopsis

The International Ethics Standards Board for Accountants (IESBA) has issued a pronouncement on professional accountants' Response to Non-Compliance with Laws and Regulations (NOCLAR). It sets out a framework that requires professional accountants (PAs) to take actions when they become aware of any illegal or potential illegal act.

The pronouncement comprises the following:

1. Section 225 concerning PAs in public practice;
2. Section 360 concerning PAs in business; and
3. Consequential and conforming amendments to other sections of the IESBA *Code of Ethics for Professional Accountants* (the Code).

NOCLAR became effective on 15th July 2017.

In this session, we will articulate the key requirements, obligations and impact on professional accountants in practice and those in organisations.

Learning outcome

At the end of this session, participants should be able to:

- Understand the new pronouncement on NOCLAR
- Explain the purpose of NOCLAR to all stakeholders
- Become aware of potential illegal act in organisations
- Identify key requirements, obligations and impact of NOCLAR on professional accountants
- Know how to respond to NOCLAR under different scenarios
- Manage the associated risk when responding to NOCLAR

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Overview of NOCLAR pronouncement

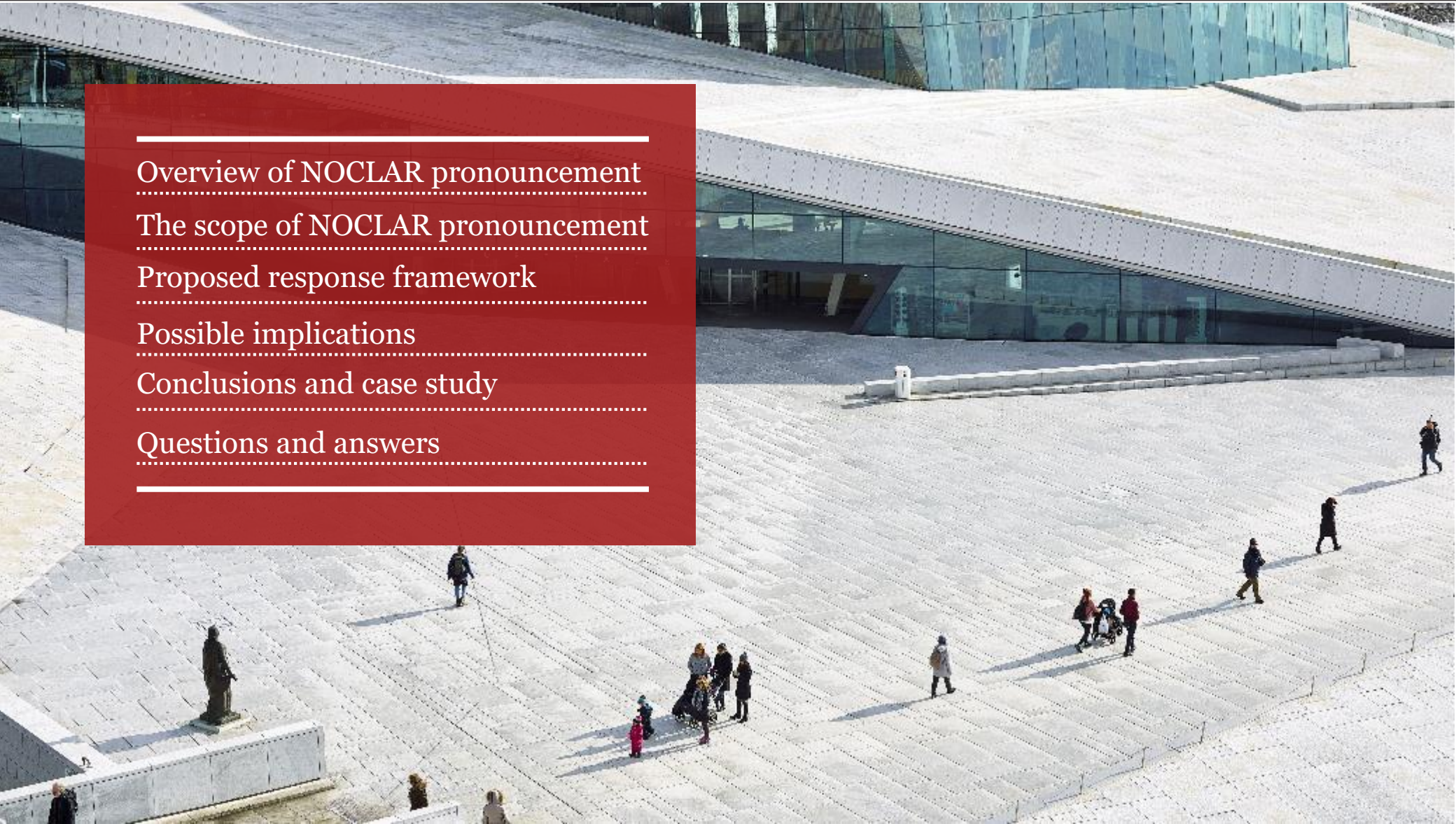
The scope of NOCLAR pronouncement

Proposed response framework

Possible implications

Conclusions and case study

Questions and answers



Overview of NOCLAR

- Context and background
- Purpose / objectives

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Context and background

In August 2012, the International Ethics Standards Board for Accountants (IESBA) issued an exposure draft (ED) of its proposals, responding to a Suspected Illegal Act.

Respondents from the regulatory community, in particular, were supportive of the Board's efforts to provide guidance not only to auditors but also to Professional Accountants (PAs) in public practice providing services other than audits of financial statements, and those in business.

As a result of significant concerns across most stakeholder groups regarding the operability of the proposals, the Board held a series of global roundtables in 2014.

The roundtables were able to solicit further views and input from stakeholders on the issues. As a result of the significant comments on the ED, the roundtable input and the Board's further deliberations and consultations with other stakeholders, the Board developed an approach for PAs to respond to instances of Non-Compliance with Laws and Regulations (NOCLAR) or suspected NOCLAR.

Purpose and objectives

In providing a professional service to a client or carrying out professional activities for an employer, Professional Accountants come across various acts or suspected acts of non-compliance with laws and regulations (NOCLAR).

The PA has a prima facie ethical responsibility not to turn a blind eye to such matters. At the same time, the IESBA recognised that such a situation can often be a difficult and stressful one.

In order to provide a solution to the dilemma, the Board approved the NOCLAR pronouncement to develop enhancements to the IESBA Code to help guide the PAs in dealing with the situation and in deciding how best to act in the public interest.

When responding to non-compliance or suspected non-compliance, the objective of the professional accountant should be to comply with fundamental principles of integrity and professional behaviours while taking public interest into consideration.

In addition, the aim is for the entity to correct the NOCLAR and remediate or prevent its occurrence where it is still being suspected.

Why the Standard was developed

The standard was developed in response to the following issues/concerns-

The duty of confidentiality owed the client which acted as a barrier to disclosing likely NOCLAR to regulators and public authorities.

Auditors resigning to avoid NOCLAR issues.

No guidance to assist the PA in working out the best response to potential NOCLAR.

What the Standard aims to achieve

Enhanced ethical conduct:

- Clarifies the appropriate response of a PA to a potential NOCLAR and emphasises the role of management in addressing in the matter.
- Increase awareness and understanding of the PA's legal and regulatory responsibilities when faced with a potential NOCLAR situation.

Protection for stakeholders and the general public

- Stimulate PAs to take a proactive role in responding to NOCLAR towards obtaining an earlier response from management, lower rates of NOCLAR and timely intervention from regulators.

Enhanced role and value of the accountancy profession

- Enhances the reputation of the profession and enables the profession play a greater role in the fight against significant NOCLARs.

Definition

Non-compliance can be defined as:

- Any act of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations.
- Such acts include transactions entered into by, or in the name of, the entity, or on its behalf, by those charged with governance, management or employees.
- Non-compliance does not include personal misconduct (unrelated to the business activities of the entity) by those charged with governance, management or employees of the entity.'

Scope of NOCLAR

- Who is covered?
- What is covered?
- Scenarios / Examples
- Exclusions



Who is covered?

The NOCLAR Pronouncement is applicable to all professional accountants including:

Professional Accountants in Public Practice

- Audit of financial statements
- Other assurance services
- Professional services other than audit of financial statement e.g. Tax, Accounting, Training etc

Professional Accountants in Business

- Those working as employees for organisations in various roles
- Senior PAs in business

What is covered?

NOCLAR covers:

- Any acts of non-compliance with laws and regulations the PA encounters or is made aware of
- Suspected acts of non-compliance with laws and regulations
- By employees of the organisation, management and those charged with governance including third parties under the control of the entity
- Whether international, or not, by omission or commission.

What is covered?

Scenarios and examples

Examples include laws and regulations that deal with:



Scope exclusion

NOCLAR does not apply to the following although the framework may be applied in dealing with them:

- matters that are clearly inconsequential, judged by their nature and impact, financial or otherwise (disclosure etc). For example: trying to cajole a traffic officer to ignore penalties for a traffic violation.
- personal misconduct unrelated to the business activities- For example: A top employee getting drunk or driving under the influence of alcohol.
- non-compliance other than by the employing organisation or any of its other stakeholders- For example: Conducting a due diligence on a company on instructions of another company.

*The proposed response
framework*

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Response framework

PAs in public practice

Audit of financial statements

When a professional accountant in public practice becomes aware of a non-compliance or suspected non-compliance, the following steps are to be taken.

Response

1. Become aware (see it, but do not seek it)
2. Obtain an understanding of the matter (nature of the act and the circumstances), discuss with management, may seek legal counsel.
3. Addressing the matter (rectify, remediate, mitigate, deter, disclose)
4. Communication with respect to groups (for financial statements audit)
5. Determine whether further action is needed (timely response, appropriate steps taken by entity etc, consider withdrawing from engagement)
6. Determine whether to disclose the matter to appropriate authority
7. Documentation- comply with ISA and PwC audit documentation

Response framework

PAs in public practice

Non-audit services

When a professional accountant in public practice becomes aware of a non-compliance or suspected non-compliance, the following steps are to be taken.

Response

1. Become aware (see it, but do not seek it)
2. Obtain an understanding of the matter
3. Address the issue with management and those charged with governance
4. Communicate the matter to the entity's external auditor
5. Consider whether further action is needed in the public interest e.g. disclosing to authorities or withdrawing from the engagement
6. Documentation – the matter, result of discussion with management or those charged with governance, actions taken.

Response framework

PAs in business

Professional Accountants other than Senior Professional Accountants

When an organizations have established protocols and procedures regarding how non-compliance or suspected non-compliance should be raised internally. The professional accountant is expected to consider them in determining how to handle non-compliance.

Response

1. Subject to established protocols and procedures, inform an immediate superior to enable the superior to take appropriate action.
2. If the PA's immediate superior appears to be involved in the matter, inform the next higher level of authority within the organisation.
3. In exceptional circumstances, the PA may decide that disclosure of the matter to an appropriate authority is an appropriate course of action.
4. Documentation – matter, discussion, response by superior, and decision taken.

Response framework

PAs in business

Senior Professional Accountants (SPAs)

SPAs are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

Response

1. Become aware (see it, but do not seek it)
2. Obtain the understanding of the matter
3. Address the matter
4. Determine whether further action is needed
5. Determine whether to disclose the matter to an appropriate authority
6. Documentations

Possible Implications

- Practical considerations
- Legal implications
- Some examples

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Responsibilities of Professional Accountants

When a professional accountant becomes aware of information regarding non-compliance or suspected non-compliance, the accountant is expected to obtain understanding of the matter, apply professional judgement and expertise, but not expected to have a level of understanding of laws and regulations beyond that which is required of his role with the employing organisation.

In exceptional cases, the professional accountant may disclose an act of non-compliance to appropriate authority and such act will not be considered as breach of confidentiality but an act of good faith in the interest of the public.

Factors to consider include:

1. The legal and regulatory framework
2. The urgency of the matter
3. The pervasiveness of the matter throughout the organisation
4. Whether there is confidence in the integrity of those charged with governance
5. Whether non-compliance is likely to recur
6. Actual or potential harm to the interest of the organisation, investors, creditors, employees or general public.

Responsibilities of management and those charged with governance

It is the responsibility of the employing organisation's management and those charged with governance, to ensure that their business activities are conducted in accordance with laws and regulations and to identify any form of non-compliance by any of its stakeholders.

Non-compliance may result in fines, litigation, or other consequences for the employing organisation that may have a material effect on its financial statement and may also affect negatively investors, creditors, employees or general public.

Questions!



Thank you!



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