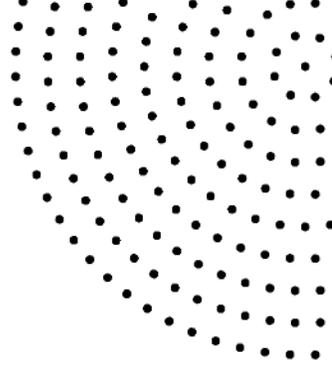


Ethics

2021

PRESENTED BY
CARYN MAITLAND

WHO WE ARE



The Southern African Institute for Business Accountants NPC is the #1 Professional Body for Accountants and Finance Executives in Africa. With more than 9000 members working as employed or self-employed accountants in all industries we are making business better from the Cape to Cairo.

Our CPD policy is compliant with IFAC IES7.

Visit our website for more about us and what we do www.saiba.org.za



SAIBA DESIGNATIONS

ABOUT THE PRESENTER

CARYN MAITLAND

Caryn is a qualified CA(SA) and RA.

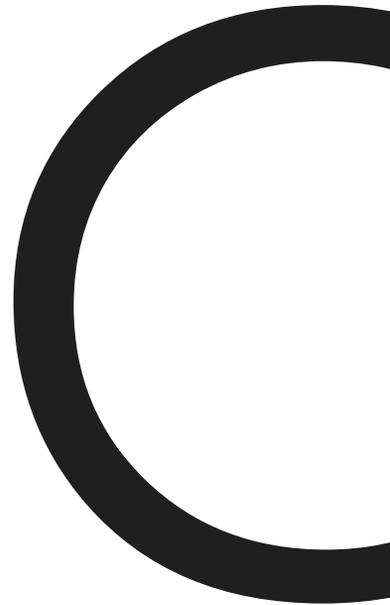
She lectured at UKZN up until 2011 and was appointed Section Head of Financial Accounting and Deputy Head of the School of Accounting (managing the Pietermaritzburg campus) prior to leaving UKZN. She was appointed as a visiting Associate Professor to the University of Limpopo tasked with mentoring their Financial Accounting staff (Aug 2011 to Dec 2013).

Caryn has conducted independent workshops and seminars for professional accountants since 2006 and is a platform presenter for various institutes as well as many small to medium accounting practices across the country and into Southern Africa.

Since January 2011, she has focused on her own business as technical freelance consultant and trainer to those working within the accounting profession. Caryn is a technical advisor specialising in financial reporting (IFRS, IFRS for SME's and general accounting), assurance, legislation and ethics. Caryn has a passion for Corporate Governance, which together with her Companies Act specialism and Financial Management for Non-Financial Management lecturing background, has served her well in consulting and advising various Boards of Directors in recent years.



CPD CERTIFICATE



To obtain your CPD certificate complete the questions in the Quiz section. A CPD certificate will automatically be issued when you obtain above 75% within 3 attempts.

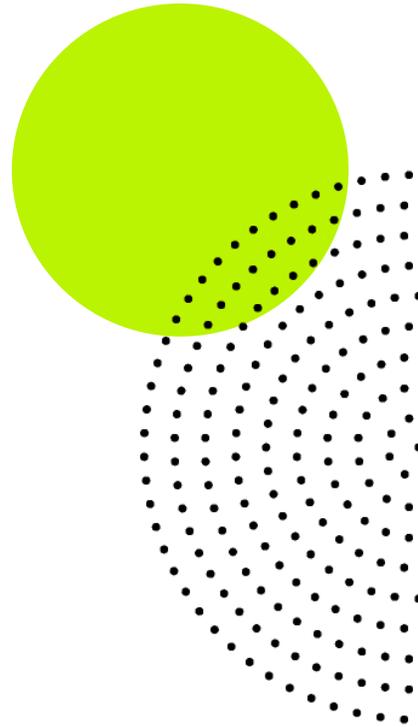
Queries regarding your CPD can be send
cpd@saiba.org.za

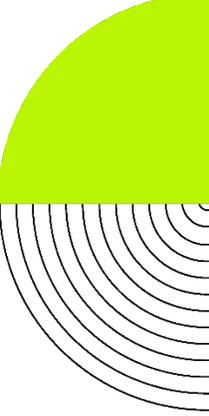
QUESTIONS & ANSWERS

Email questions to:

technical@saiba.org.za

Questions and Answers will be shared later in the Q&A section.





Disclaimer

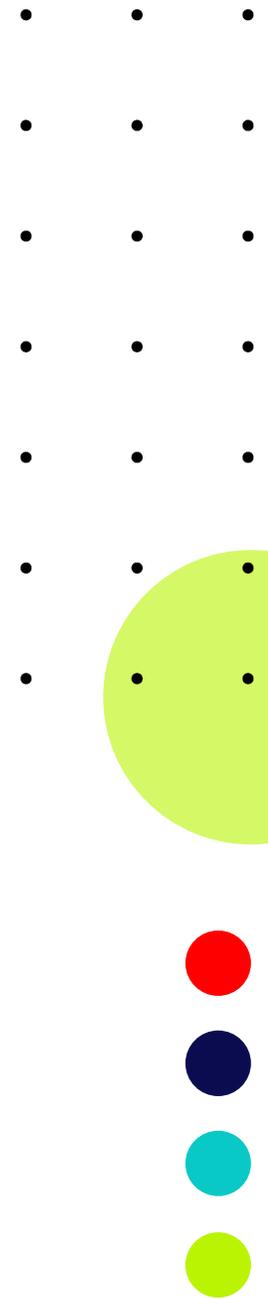
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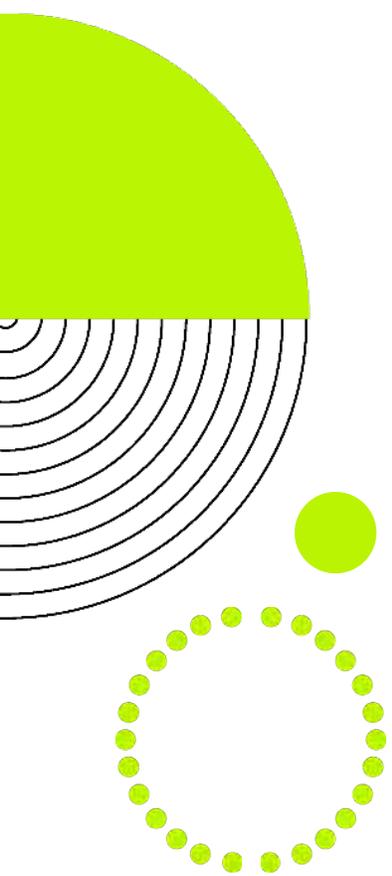
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SAIBA PARTNERS





Resources

1. SAIBA Ethics:

https://saiba.org.za/share/ethics_is_rewarding

2. Ethics Committee

https://saiba.org.za/downloads/policies_and_forms/SECToR-003_SEC%20terms%20of%20reference.pdf

CPD INDEX

1. Ethically Conscious Accountants
2. Principles of Ethics
3. Non-Compliance with Laws and Regulations
4. Statutes to consider

1. ETHICALLY CONSCIOUS ACCOUNTANTS



1 . ETHICALLY CONSCIOUS ACCOUNTANTS

Accountants that are ethically conscious are committed to:

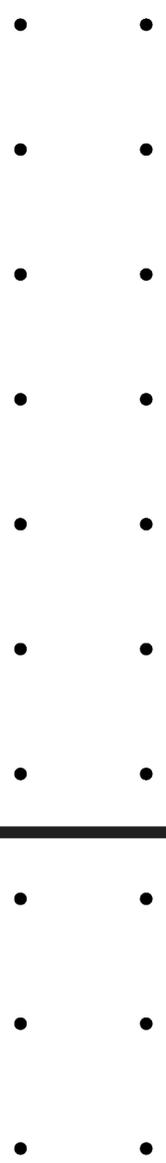
- Providing quality services at affordable prices,
- Helping clients maximise profits in a sustainable and lawful manner.
- Reporting financial and business results in a meaningful way that enhances economic decision making..



1. ETHICALLY CHECKED

1. **Awareness:** Firms should be aware of and comply with all their ethical obligations as illustrated in the SAIBA Code of Ethics. This will include compliance with the specific requirements related to disclosures of Non-Compliance with Laws and Regulations. The Code requires a business accountant, whether in practice or employed, to take certain actions when becoming aware of a potential illegal act or one that may cause financial distress, known as non-compliance with laws and regulations, or NOCLAR, committed by a client or employer. Examples of such illegal acts include fraud, corruption and bribery, money laundering, tax payments, financial products and services, environmental protection, and public health and safety.
2. **Disclosure:** A commitment to disclose potential non-compliance situations to management, boards or relevant authorities in certain situations, without being constrained by the ethical duty of confidentiality.
3. **Improvement:** Continuous Professional Development (CPD) is the means by which members remain aware and knowledgeable about standards of conduct and engagement. Ethical accountants commit to CPD.
4. **Rewards:** Ethically checked SAIBA members deserve to be rewarded for the effort by issuing a certificate and access to lifestyle rewards.

2. PRINCIPLES OF ETHICS



2. PERSONAL, PROFESSIONAL & BUSINESS

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2. PRINCIPLE BASED CODE OF CONDUCT

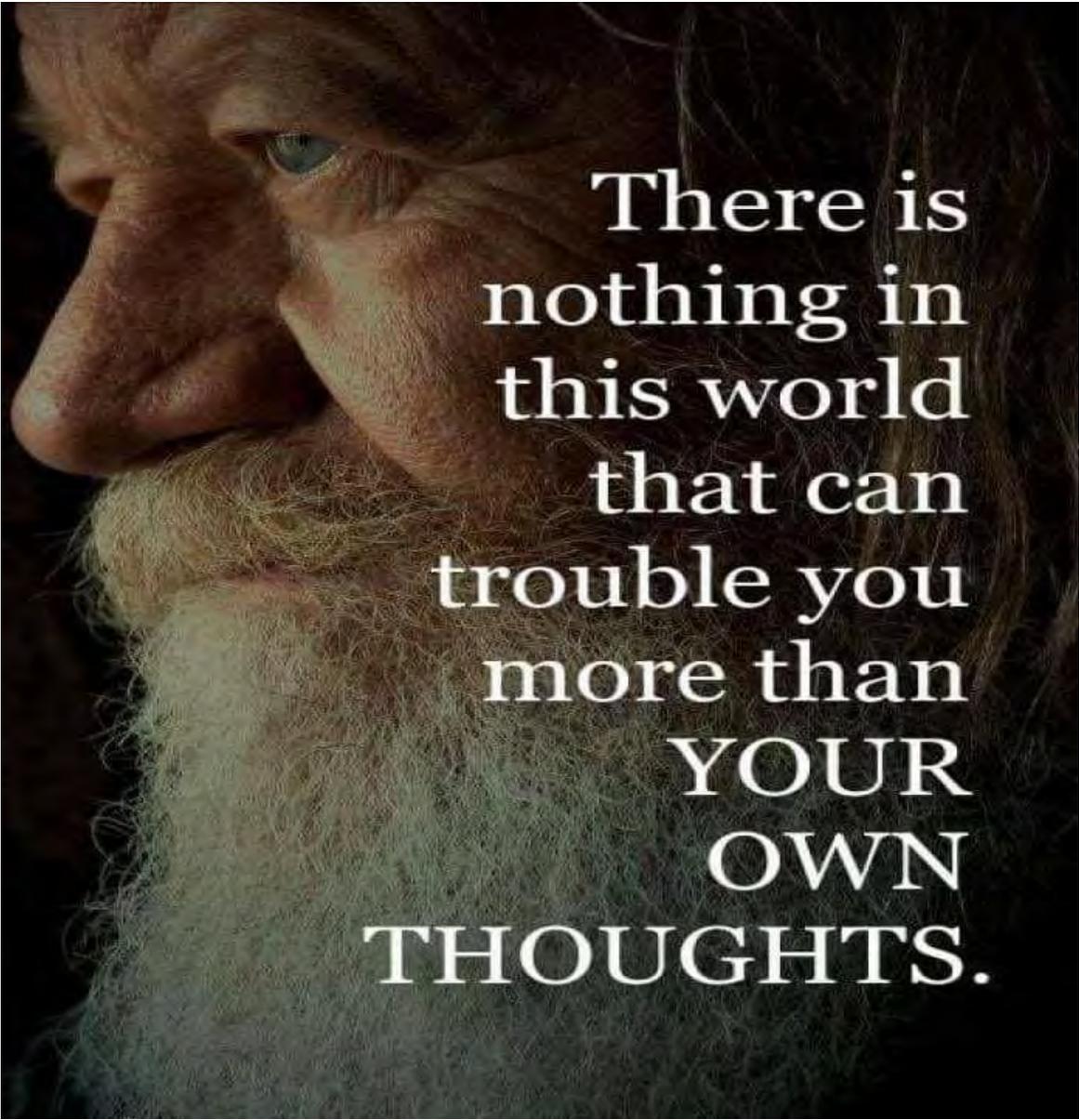
- Independence
- 5 principles vs 5 threats
- Safeguards
 - Internal vs external
- Documentation of considerations
- Professional Scepticism



2. PRINCIPLE BASED CODE OF CONDUCT

5 Principles vs 5 Threats

	Integrity	Objectivity	Due Care	Confidentiality	Professional Behaviour
Self Review					
Personal Interest					
Intimidation					
Advocacy					
Familiarity					

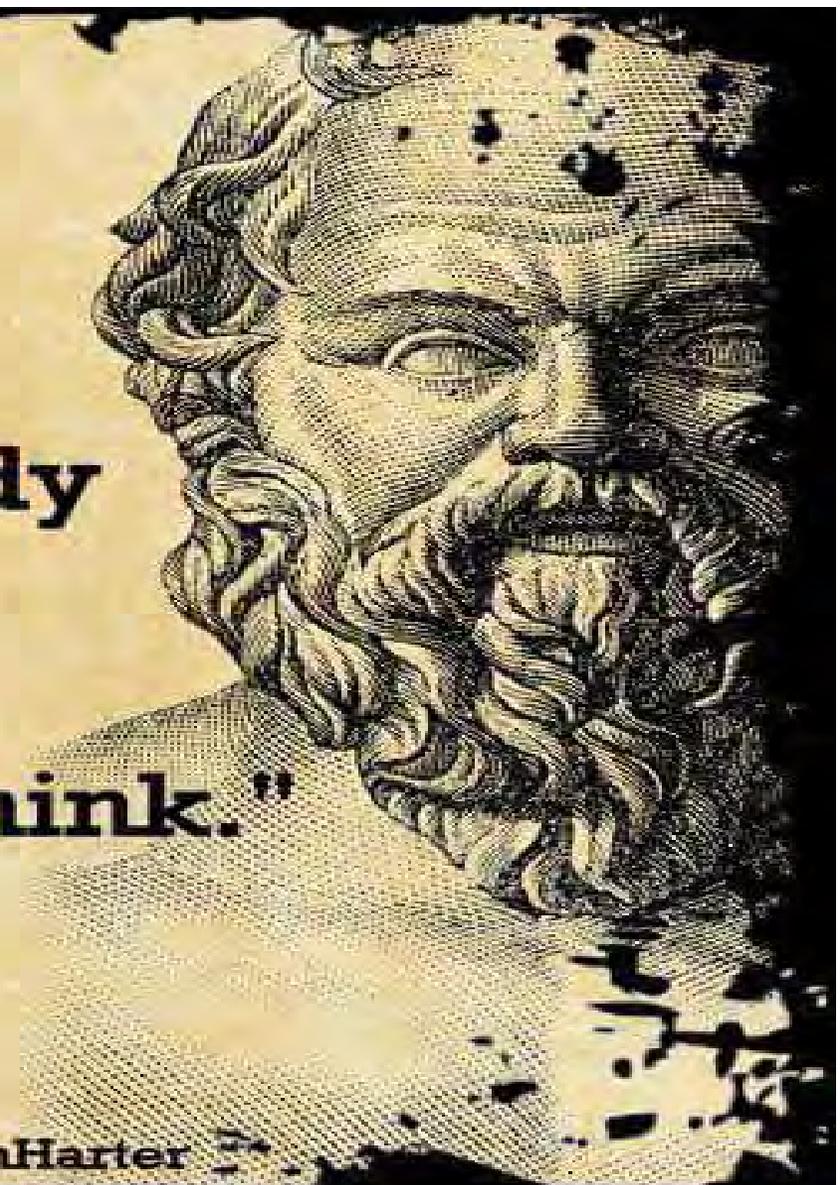


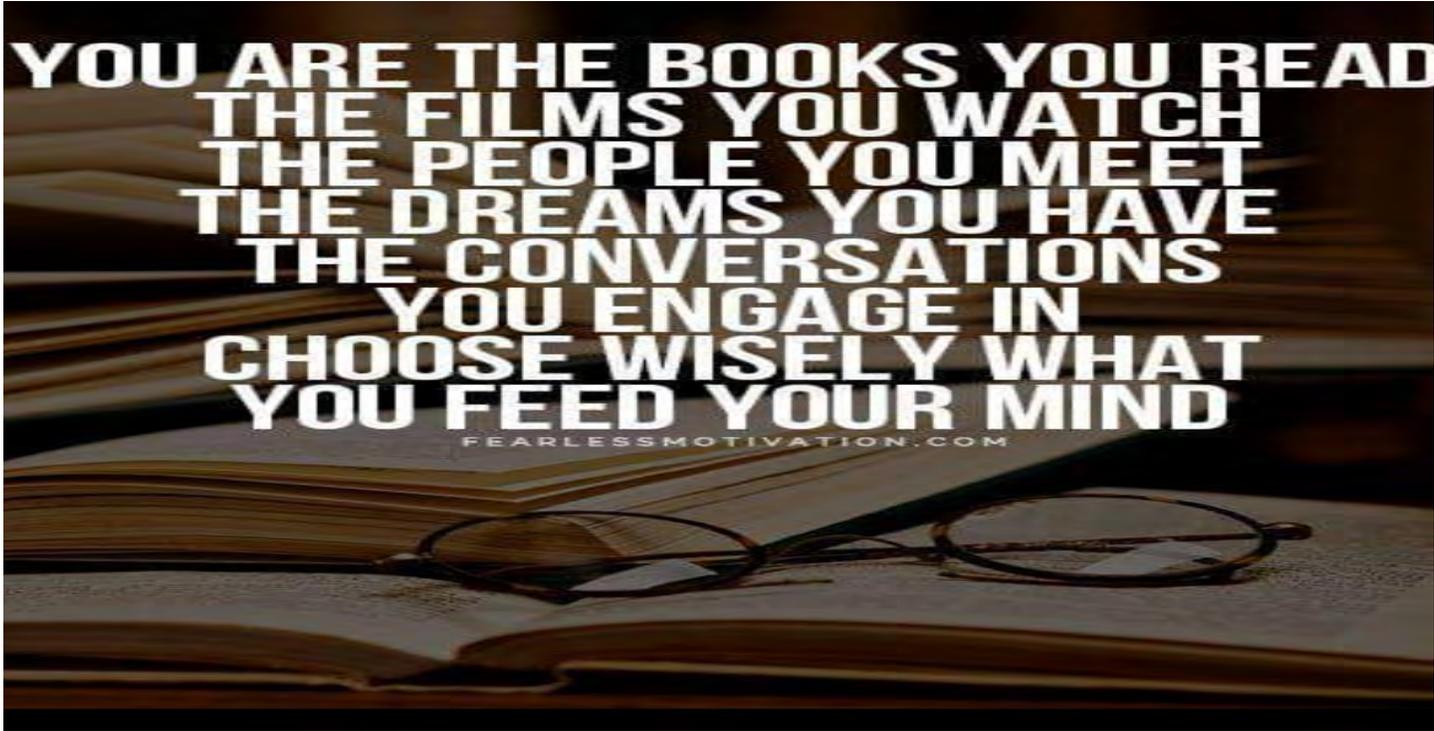
There is
nothing in
this world
that can
trouble you
more than
YOUR
OWN
THOUGHTS.

**"I cannot
teach anybody
anything,
I can only
make them think."**

~Socrates

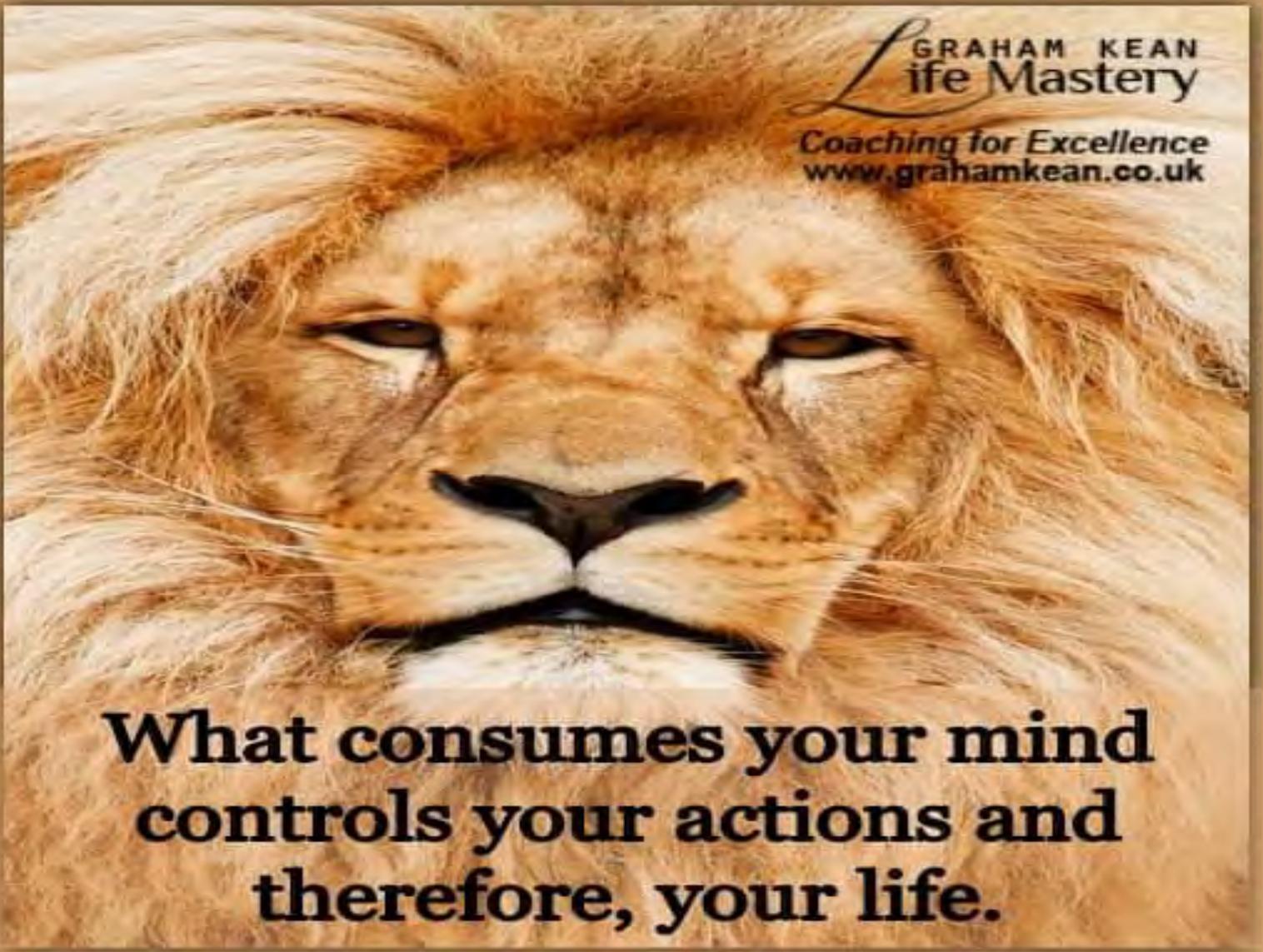
@JasonHarter





**YOU ARE THE BOOKS YOU READ
THE FILMS YOU WATCH
THE PEOPLE YOU MEET
THE DREAMS YOU HAVE
THE CONVERSATIONS
YOU ENGAGE IN
CHOOSE WISELY WHAT
YOU FEED YOUR MIND**

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ife Mastery

Coaching for Excellence
www.grahamkean.co.uk

**What consumes your mind
controls your actions and
therefore, your life.**

2. INTEGRITY

Aristotle

“There is only one way to avoid criticism:

- Do nothing,
- Say nothing, and
- Be nothing.”



***“SOME PEOPLE WANT TO
SEE YOU ON THE TOP OF THE
MOUNTAIN AND SOME PEOPLE
WANT YOU TO KEEP THEM
COMPANY DOWN
IN THE VALLEY.”***

ADDICTED2SUCCESS.COM



Do not follow the
majority,
follow the right
way.



2. WHERE ARE WE IN 2021?

- Pulse check



2. ETHICAL FADING

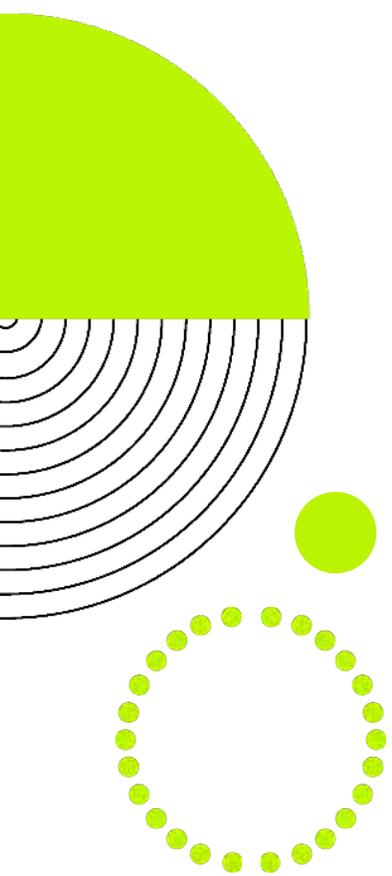
- Why good people do bad things....
- Ethical aspects of a decision disappear from view
- Rely on other aspects of decision – profitability and winning....
- Simon Sinek, Lenny Wong
- Product of self deception
- Tools used
 - Over use of Euphemisms (data mining, enhanced interrogation, manage the externalities
 - Rationalising (excuses, everyone is doing it, need to put food on the table
 - How do you sleep at night?
- Moral disengagement –
 - People restructure reality to make it seem less harmful



2. "THE RISE OF SELFISHNESS" S SINEK

- Milton Friedman Theory (1970's)
 - Responsibility of business is to maximise shareholders profits
 - Business only existed to make money
 - Shareholders over customers and employees
 - 1980's and 1990's boom
 - Rise of shareholder supremacy





“Everyone thinks of changing the world, but no one thinks of changing himself”

LEO TOLSTOY

2. WHERE DO WE NEED TO BE

- Leadership
- Accountability
- Empathy
- Teamwork
- Continually learning



**Leadership is not about
being in charge.**

**Leadership is about
taking care of those
in your charge.**

2. WHAT CAN WE DO TO MAKE A DIFFERENCE

- Creating a healthy culture and environment
- Effective and ethical leadership
- Truth to power
- Role modelling
- Personal Brand

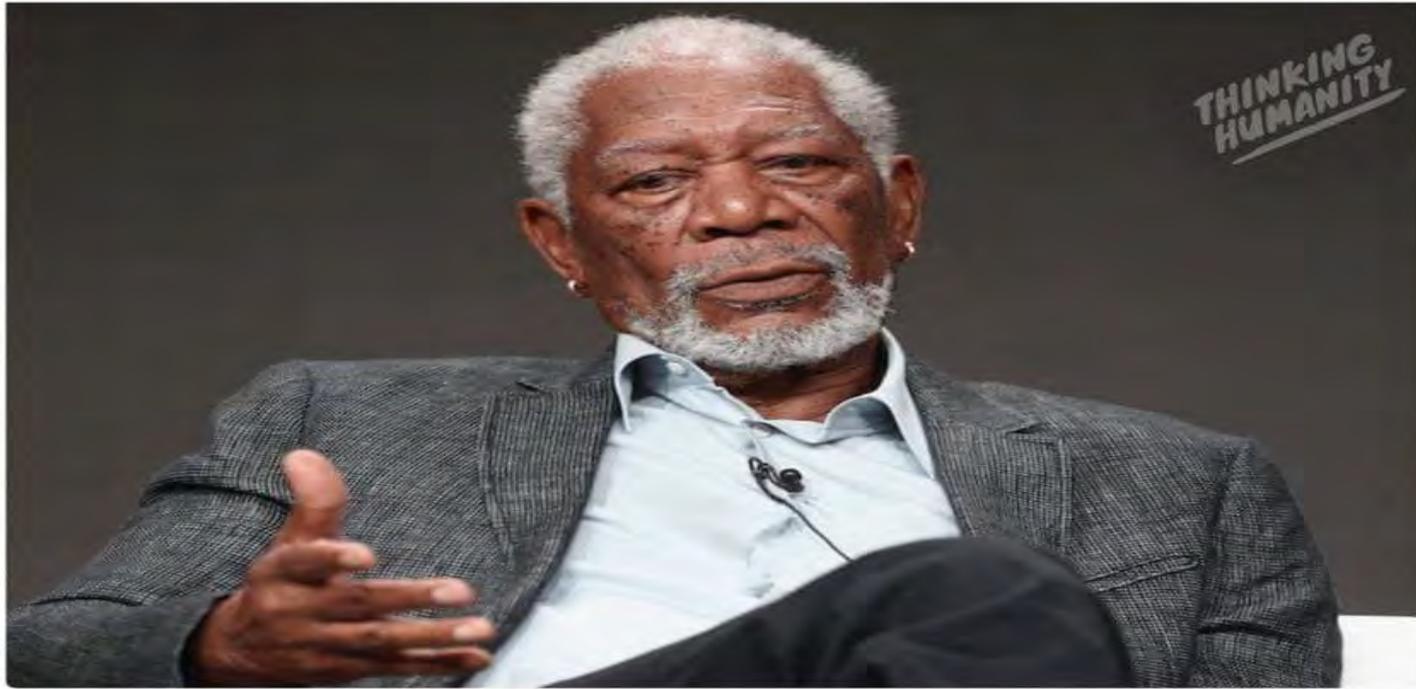




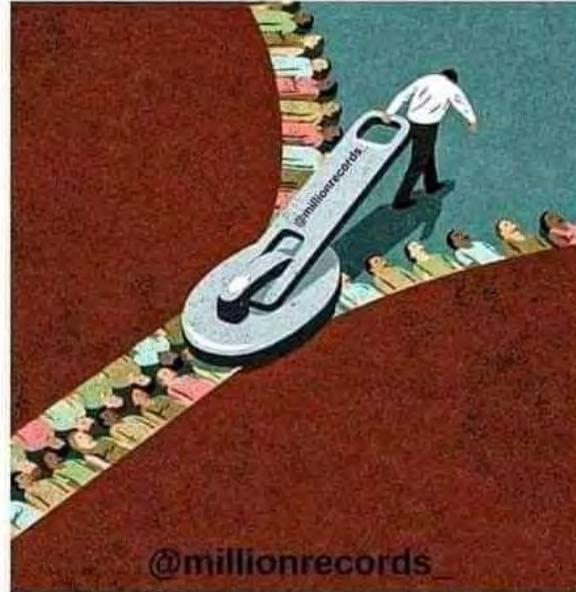
**“EFFECTIVE LEADERSHIP IS
PUTTING FIRST THINGS
FIRST. EFFECTIVE
MANAGEMENT IS
DISCIPLINE, CARRYING IT
OUT.”**

- STEPHEN R. COVEY

**Degree is just
a piece of paper,
real education
is seen in behaviour.**



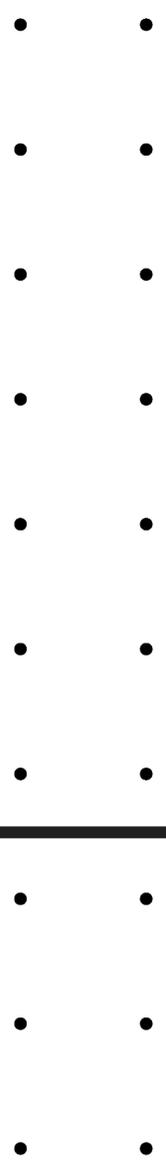
**A TRUE LEADER DOESN'T
CREATE SEPARATION**



**A TRUE LEADER BRINGS
PEOPLE TOGETHER**



3. NON-COMPLIANCE WITH LAWS AND REGULATIONS



3. NON-COMPLIANCE WITH LAWS & REGULATIONS

Why NOCLAR? – Pope Francis 2014

In addressing professional accountants who attended the 2014 World Congress of Accountants in Rome, Pope Francis noted that difficult economic times increase the risk of moral hazard by saying:

“There is a stronger temptation to defend one’s interest without concern for the common good, without paying much heed to justice and legality. For this reason everyone, especially those who practice a profession which deals with the proper functioning of a country’s economic life, is asked to play a positive, constructive role in performing their daily work.”

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3. A RESPONSE FRAMEWORK

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3. NON-COMPLIANCE WITH LAWS & REGULATIONS

NOCLAR Definition

- Acts of omission or commission,
- intentional or unintentional,
- committed by
 - a client or
 - the PA's employing organisation, or
 - by TCWG, by management or by other individuals working for or under the direction of a client or employing organisation
- which are contrary to the prevailing laws or regulations



3. NON-COMPLIANCE WITH LAWS & REGULATIONS

Reasonable expectations of a Professional Accountant

- To recognise NOCLAR, having regard to what should be within the scope of his/her training and experience
- No additional responsibilities to detect NOCLAR
- No increase in the range of laws and regulations (L&Rs) the PA is required to have knowledge of for purposes of
 - performing a given engagement; or
 - the PA's role within the employing organisation
- Not trained lawyers
 - L&Rs that generally relate to a PA's professional training and expertise
 - L&Rs linked to a PA's knowledge in a particular field
 - Not required to have specialised legal knowledge and skills

3. NON-COMPLIANCE WITH LAWS & REGULATIONS

Per standards – Reasonably expected to know

- Laws and regulations generally recognised to have
 - a direct effect on the determination
 - of material amounts and disclosures
 - in the financial statements
- Other laws and regulations with
 - no direct effect but compliance with which
 - may be fundamental to the entity's business and operations, or
 - to avoid material penalties

3. NON-COMPLIANCE WITH LAWS & REGULATIONS

Examples of Laws and Regulations

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



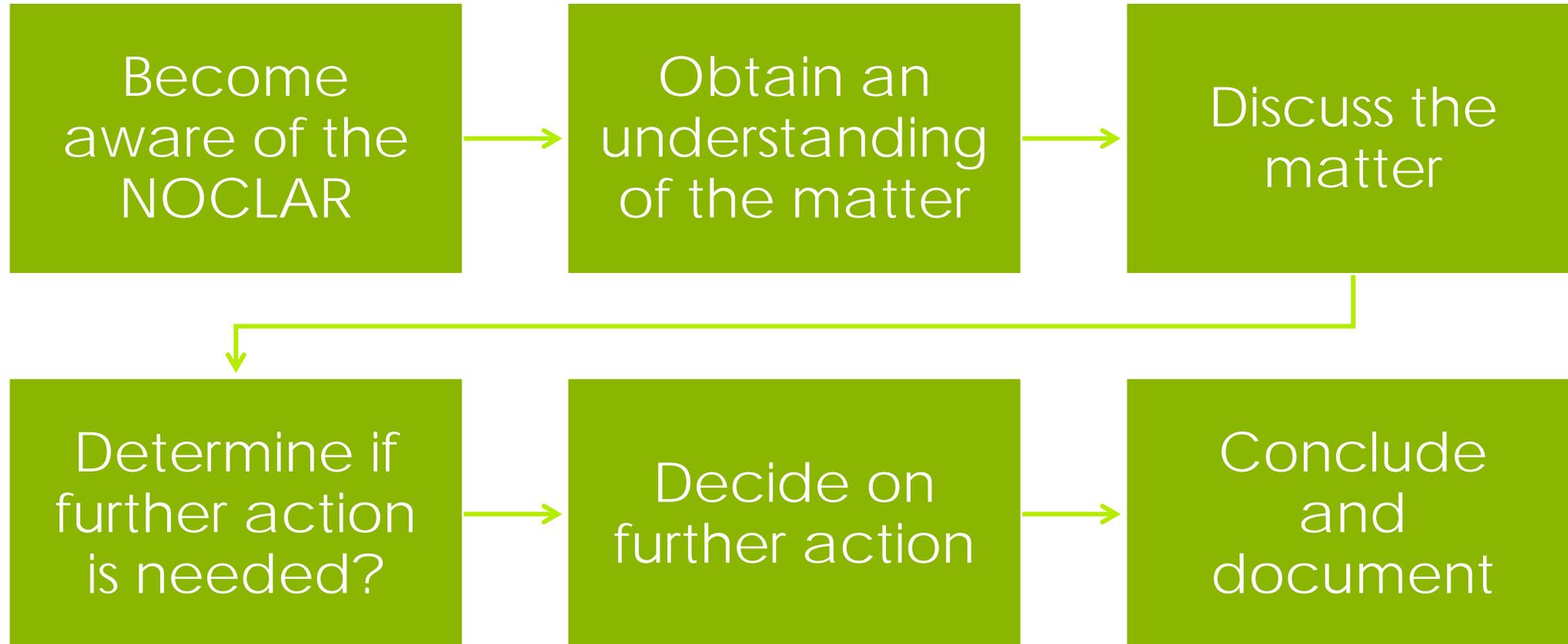
3. NON-COMPLIANCE WITH LAWS & REGULATIONS

Excluded

- Matters that are clearly inconsequential
- Personal misconduct unrelated to the business activities of the client or the employing organisation
- NOCLAR other than by the client or the employing organisation, or TCWG, management or other individuals working for or under the direction of the client or the employing organisation



3. NOCLAR PROCESS/FRAMEWORK Exit points??



3. NON-COMPLIANCE WITH LAWS & REGULATIONS

Give consideration to

- Laws and regulations that address the consideration, disclosure or non-disclosure of NOCLAR, or otherwise deal with the disclosure of information
 - Although certain requirements under the Code may be affected, there may be other requirements that still need to be complied with
- A firm's quality control policies and procedures, or an employing organisation's internal protocols and procedures
- For a given engagement, PAs in practice, must comply with relevant engagement standards and pronouncements

3. NON-COMPLIANCE WITH LAWS & REGULATIONS

What about when you are prohibited to disclose?

- Legal privilege
 - Right to prevent disclosure; applies to communications between an appropriately qualified legal advisor and Client
 - Must be claimed (and other requirements must be met)
 - Specific information is privileged; not general knowledge about an event or incident >>> Assess what is privileged
 - Disclosure of privileged information would be precluded
 - Also consider that the appropriate people at Client are already taking steps to seek to address the matter ...
- Examples of L&Rs that prohibit disclosure
 - Protection of Information Act 84 of 1982
 - And others ... (depends on the nature of the information and the specific circumstances of a possible disclosure)

3. NON-COMPLIANCE WITH LAWS & REGULATIONS

Contractual confidentiality

- Freedom to contract, but not contrary to L&Rs
- Only arises when PA decides to disclose information despite the absence of a legal obligation to do so
- Higher order considerations in Code related to public interest
- Contract could allow for disclosure into the NOCLAR provisions
 - Such clause protects the client or employer and the PA
- In limited circumstances, the “contrary to public policy” principle could override a confidentiality clause
 - Determined on a case by case basis ... [remember, PA may decide to consult at any stage]
 - Reporting to prevent manifest and substantial harm

3. EXAMPLES OF STATUTE – GENERAL PROTECTION

Protected Disclosures Act 26 of 2000

- Applicable to employees (subject to the requirements of the Act)
- Protection is against 'occupational detriment'
- The disclosure must be made internally to certain persons, including complying substantially with any internal procedure
- The disclosure must be made in good faith
- Must relate to any conduct of the employer or any employee of the employer where the information shows or tends to show ...
- Can be repeated to an appropriate external party, if
 - The disclosure was 1st made internally; and
 - The internal party failed to take action



3. EXAMPLES OF STATUTE – GENERAL PROTECTION

Companies Act, section 159

- Protection is immunity from any civil, criminal or administrative liability
- Applies to employees and is also linked to the PDA
- Also applies to other parties – section 159(4). For example
 - Shareholders, directors, prescribed officers, company secretary, suppliers of goods or services
- Applies to disclosures made to ... – section 159(3). For example
 - CIPC, Tribunal, Panel, a regulatory authority, the board, a committee of the company, auditor
- Must relate to information that shows or tends to show that a company or external company, or a director or prescribed officer of a company acting in that capacity, had ...
 - section 159(3)(b)

3. ACTIONS

Action?

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3. APPROPRIATE FURTHER ACTION

- **Business Accountants in Practice/Senior Business Accountants in Business**
 1. Withdraw from the engagement and the professional relationship OR Resign from the employing organisation
 2. Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so
[Also Other PAIBs, in exceptional circumstances]
- **Other Business Accountants**
 1. Inform the management of the parent entity of the matter



3. APPROPRIATE FURTHER ACTION

- One or a combination of possible further actions may be appropriate
- In making the decision, the PA may also consider
 - Consulting internally;
 - Obtaining legal advice to understand the various options and their professional or legal implications; or
 - Consulting on a confidential basis with a regulator or professional body



3. APPROPRIATE FURTHER ACTION

Disclose to appropriate authority??

- Disclosure would be precluded if doing so would be contrary to law or regulation
- Disclosure only becomes a consideration if substantial harm is indicated in the circumstances
- Disclosure also depends on certain external factors
- Whether there is an appropriate authority
- Whether there exists robust and credible protection from civil, criminal or professional liability
- Whether there are actual or potential threats to physical safety



3. APPROPRIATE FURTHER ACTION

If the PA decides that disclosure is an appropriate course of action

- It will not be considered a breach of the duty of confidentiality under Code
- PA must act in good faith and exercise caution when making statements and assertions
- [For PAIPPs] Consider whether it is appropriate to inform the client of the PA's intentions before disclosing the matter



3. APPROPRIATE FURTHER ACTION

Disclosure to the entity's external auditor

Determine whether disclosure to the entity's external auditor is needed. This is in addition to responding to the matter in terms of the Code

Purpose

To provide all information necessary to enable the auditor to perform the audit

Relevant factors to consider

- Whether it would be precluded by law or regulation
- Whether there are any restrictions imposed by a regulatory agency or prosecutor
- Whether the external auditor has already been informed
- The likely materiality of the matter to the entity's financial statements



3. APPROPRIATE FURTHER ACTION

Actual of substantial harm

Is an act that results in serious adverse consequences to the entity or to investors, creditors, employees or the general public, in financial or non-financial terms

Examples include

- Fraud resulting in significant financial losses
- A breach that endangers the health and safety of ...

More examples

- Bribery for purposes of securing large contracts
- A matter that threatens the entity's license to operate
- An act that poses a systemic risk to the financial markets
- Products that are harmful to public health or safety
- Promoting a scheme to evade taxes



3. APPROPRIATE FURTHER ACTION

Reasonable and informed 3rd party test

Take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the PA at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest

Further context

- The PA is required to exercise professional judgment
- It is not a hindsight test
- It brings an essential elements of objectivity to the PAs evaluation of the matter in the circumstances
- Remember, the PA's overall objectives in terms of the Code



3. APPROPRIATE FURTHER ACTION

Consider a forensic Investigation?

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3. APPROPRIATE FURTHER ACTION

Business accountants in Practice: Determine whether further action is needed (and nature and extent)

CONSIDER

- Nature, cause, circumstances and extent of the matter

CONCLUDE

- No further action is required
- Further action is required

DOCUMENTATION

- PA is encouraged to document



3. APPROPRIATE FURTHER ACTION

Consider:

Nature, cause, circumstances
and extent of matter

- Legal and regulatory framework
- The appropriateness and timeliness of the response of management and, where applicable, TCWG
- Urgency of the matter
- The involvement of management or TCWG in the matter
- The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public



3. DOCUMENTATION

In relation to an identified or suspected act of NOCLAR, the PA is encouraged to document:

- The matter
- The results of discussions with ...
- How management and, where applicable TCWG, have responded
- Courses of action considered, judgments made and the decisions that were taken
- How the PA is satisfied that he/she has appropriately considered whether further action is needed in the public interest



3. EXCEPTIONAL CIRCUMSTANCES (OVERRIDE)

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3. EXCEPTIONAL CIRCUMSTANCES (OVERRIDE)

- “In exceptional circumstances,
- the professional accountant may become aware of actual or intended conduct
- that the professional accountant has reason to believe would constitute an imminent breach of a law or regulation
- that would cause substantial harm to investors, creditors, employees or the general public.
- Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity,
- the professional accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority
- in order to prevent or mitigate the consequences of such imminent breach of law or regulation.
- Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.”



3. EXCEPTIONAL CIRCUMSTANCES (OVERRIDE)

- Which Statutes have specific requirements for accountants to report
- Reportable Irregularities vs. Other Reporting Obligations
- Managing your professional risk with respect to these obligations
- Where does this leave us in terms of our ethical need to maintain confidentiality?



3. STATUTORY LANDSCAPE

- Significant changes over the years
 - 20 Acts
- Actual vs Deemed knowledge
- Auditor vs Accountant vs Tax Practitioner
 - Audit and Independent Review vs Compilation
- Increased risk and responsibilities

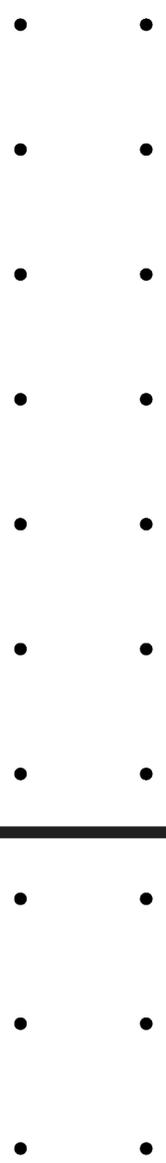


3. STATUTORY LANDSCAPE

- Significant changes over the years
 - 20 Acts
- Actual vs Deemed knowledge
- Auditor vs Accountant vs Tax Practitioner
 - Audit and Independent Review vs Compilation
- Increased risk and responsibilities



4. STATUTES TO CONSIDER



4. STATUTES TO CONSIDER

Companies Act, No 71 of 2008

- S28 Accounting records
 - An offence to
 - Falsify, mislead, intent to deceive by failing to keep accurate records, or records in prescribed format
 - Or permit another to do so
- S29 and S30 Preparer of Financials (sign off)
- S31 Access to Info
 - Judgement creditors and Trade Unions?
- Regulations 29
- Independent reviewers have RI's (in addition to Auditors)
- Reportable to CIPC
- Fine or 12 month imprisonment (S216)



4. STATUTES TO CONSIDER

Reportable irregularities per Co Act

- Regulation 29(1)(b) defines a reportable irregularity for purposes of an independent review as being:
 - any act or omission
 - committed by any person responsible for management of a company
 - which
 - unlawfully has caused or is likely to cause material financial loss to the company or to any member, shareholder, creditor, or investor of the company in respect of his, her or its dealings with the company
 - OR
 - is fraudulent or amounts to theft
 - OR
 - causes or has caused the company to trade under insolvent conditions.



4. STATUTES TO CONSIDER

Response to an RI

- **Step 1:** Send written report to the Commission (the CIPC) “without delay”
- **Step 2:** Inform the board of directors of the company
- **Step 3:** Discuss the report with members of the board of the company
 - BoD opportunity to make representations
 - Meeting must happen within 20 business days of sending CIPC report.
- **Step 4:** Send a 2nd report to the Commission regarding the status of the reported irregularity
 - Status 1: no reportable irregularity had taken place or is taking place
 - Status 2: suspected irregularity is no longer taking place and that adequate steps have been taken
 - Status 3: the reportable irregularity is continuing
- **Step 5:** The Commission notifies appropriate regulators, if necessary

4. STATUTES TO CONSIDER

Close Corporation Act, No 69 of 1984

- Responsible person – Accounting Officer
- Section 62(2)(a)
 - During performance of duties becomes aware of any contravention of CC Act
 - Report to members, describe nature of contravention



4. STATUTES TO CONSIDER

Section 62(3)

- Report to CIPC (be careful of S64 “party to offence”)
- Is the business a going concern, dormant?
- While performing duties
 - Changes to CK1
 - Technical insolvent at year end ($A < L$)
 - AFS incorrectly state solvent @ YE (includes reason to believe)



4. STATUTES TO CONSIDER

Tax Administration Act, No 28 of 2011

- Section 28
- SARS may request
 - From the person who preps the financials or accounts prepared by another person in support of the submitted return
 - To submit a certificate or statement by the other person setting out the details of
 - The extent of examination of the books of accounts and source documents
 - Whether or not the entries in the books disclose the true nature of the transactions, receipts, accruals, payments or debits in so far as may be ascertained from the that examination
- Have to give copy of certificate to taxpayer in question upon request



4. STATUTES TO CONSIDER

Financial Intelligence Centre Act, No 38 of 2001

- FICA
- Money Laundering
- Reportable vs Accountable Institutions
 - Accountants and auditors are AI's when
 - Providing investment advice per FAIS
 - Acting as trustees of an inter vivos trust
 - Legal advice??



4. STATUTES TO CONSIDER

- S28 Cash threshold report (R24 999 – Reg 22B)
 - Both RI and AI must report
 - Report to FIC
 - R100 million fine or 15 years (S68)
- S28A
 - Only AI has possession property controlled by or on behalf of
 - Entity falling foul of POCDTARA or notice issued by President (terrorists)
 - Report to FIC
 - R100 million fine or 15 years (S68)



4. STATUTES TO CONSIDER

- S29 Suspicious or Unusual transactions
 - Who is responsible – person who carries on, manages or is employed in business
 - Proceeds relating to actual or potential terrorist activities/fraud/money laundering/tax evasion
 - Report to FIC
 - R100 million fine or 15 years (S68)
- Terrorist Financing Reports



4. STATUTES TO CONSIDER

Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No 33 of 2004
Who is responsible – person who carries on, manages or is employed in business

- POCDATARA
- Section 12
- Any person who suspects potential terrorist activities
- Report as soon as possible to SAPS
- Fine or 5 years imprisonment S18



4. STATUTES TO CONSIDER

Prevention and Combating of Corrupt Activities, No 12 of 2004

- PRECCA Section 34
- Any person who holds authority
 - Not normally an accountant in a professional/client relationship
- Relates to “white collar” crime/corruption exceeding R100 000
- Report to the Hawks
 - Directorate for Priority Crime Investigation (S17C of SAPA Act)
 - Fine or 10 years plus a fine of 5 times value of gratification



4. PROFESSIONAL RISK

Managing your professional risk with respect to these obligations

- Dealing with SARS??
- Working with other professionals
- Communication with clients

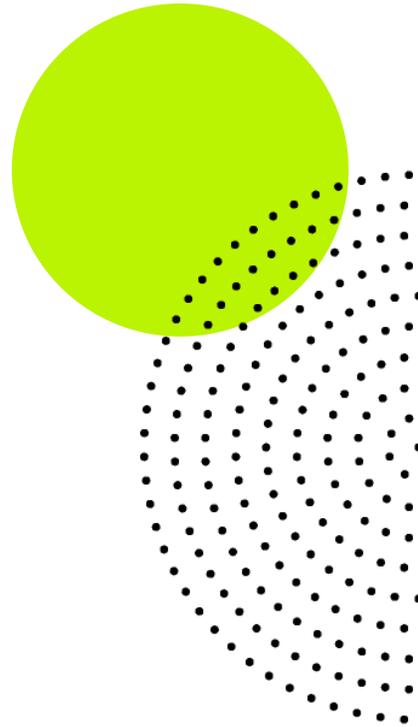


QUESTIONS & ANSWERS

Email questions to:

technical@saiba.org.za

Questions and Answers will be shared later in the Q&A section.



THANK YOU

For joining us for the event.

