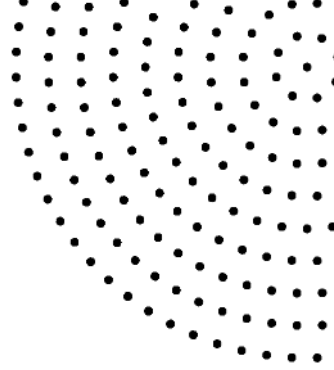


NAMIBIA ETHICS, INDEPENDENCE AND NOCLAR 2021

AUG 2021

PRESENTED BY
B Stoop



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



ABOUT THE PRESENTER



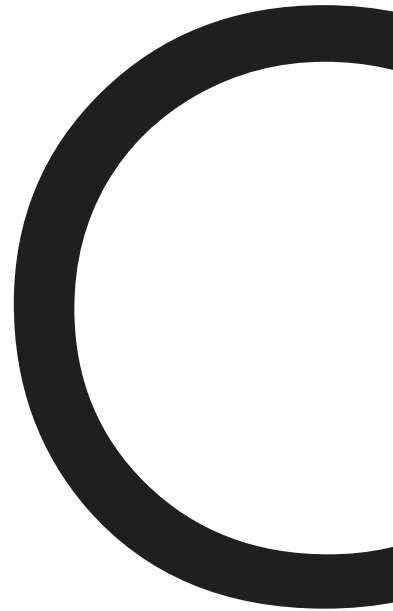
Berrie Stoop

Berrie Stoop is a lecturer in higher education, chairperson of SAIBA's educational committee, author, presenter of various corporate training courses, member of Solidariteits' advice committee and national head of accounting sciences of the Cti group (currently known as Pearsons). He obtained his BCOM Honours in Financial Accounting and has his own accounting practice. He lectured at NWU and NWU Business School in the MBA program and is currently enrolled at the Stellenbosch University, Masters in the philosophy of higher education.

He served on SAIPA's regional committee and chairperson of the SAIPA North West region from 2005 until 2009.



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.

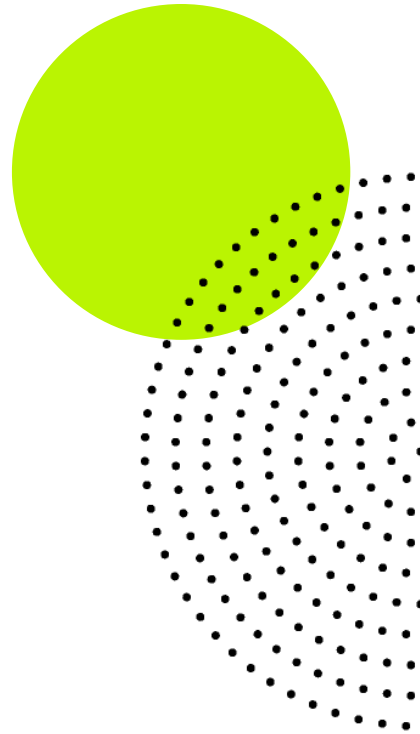
Queries regarding your CPD can be send
cpd@saiba.org.za

QUESTIONS & ANSWERS

Email questions to:

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

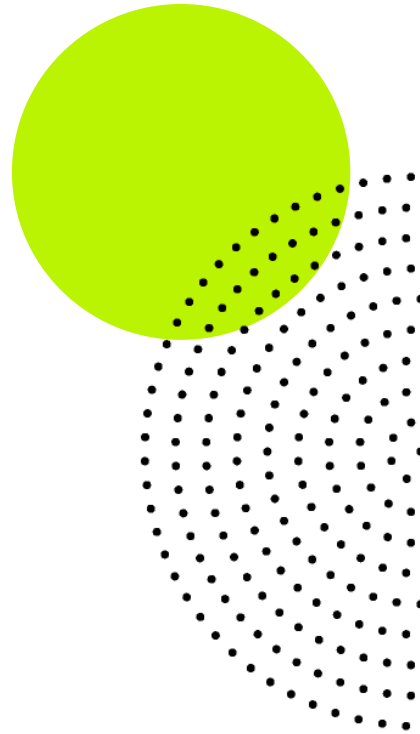


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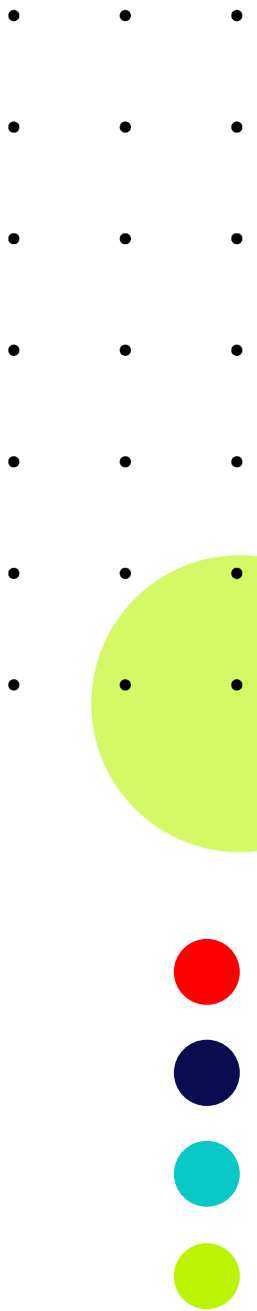
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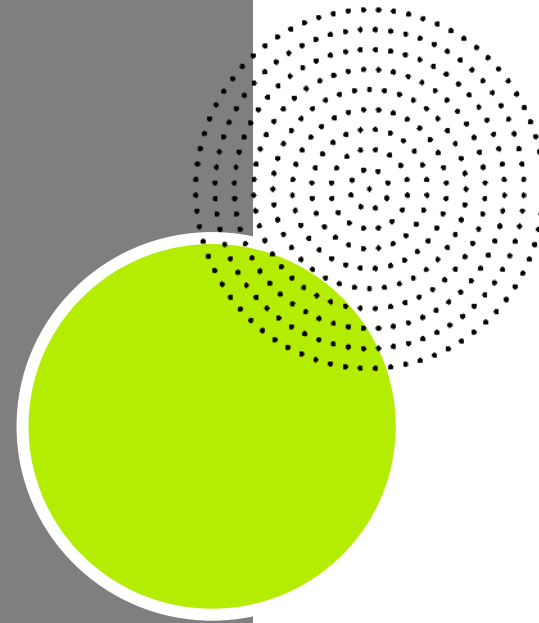




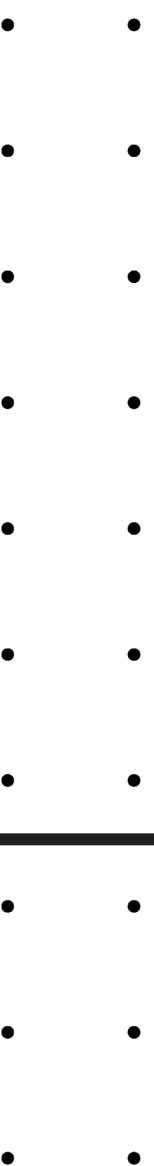
SAIBA PARTNERS



1. What is ethics – The “Green Accountant”
2. The conceptual framework
3. Responding to NOCLAR
4. Whistleblowing and the breach of confidentiality
5. Ethics duties and responsibility in SAIBA’s framework
6. Loyalty to a client vs public responsibility
7. Case study
8. Practice Tools



1. The "Green" Accountant – What is ethics?



1. WHAT IS ETHICS

- **What is ethics, in your opinion?**

*At its simplest, ethics is a system of moral principles. ... Ethics is concerned with what is good for individuals **and society** (public responsibility) and is also described as **moral** philosophy. The term is derived from the Greek word ethos which can mean custom, **habit**, character or **disposition**.*

- **If a child asks you, what is ethics, how will you explain it?**

*When you can't sleep at night and there is one thing that bothers you, you were **un**ethical. A habit is something we just do without even noticing it but when you "break" a habit, it is a discomfort. The question should rather be when are you **un**ethical. Ethics should be a habit.*

- **Why do you think ethics are important?**

*There is a framework of ethics underlying our lives on a daily basis, helping us make decisions that create positive impacts and steering us away from **unjust** outcomes. Ethics guides us to make **the world** a better place through the choices we make. Ethics **in business** is just as important as ethics in personal life.*



1. WHAT IS ETHICS

- **Why is ethics important in life?**

*Ethics serve as a guide to **moral** daily living and helps us judge whether our behaviour can be justified.*

*Ethics refers to society's sense of the right way of living our daily lives. It does this by establishing rules (**law?**) , principles, and values on which we can base our conduct. (Code of conduct, is it rules/law, morals or a choice of behaviour)*

- **What is the difference between ethics, morals and laws?**

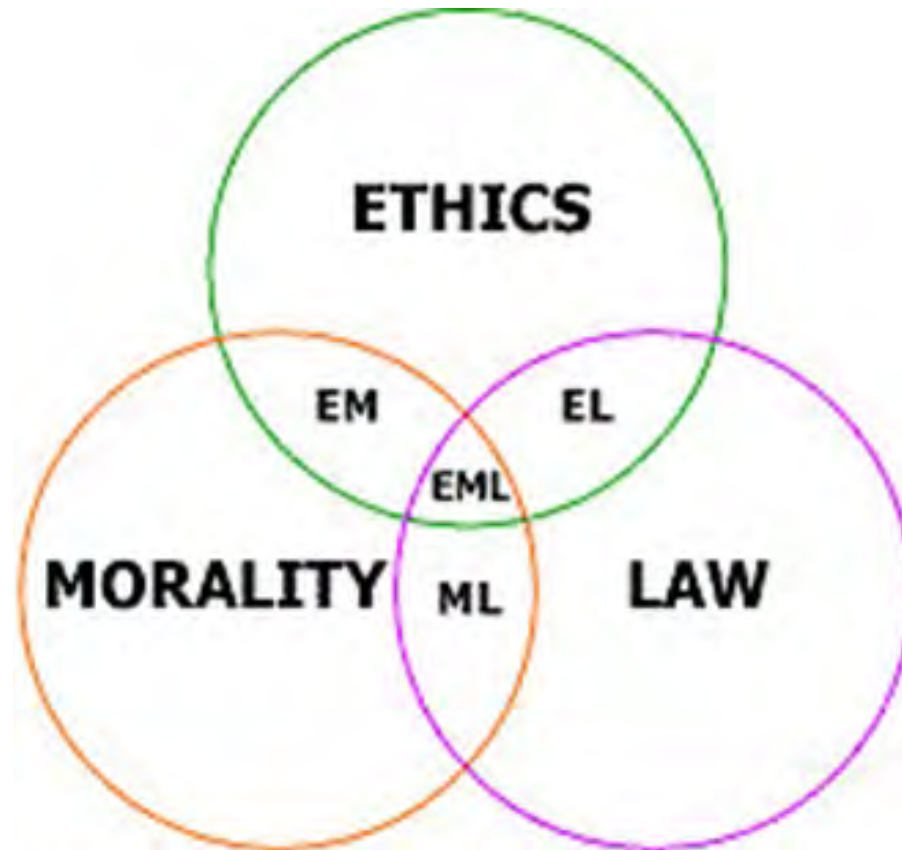
Ethics vs. morals! In most cases, when any one of us does something, we try to act according to what society believes is right. More often, we listen closely to what our own beliefs about right or wrong are telling us, even if they're different from society's views. These two have to do with ethics vs. morals. Even though these words are used interchangeably by many, there is a big difference in the meanings.

MORALS – are our own principles (as individual)

ETHICS – refers to the rules that a social system provides us with (as a community)

LAWS - are structured rules utilized to govern **all of society**. (governed / formal judgement). A law is applicable to all and not only a profession.

1. WHAT IS ETHICS



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1. WHAT IS ETHICS

- **Why we aren't as ethical as we think we are**

"Companies typically don't do bad things because they have bad people. When people imagine or predict what they would do in certain situations, they think about what they should do, however, when it comes to actually making decisions, people tend to focus on what they want to do. They are not conditioned to think of the ethical consequences at the time of the decision,"

(<https://newatlas.com/we-arent-as-ethical-as-we-think-we-are/14572/>)

A company can have ethical procedures and policies but does that make the employees ethical and if not, is the company still ethical? Ethics is a culture, not a set of guidelines.

- **What is code of professional ethics?**

A code of ethics is a guide of principles designed to help professionals conduct business honestly and with integrity. ... A code of ethics, also referred to as an "ethical code," may encompass areas such as business ethics, a code of professional practice, and an employee code of conduct.



1. WHAT IS ETHICS

- **Why code of ethics is important for accountants?**

The Ethics code ensures that all members of the company demonstrate integrity and honesty in their work with clients and other professional relationships. The ethics code also prevents accountants from associating themselves with any information that could be misleading or damaging to the client or the organisation.

- **What is the Code of Ethics for accountants?**

The fundamental principles within the Code – integrity, objectivity, professional competence and due care, confidentiality and professional behaviour – establish the standard of behaviour expected of a professional accountant (PA) and it reflects the profession's recognition of its public interest responsibility.



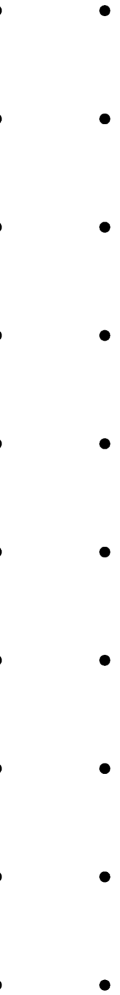
1. WHAT IS ETHICS

- **What is the purpose of the Code of Ethics for Accountants?**

This Code provides a framework to assist a professional accountant to identify, evaluate and respond to threats to compliance with the fundamental principles.

- **Is the code of ethics a moral or a law?**

If an accounting body or IFAC/IESBA give "ethical" guidelines that must be applied, is that not a law in itself?



1. WHAT IS ETHICS

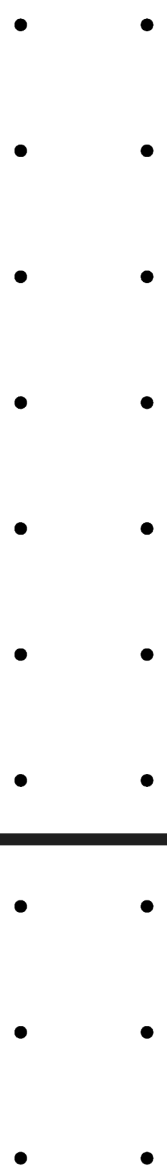
- **Which body sets code of ethics for professional accountants?**

In June 2005, the IESBA (formerly the Ethics Committee) issued a revised Code of Ethics for Professional Accountants. The revised Code establishes a conceptual framework for all professional accountants to ensure compliance with the five fundamental principles of ethics

- **What are the 5 codes of ethics? What does it mean and why is this applicable?**

1. *Integrity.*
2. *Objectivity.*
3. *Professional competence.*
4. *Confidentiality.*
5. *Professional behaviour.*

2. The Conceptual Framework



2. THE CONCEPTUAL FRAMEWORK

Professional accountants have a responsibility to always **act in the public interest**. Compliance with the fundamental principles help in upholding this responsibility. **However**, sometimes the circumstances in which an accountant operates in their day-to-day job can create impediments, or “threats,” to that **accountant’s ability to comply** with the fundamental principles.

What is the Conceptual Framework?

The conceptual framework is an **approach** that all professional accountants are required to apply to comply with the fundamental principles.

It involves **identifying, evaluating and addressing threats**. In doing so, professional accountants are required to exercise professional **judgment**; remaining alert for new information and changes in facts and circumstances; and using a reasonable and informed third party test.

Auditors and assurance practitioners are required to be independent when performing **audits, reviews and other assurance engagements**. In doing so, they too are required to apply the conceptual framework to identify, evaluate and address threats to independence. (Does this include us?)

2. THE CONCEPTUAL FRAMEWORK

What are Threats?

Threats to compliance with the fundamental principles are categorized as:

- Self-Interest

What's in it for me and does this impact my decision making?

Does the promise of a large bonus make you hesitant to investigate the emails that were uncovered?

Does it make you less objective? See no evil, hear no evil?

- Self-Review

Am I reviewing my own work or evaluating recommendations I previously made?

Were you involved in the development of the plan, and if so, would that threaten objectivity in evaluating the plan going forward?

- Advocacy

Am I at risk of promoting my client's or employer's position in a way that is inappropriate? Said another way, are you at risk of over-stating the legitimacy or value of the CEO's position/plan in spite of concerns over the bribery issue in order to promote the interests of the company?

2. THE CONCEPTUAL FRAMEWORK

What are Threats?

- Familiarity

Does my long-standing relationship with my client or employer threaten my decision-making or judgement? (Loyalty to a client vs public responsibility)

- Intimidation

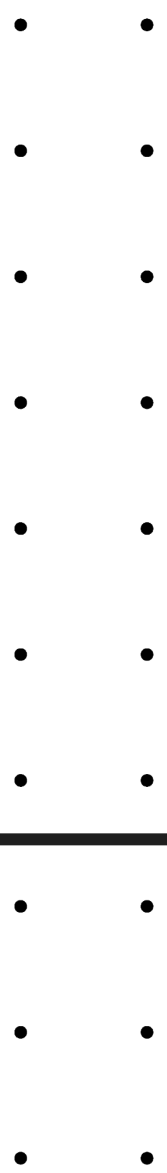
Do I feel threatened in any way with respect to performing my job in a diligent, professional or objective way?

Context is important.

As part of identifying threats, professional accountants are required to understand the specific facts and circumstances, including any professional activities, interests, and relationships that might compromise compliance with the fundamental principles.

- *But who determines the context?*
- *Isn't this contradicting the "framework"?*
- *Companies vs SME (context)*

3. Responding to NOCLAR



3. RESPONDING TO NOCLAR

NO n Compliance with Law And Regulations

What is it?

Responding to Non-compliance with Laws and Regulations is an international ethics standard for auditors and other professional accountants (PAs). It sets out a first-of-its-kind framework to guide PAs in what actions to take in the public interest when they become aware of a potential illegal act, known as non-compliance with laws and regulations, or NOCLAR, committed by a client or employer.

Why is it important?

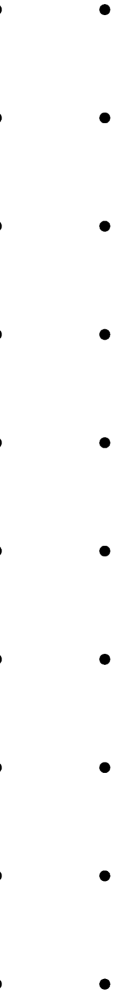
As a set of ethical standards with global reach, the IESBA Code of Ethics for Professional Accountants (the Code) plays a unique role in supporting the accountancy profession in acting in the public interest.

- The standard will stimulate greater accountability among organizations and strengthen the reputation of the profession.*
- The accountancy profession to play a greater role in the global fight against NOCLAR, such as financial fraud, money laundering, and corruption.*

3. RESPONDING TO NOCLAR

What outcomes is the standard seeking to achieve?

- **Enhanced ethical conduct**
 - *placing renewed emphasis on the roles of management*
 - *increases awareness*
- **Protection for stakeholders and *general public***
 - *proactive role in responding to NOCLAR*
- **Enhanced role and value of the *accountancy profession***
 - *Enables the profession to play a greater role in the fight against significant NOCLAR*
 - *Enhances the profession's reputation*



3. RESPONDING TO NOCLAR

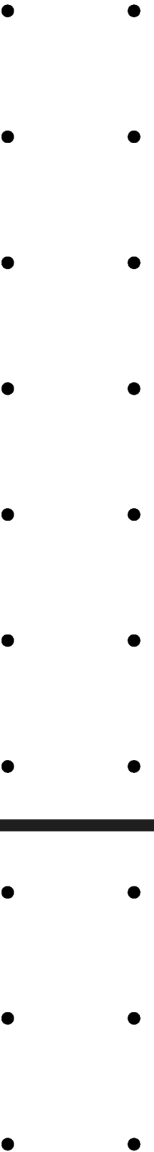
When does it apply?

- any act of omission or commission, intentional or unintentional, committed by a client or employer, including by management or by others working for or under the direction of the client or employer, which is contrary to prevailing laws or regulations.
- The laws and regulations covered that directly affect the client's or the employing organization's financial statements or its business in a material or fundamental way.

Examples of the range of laws and regulations covered include those that address:

MONEY LAUNDERING PUBLIC HEALTH AND SAFETY
SECURITIES MARKETS BRIBERY DATA PROTECTION
FRAUD CORRUPTION FINANCIAL PRODUCTS
FINANCIAL SERVICES BANKING PROCEEDS OF CRIME
SECURITIES TRADING ENVIRONMENTAL PROTECTION
TAX AND PENSION LIABILITIES TERRORIST FINANCING

4. Whistleblowing



4. WHISTLEBLOWING

A whistleblower (whistle-blower or whistle blower) is a person who exposes any kind of information or activity that is deemed illegal, dishonest, or not correct within an organisation that is either private or public.

The information of alleged wrongdoing can be classified in many ways: violation of company policy/rules, law, regulation, or threat to public interest/national security, as well as fraud, and corruption.

Those who become whistleblowers can choose to bring information or allegations to surface either internally or externally. Internally, a whistleblower can bring his/her accusations to the attention of other people within the accused organisation.

Externally, a whistleblower can bring allegations to light by contacting a third party outside of an accused organisation. He/She can reach out to the media, government, law enforcement, or those who are concerned.

Your responsibility as a BAP(SA) are legally required to report any violation of the law, regulations or threat to public interest, as well as fraud, and corruption to:

- SARS – Tax Administration Act 28 of 2011
- Reportable irregularities (IAS)/s 90 of the Companies Act

4. WHISTLEBLOWING

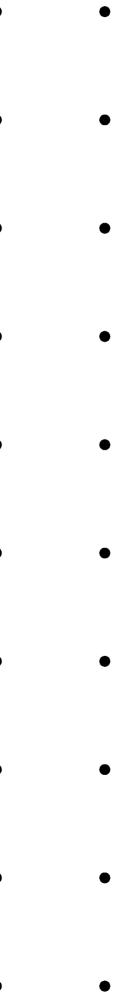
Legislation protecting whistleblowers

In South Africa the act that protects whistleblowers is called the Protected Disclosures Act 26 of 2000.

The SA government has indicated its support for the concept of whistle blowing and acknowledged the need to offer legal protection to whistle blowers with the introduction of The Protected Disclosures Act, aptly dubbed the Whistle Blowers Act.

The Act makes provision for employees to report unlawful or irregular conduct by employers and fellow employees, while providing for the protection of employees who blow the whistle. The Act makes provision for the following:

- Employees to report unlawful or irregular conduct by employers and fellow employees;
- Protection of employees who blow the whistle from “occupational detriment” by employers when making certain “protected disclosures



4. WHISTLEBLOWING

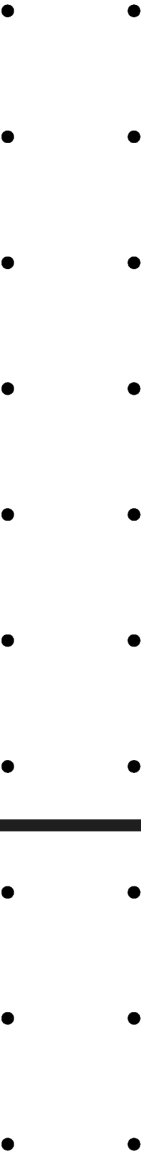
In terms of the Act, the “occupational detriment” from which the whistle blower is protected is:

- Being subjected to any disciplinary action;
- Being dismissed, suspended, demoted, harassed or intimidated;
- Being transferred against his or her will;
- Being refused transfer or promotion;
- Being subjected to a term or condition of employment or retirement which is altered, or kept altered, to his or her disadvantage;
- Being refused a reference, or being provided with an adverse reference, from his or her employer;
- Being denied appointment to any employment, profession or office;
- Being threatened with any of the actions mentioned above; or
- Being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security.

Are you as an accountant protected as a whistleblower?

Is this not a breach in confidentiality?

5. Ethics duties in SAIBA's Framework



5. ETHICS DUTIES IN SAIBA'S FRAMEWORK

Responsibility of accountant towards auditors relating to reportable irregularities

APPROPRIATE FURTHER ACTION:

Business Accountants in Practice

- Withdraw from the engagement and the professional relationship OR Resign from the employing organisation
- Disclose the matter to an appropriate authority **even when there is no legal or regulatory requirement** to do so

Other Business Accountants

- Inform the management of the parent entity of the matter

One or a combination of possible further actions may be appropriate

In making the decision, the accountant 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 SAIBA.

5. ETHICS DUTIES IN SAIBA'S FRAMEWORK

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

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

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**



5. ETHICS DUTIES IN SAIBA'S FRAMEWORK

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

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
- Bribery for purposes of securing large contracts
- A matter that threatens the entity's license to operate
- Products that are harmful to public health or safety
- Promoting a scheme to evade taxes (*VAT reconciliations?*) *Whistleblowing towards SARS?*

5. ETHICS DUTIES IN SAIBA'S FRAMEWORK

Consider a forensic investigation

- What is the difference between an audit and a forensic investigation?
- Is a forensic investigation a legal action?
- Can the auditor be the forensic officer in a forensic investigation?
- Who qualifies as a forensic investigator?

BAP(SA): Determine whether further action is needed (and nature and extent - context)

Consider

- Nature, cause, circumstances and extent of the matter

Conclude

- No further action is required
- Further action is required

Documentation

- Accountant is encouraged to document (unavoidable)



5. ETHICS DUTIES IN SAIBA'S FRAMEWORK

Exceptional circumstances (override)

- the accountant may become aware of actual or intended conduct
- that the 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 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.
- 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?

6. Loyalty to a client vs public responsibility



6. Loyalty to a client vs public responsibility

Responsibility towards a client or the public

- From A SAIBA's (BAP or BA) point of view
- From the external auditors point of view
- From governments point of view

Ethical behaviour from within a practise

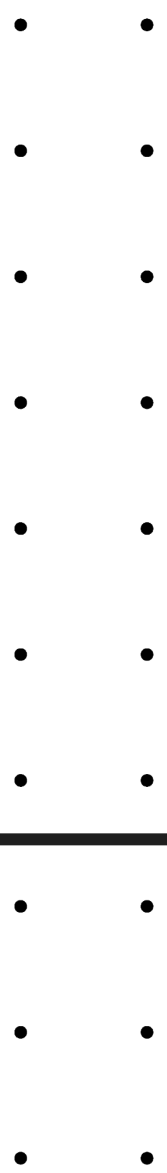
- Procedures when taking over a new client
- Procedures when letting a client go

Procedures when reporting a client

- Parties involved
- Confidentiality

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7. Case Study



7. CASE STUDY

_____ & ASSOCIATES

FOR ATTENTION: MR. **EXTERNAL AUDITOR**

Dear Sir,

R/E: ABC (PTY) LTD / ANNUAL FINANCIAL STATEMENTS (AFS) AND RECONCILIATIONS

I refer to the above mentioned and our meeting on (date) at your premises, regarding this matter.

The following are some of the information/clarifications we urgently need before more discussions will follow with the relevant parties involved:

Re the appointed **auditors, Accounting Officers** (*annual reporting*), **accounting services** (*operational and monthly reporting*) and the applicable dates of these appointments:

- The AFS on 29 February 2012 indicates “**Mr. accountant**” was still appointed and he clearly states in his “report” this appointment and duties was based on the Companies Act of 2008. (refer to attachment 1)
- In the next financial year, you were appointed. Why did “**Mr. accountant**” resign or was this a request from the director of the company?
- When was this decided and what was the date this decision came into effect?
 - Please provide us with a copy of the letter you wrote to “**Mr. accountant**” informing him of your involvement and whether there were any professional objections regarding your appointment.

7. CASE STUDY

- According to the memorandum of agreement, signed on 16 November 2010, _____ Financial Services CC (owned by “Mr. accountant”) was appointed and this agreement was cancelled on 3 August 2015.
 - During this period, “Mr. accountant” performed accounting services (monthly services as well as annual responsibilities) as stipulated in this agreement. Are you aware of any amendments made to this agreement? (considering your appointment and the auditor’s responsibilities from 2012/2013 and thereafter)
 - What was the responsibilities, duties and involvement of “Mr. accountant” when he assisted you with the annual financial statements you compiled from 2013-2015?

Change of the financial year end of the company

- As discussed during our meeting you weren’t aware of this change nor possible reasons as to why the date of the financial year end changed even though this was done during the financial year you were the appointed auditor.
- “Mr. (only) director” wasn’t aware of this nor discussed with him.
 - Can you please assist in this matter as to why this was done and by whom?

7. CASE STUDY

Annual financial statements: 2012 and 2013 (attachments 2 and 3)

- As discussed in our meeting, we are unable to reconcile and finalize cash received, petty cash and bank deposits. Mrs. **financial manager** hasn't responded to any of our various requests to assist in this matter and these balances does not reflect in the AFS.
- During our meeting, you pointed out that any cash that isn't accounted for had to be rectified with a journal entry and if this was the case, you would have been able to detect any possible

irregularities. With this being said, can you please give us possible reasons regarding the following balances included in the AFS:

- *I refer to the figures on 29 February 2012 (attachment 2) and the comparative figure on the same date (2012) (attachment 3). Some of the following figures*
 - *Inventory,*
 - *long term borrowings,*
 - *Trade and other payables.*

7. CASE STUDY

Annual financial statements: Discount allowed for cash - 2011 to 2014 (attachments 4 and 5)

- I refer to the overhead expense “discount allowed for cash” as per the financial statements **2011-2014**:
 - Mr. **ONLY DIRECTOR** can't help us and says the company doesn't give any discount for cash payments.
 - Why would this increase so dramatically **with more than R220k during the 2012 financial year, R242,367 in 2013 and decreases dramatically with more than R120k in 2014?**
- *Can you please supply us with the **ledger accounts for the respective years and the clients to whom this discount was allocated to?***

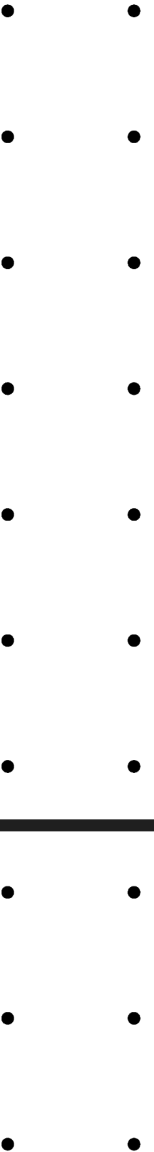
All the above matters are mainly caused because we weren't able to get any information or assistance from Me. **FINANCIAL MANAGER** after numerous attempts via various channels.

_____ the instructions from our attorneys (see attachment 6) and Mr. **INVESTIGATION OFFICER** is to **proceed with criminal charges and to subpoena the accountant/auditor to finalize the above mentioned and various other matters**. I however would prefer to avoid this if possible and to do that, we ask that you consult with Mr. **PROFESSIONAL ACCOUNTANT** and Me. **FINANCIAL MANAGER** and we can arrange a meeting with yourself, Me. **FINANCIAL MANAGER** and Mr. **PROFESSIONAL ACCOUNTANT**.

I sincerely hope that this can be arranged, and we can continue this process **without involving any attorneys**.

Kind regards,

8. Practice Tools



8. PRACTICE TOOLS

Practice Tools for Business Accountants in Practice

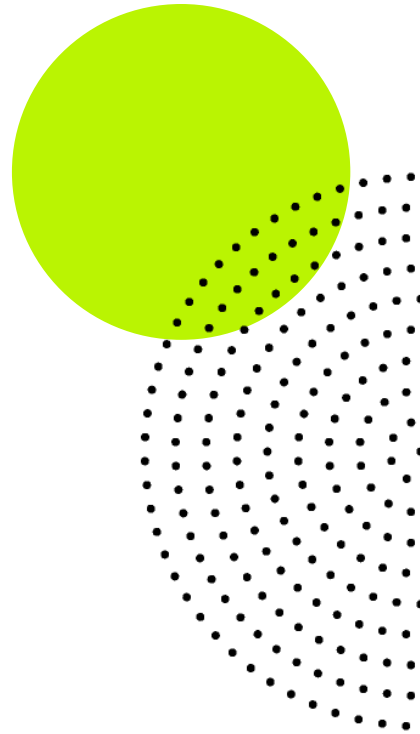
- Example of a letter from a Practitioner to a client to adjust unethical behaviour/transactions
- Example of a letter from a Practitioner to a client to end services due to unethical behaviour/transactions
- Checklist for a Practitioner before accepting a client to address ethical issues
- Checklist for a Practitioner to review current client regarding ethical issues
- Threats and Safeguard Decision Framework for a practitioner
- Example of a letter from a Practitioner to the directors of the company to confirm director's responsibility to self-regulate and reference to relevant regulations
- Checklist for when Practitioners will be held accountable.
- Checklist for when Practitioners should report to which authorities/Regulators

QUESTIONS & ANSWERS

Email questions to:

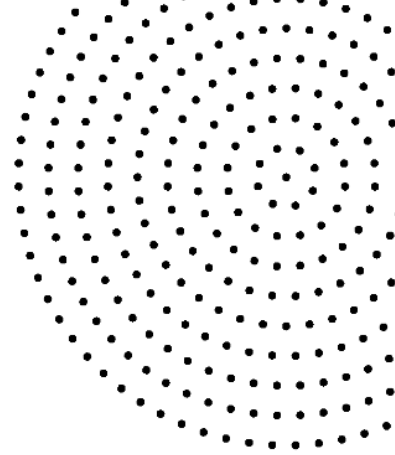
technical@saiba.org.za

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



THANK YOU

For joining us for the event.
Stay In touch.



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