

# Reporting Requirements Relating to Fraud and NOCLAR

Presenter: **Nestene Botha (CA)SA**

# Presenter

## Nestene Botha (CA)SA

- Explore ProTech Entrepreneurial Haven (Co-Founder)
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# Quote

*"Integrity is doing the right thing, even when no one is watching." - C.S. Lewis*

# COURSE OUTLINE

# Learning Outcomes

## By the end of this webinar you will:

- Have an understanding of the ethical reporting requirements with regards to fraud and NOCLAR
- Be able to find the necessary resources to reference when becoming aware of fraud or NOCLAR in practice
- Be able to chart a course of action when becoming aware of fraud or NOCLAR in practice

# Learning Outcomes

- For further guidance attend:

[Ethics, Independence and NOCLAR - Policies, Procedures and Checklist for Practical Implementation - 15 March 2023](#)

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# MODULE 1: INTRODUCTION

# INTRODUCTION

- The NOCLAR provisions affect all PAs,
  - whether in public practice providing (any) professional services to clients,
  - or whether in business carrying out professional activities for an employing organisation.
- Section 260 and section 360 of the SAICA Code set out the PA's responsibilities (in business or in public practice, respectively) in responding to NOCLAR or suspected NOCLAR.

# INTRODUCTION

- The NOCLAR provisions affect all PAs,
  - whether in public practice providing (any) professional services to clients,
  - or whether in business carrying out professional activities for an employing organisation.
- Section 260 and section 360 of the SAICA Code set out the PA's responsibilities (in business or in public practice, respectively) in responding to NOCLAR or suspected NOCLAR.

# INTRODUCTION

- They establish a comprehensive response framework that guides the PA in terms of the factors to consider and the steps to be taken when he/she becomes aware of NOCLAR or suspected NOCLAR.
- The PA's objective is to alert management and, where applicable, those charged with governance (TCWG) about the matter to seek to enable them to take appropriate action to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance, or deter the commission of the non-compliance where it has not yet occurred.

# INTRODUCTION

- It is important to note that it is, and remains, the responsibility of the client's or the employing organisation's management, with the oversight of TCWG, to ensure compliance with relevant laws and regulations.
- The PA is also required to determine, in the circumstances, whether further action is needed in the public interest.
- The SAICA Code is clear that a PA has to comply with the law and should not take any action that is contrary to the law.

# INTRODUCTION

- This would include considering:
  - whether specific legislation in the circumstances ***already imposes a reporting obligation,***
  - whether there are any laws or regulations that may ***preclude the reporting of a matter*** and
  - whether there will be ***protection for the PA*** from criminal, civil or professional liability.

# INTRODUCTION

- Further action could include, among other actions,
  - the reporting of a matter to an appropriate authority under the appropriate circumstances,
  - despite the absence of a legal obligation to do so, and
  - without being limited by the ethical duty of confidentiality.

# INTRODUCTION

- Disclosing a matter to an appropriate authority would be at *the end stage* of the process in relation to serious identified or suspected NOCLAR, *after consideration of a range of factors*, including the appropriateness of the response of management and, where applicable, TCWG.



# INTRODUCTION

- Be aware of the overall context and scope of requirements
- Step 1 – Becomes aware of NOCLAR or suspected NOCLAR
- Step 2 – Obtain an understanding of the matter
- Step 3 – Discuss the matter
- Step 4 – Determine whether further action is needed
- Step 5 – If applicable, decide on appropriate further action
- Step 6 – Documentation
- Be aware of the exceptional circumstances override

# INTRODUCTION

## Section 260

Section 260 of the SAICA Code, which deals with the responsibilities of SAICA members and associates in business in responding to noncompliance with laws and regulations.

**Senior Accountant in Business**

**Accountant in Business**

## Section 360

Section 360 of the SAICA Code, which deals with the responsibilities of SAICA members and associates in public practice in responding to non-compliance with laws and regulations.

**Auditor**

**Public Practice, not Auditor**

## **MODULE 2**

# **STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED NOCLAR**

# STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED NOCLAR

Take steps to comply with the applicable responsibilities under the Code on a ***timely*** basis, having regard to the PA's understanding of the nature of the matter and the ***potential harm*** to the interests of the entity, investors, creditors, employees, employing organisation or the general public.

Consider the ***firm policies and methodologies*** or ***internal protocols and procedures***.

Comply with applicable laws and regulations.

Continue to consider whether there are any other provisions of section 260 or 360 that needs to be complied with.

# STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED NOCLAR

**A PAIPP engaged by a client to perform an audit of financial statements (an audit)**

**Auditor**

The auditor shall, parallel to his/her responsibilities under the Code, also comply with ISA 250 (Revised) (and other ISAs, as relevant to the audit) in performing the audit of financial statements.

**A PAIPP engaged to provide any other professional service/(s) (other than an audit of financial statements) to a client**

**Public Practice, not Auditor**

The PA shall, parallel to his/her responsibilities under the Code, also comply with any other standards or pronouncements applicable to the given engagement, e.g. ISRE 2400 (Revised) in the case of performing a review of financial statements.



# STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED

## NOCLAR

**A Senior PAIB, i.e. employed by an organisation in a position or at a level that meets the definition of Senior PAIB**

**Senior Accountant in Business**

Senior PAIBs, being part of those within an organisation that can exert significant influence over or take decisions regarding the employing organisation's resources, have a responsibility to ensure that the organisation's activities are conducted in accordance with laws and regulations and, as applicable, exercise oversight in this regard.

**Other PAIB, i.e. employed by an organisation other than in a position or at a level of Senior PAIB**

**Accountant in Business**

Other PAIBs, to the extent applicable to their role and function within the employing organisation, are required to comply with laws and regulations and thereby contribute to the organisation's overall compliance. They are also required to account to their superiors in this regard.

## **MODULE 3**

### **STEP 2 – OBTAIN AN**

# **UNDERSTANDING OF THE MATTER**

# STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED NOCLAR

## Auditor

The auditor ***shall obtain*** an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

Considerations pertaining to the laws and regulations that are applicable to the circumstances, and the potential consequences of the NOCLAR for the entity, investors, creditors, employees or the general public provide further context.

Apply knowledge, professional judgement and expertise (but not beyond what is expected from an auditor in the circumstances).

May decide to consult on a confidential basis with others in the firm or a professional body or with legal counsel.



# STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED NOCLAR

## Public Practice, not Auditor

The PA shall ***seek to obtain*** an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

Considerations pertaining to the laws and regulations that are applicable to the circumstances, and the potential consequences of the NOCLAR for the entity, investors, creditors, employees or the general public provide further context.

Apply knowledge, professional judgement and expertise (but not beyond what is expected from a PA in the circumstances).

May decide to consult on a confidential basis with others in the firm or a professional body or with legal counsel.

# STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED

## NOCLAR

### Senior Accountant in Business

The senior PA ***shall obtain*** an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

In addition, paragraph R260.12 requires that the PA's understanding includes application of the relevant laws and regulations to the circumstances, and the potential consequences of the NOCLAR for the employing organisation, investors, creditors, employees or the general public.

Apply knowledge, professional judgement and expertise (but not beyond what is expected from a PA in the circumstances).

May decide to consult on a confidential basis with others within the employing organisation or a professional body or with legal counsel.

# STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED

## NOCLAR

### Accountant in Business

The PA ***shall seek to obtain*** an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

Considerations pertaining to the laws and regulations that are applicable to the circumstances, and the potential consequences of the NOCLAR for the employing organisation, investors, creditors, employees or the general public provide further context.

Apply knowledge, professional judgement and expertise (but not beyond what is expected from a PA in the circumstances).

May decide to consult on a confidential basis with others within the employing organisation or a professional body or with legal counsel.

# STEP 1 – BECOMES AWARE OF NOCLAR OR SUSPECTED NOCLAR

**Auditor**

**Public Practice, not Auditor**

If at any time during the course of obtaining an understanding, or seeking to obtain an understanding of the matter (as applicable to the category of PAIPP), the PA determines that the matter does not represent NOCLAR or suspected NOCLAR within the scope of section 260 or 360, the PA is not required to pursue the matter further in terms of the Code.

**Senior Accountant in Business**

**Accountant in Business**

## **MODULE 4**

# **STEP 3 – DISCUSS THE MATTER**



# DISCUSS THE MATTER

## Auditor

Discuss the matter with the appropriate level of management and, where appropriate, TCWG.

The discussion serves to clarify the auditor's understanding about the matter and its potential consequences, and may prompt management or TCWG to investigate the matter.

### **The auditor:**

- Decides on the appropriate level of management with whom to discuss the matter (refer to paragraph 360. 11 A2 – A3);
- Advises them to take appropriate and timely actions, if they have not already done so; and
- Considers whether the client's management and TCWG understand their legal or regulatory responsibilities with respect to the NOCLAR.

# DISCUSS THE MATTER

## Auditor

If not, the auditor may suggest appropriate sources of information or recommend that they obtain legal advice.

“Appropriate and timely actions” refer to such actions as may be required to rectify, remediate or mitigate the consequences of the NOCLAR; or deter the commission of the NOCLAR if it has not yet occurred; or disclose the matter to an appropriate authority where required by law or regulation, or where considered necessary in the public interest.

If the client is a component in a group and the group financial statements are audited, the PA must also comply with paragraphs R360.16 – 360.18 A1.

# DISCUSS THE MATTER

## Auditor

The PA's responsibilities in this regard are dependent on whether:

- The PA is the component auditor performing work on the financial information related to a component of the group, or auditing the financial statements of a component of the group (paragraph R360.16 – 360.16 A1); or
- The PA is the group auditor; i.e. the group engagement partner (paragraph R360.17 – 360.18 A1)



# DISCUSS THE MATTER

## Public Practice, not Auditor

Discuss the matter with the appropriate level of management and, if the PA has access to them and where appropriate, TCWG.

The discussion serves to clarify the PA's understanding about the matter and its potential consequences, and may prompt management or TCWG to investigate the matter.

The PAIPP (other than the auditor):

- Decides on the appropriate level of management with whom to discuss the matter (refer to paragraph 360.30 A2).

# DISCUSS THE MATTER

## Public Practice, not Auditor

If the PA is performing a non-audit service for a client whose financial statements are subject to an audit, the PA must also comply with paragraphs R360.31 – 360.35 A1 of the Code.

The PA's responsibilities in this regard are dependent on whether:

- The client is an audit client of the PA's firm, or a component of an audit client of the firm (paragraphs R360.31 and 360.35 A1); or
- The client is an audit client of a network firm, or a component of an audit client of a network firm (paragraphs R360.32, 33 and 360.34 A1); or
- The client is an audit client of another firm (paragraph R360.33 – 360.35 A1)

# DISCUSS THE MATTER

## Senior Accountant in Business

Subject to the employing organisation's internal protocols and procedures for dealing with such matters, discuss the matter with the PA's immediate superior (if any).

The discussion serves to clarify the senior PAIB's understanding about the matter and to enable a determination to be made about how the matter should be addressed.

The senior PAIB:

- Discusses the matter with the next higher level of authority within the employing organisation, if the immediate superior appears to be involved in the matter; and

# DISCUSS THE MATTER

## Senior Accountant in Business

Takes appropriate steps to:

- Have the matter communicated to TCWG to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfil their responsibilities;
- Comply with applicable laws and regulations, including provisions governing the reporting of NOCLAR to an appropriate authority;
- Have the consequences of the NOCLAR rectified, remediated or mitigated;
- Reduce the risk of reoccurrence; and
- Seek to deter the commission of the NOCLAR if it has not yet occurred.

# DISCUSS THE MATTER

## Senior Accountant in Business

- If the employing organisation's financial statements are subject to an audit,
- the senior PAIB shall determine whether disclosure of the matter to the external auditor is needed pursuant to his/her duty or legal obligation to provide all information necessary to enable the auditor to perform the audit (paragraph R260.15 – 260.15 A1).



# DISCUSS THE MATTER

## Accountant in Business

Subject to the employing organisation's internal protocols and procedures for dealing with such matters, inform an immediate superior to enable the superior to take appropriate action.

The other PAIB is only required to inform an immediate superior to enable that superior to take appropriate action.

The other PAIB:

- Informs the next higher level of authority within the employing organisation, if the PA's immediate superior appears to be involved in the matter.

## **MODULE 5**

# **STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED**

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Auditor

Exercise professional judgement and determine whether further action is needed in the public interest (and, if applicable, the nature and extent of further action).

The main considerations (MCs) in making this determination, are:

MC1 The appropriateness of the response of management and, where applicable, TCWG

MC2 Matters that characterise the nature, cause, circumstances and extent of the NOCLAR



# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Auditor

Exercise professional judgement and determine whether further action is needed in the public interest (and, if applicable, the nature and extent of further action).

The main considerations (MCs) in making this determination, are (continued):

MC3 Take into account how a reasonable and informed third party would likely evaluate the NOCLAR and the PA's determination of the need for, and nature and extent of, further action.

These considerations are addressed in paragraphs R360.19 - 21.  
Consider all relevant factors individually and collectively.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

**Auditor**

## MC1

Assess the appropriateness of the response of management and, where applicable, TCWG.

Factors to consider in assessing the appropriateness of the response (these are the factors mentioned in paragraph 360.19 A1):

- The response is timely
- The PA should have regard to the requirements of any applicable law or regulation that requires a specific response and/or the nature of the matter and its possible adverse consequences to the interests of the entity, investors, creditors, employees or the general public.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

## MC1 (continued)

- The NOCLAR has been adequately investigated
- Action has been, or is being, taken to rectify, remediate or mitigate the consequences of the matter; or where the NOCLAR has not yet occurred, to deter the commission thereof.
- Appropriate steps have been, or are being taken, to reduce the risk of re-occurrence

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

**Auditor**

## MC1 (continued)

- The NOCLAR has been disclosed to an appropriate authority where appropriate (i.e. when required in terms of applicable law or regulation) and, if so, whether the disclosure appears adequate.

## MC2

- Consider the effect of matters that characterise the nature, cause, circumstances and extent of the NOCLAR.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

## MC2 (continued)

- Consider the effect of matters that characterise the nature, cause, circumstances and extent of the NOCLAR.
- Various factors play a role, including:
  - The legal and regulatory framework
  - The urgency of the matter
  - The pervasiveness of the matter throughout the client

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

## MC2 (continued)

- Whether the PA continues to have confidence in the integrity of management and, where applicable, TCWG
- Whether the NOCLAR is likely to recur
- Whether there is credible evidence of actual or potential ***substantial harm*** to the interests of the entity, investors, creditors, employees or the general public



# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

Public Practice, not Auditor

## MC2 (continued)

- For a PAIPP paragraph 360.5 A3 states:
- For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms.
- Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.



# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

Public Practice, not Auditor

## MC2 (continued)

- “These parties” refer to the affected stakeholders in the circumstances, namely, the entity, investors, creditors, employees or the general public.
- Reference can also be made to paragraph 360.25 A2 – A3 for further context.
- Although this is part of the paragraphs that deal with the possible further action of disclosure of a matter to an appropriate authority (later on in the response framework – step 5), it reflects on the potential harm to affected stakeholders, and the examples provided would imply that when the harm is serious, such action may be required.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

Public Practice, not Auditor

## MC2 (continued)

- Hence, paragraph 360.25 A2 – A3 serves to provide further context in terms of when potential harm is substantial/serious.

### **The examples included are:**

- The entity is engaged in bribery (for example, of local or foreign government officials for purposes of securing large contracts).
- The entity is regulated and the matter is of such significance as to threaten its license to operate.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

**Auditor**

**Public Practice, not Auditor**

## MC2 (continued)

**The examples included are:**

- The entity is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the entity's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the entity.
- The entity is promoting a scheme to its clients to assist them in evading taxes.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

Public Practice, not Auditor

## MC2 (continued)

- The Code only provides examples, which are not intended to provide a complete list of actions that would result in serious adverse consequences/substantial harm.
- The PA is required to weigh all the specific facts and information available concerning the actual or potential harm to the entity, investors, creditors, employees or the general public (also taking into account what could reasonably be expected of the PAIPP in the circumstance, i.e. being an auditor or a PAIPP other than an auditor).

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

Public Practice, not Auditor

## MC2 (continued)

- During this step 4 of the response framework, the extent of the actual or potential harm is not meant as a threshold, but as a consideration that will affect the PA's determination/consideration of whether further action is needed, taking into account all relevant factors in the circumstances.



# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

## MC3

- Exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the auditor at the time, would be likely to conclude that the auditor has acted appropriately in the public interest.
- **Further context to this evaluation:**
  - It is a consideration at the time that the auditor made his/her decision (it is not a hindsight judgement).

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

Auditor

## MC3

- **Further context to this evaluation (continued):**
  - It is intended to bring an essential element of objectivity to the auditor's determination around further action.
  - Also take into account the auditor's overall objectives as described in paragraph 360.4.



# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

**Auditor**

## MC3

### ● **Conclude**

- After considering MC1 to MC3 (above), as applicable, the auditor reaches a conclusion:
  - No further action is required.
  - Conclude the matter by complying with the relevant documentation requirements in paragraphs R360.28 – 360.28 A1 – refer to step 6, below.  
OR
  - Further action is required in the public interest.
  - Proceed to step 5 and step 6 below.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

**Auditor**

## MC3

### ● **Conclude**

- After considering MC1 to MC3 (above), as applicable, the auditor reaches a conclusion:
- No further action is required.
- Conclude the matter by complying with the relevant documentation requirements in paragraphs R360.28 – 360.28 A1 – refer to step 6, below.  
OR
- Further action is required in the public interest.
- Proceed to step 5 and step 6.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Public Practice, not Auditor

- Exercise professional judgement and consider whether further action is needed in the public interest (and, if applicable, the nature and extent of further action).
- The main considerations (MCs) in making this determination, are:

MC1 The appropriateness of the response of management and, where applicable, TCWG

MC2 Matters that characterise the nature, cause, circumstances and extent of the NOCLAR

MC3 [No reference to “a reasonable and informed third party” in this instance]

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Public Practice, not Auditor

These considerations are addressed in paragraphs R360.36 – 360.36 A1.

Consider all relevant factors individually and collectively.

### MC1

Consider the appropriateness and timeliness of the response of management and, where applicable, TCWG (one of the factors mentioned in paragraph 360.36 A1).

[This factor is not discussed further in this part of the Code. Remember, there is generally a lower level of expectation from the non-auditor PAIPP in terms of the extent of effort required, recognising that there may be limitations on access to information in these circumstances.]

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

**Public Practice, not Auditor**

## MC2

- Consider the effect of matters that characterise the nature, cause, circumstances and extent of the NOCLAR.
- **Various factors play a role, including (remaining factors mentioned in paragraph 360.36 A1):**
  - The legal and regulatory framework
  - The urgency of the matter
  - The involvement of management or TCWG in the matter
  - The likelihood of substantial harm to the interests of the entity, investors, creditors, employees or the general public



# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Senior Accountant in Business

- Exercise professional judgement and determine whether further action is needed in the public interest (and, if applicable, the nature and extent of further action).
- **The main considerations (MCs) in making this determination, are:**
  - MC1 The appropriateness of the response of the PA's superiors (if any) and TCWG
  - MC2 Matters that characterise the nature, cause, circumstances and extent of the NOCLAR
  - MC3 Take into account how a reasonable and informed third party would likely evaluate the NOCLAR and the PA's determination of the need for, and nature and extent of, further action

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Senior Accountant in Business

- These considerations are addressed in paragraphs R260.16 – 18.
- Consider all relevant factors individually and collectively.

### MC1

- Assess the appropriateness of the response of the PA's superiors (if any) and TCWG.

**Factors to consider in assessing the appropriateness of the response (these are the factors mentioned in paragraph 260.16 A1):**

- The response is timely



# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Senior Accountant in Business

**Factors to consider in assessing the appropriateness of the response (these are the factors mentioned in paragraph 260.16 A1) (continued):**

- The response is timely
- They have taken or authorised appropriate action to seek to rectify, remediate or mitigate the consequences of the matter; or where the NOCLAR has not yet occurred, to avert it
- The NOCLAR has been disclosed to an appropriate authority where appropriate (i.e. when required in terms of applicable law or regulation) and, if so, whether the disclosure appears adequate

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Senior Accountant in Business

### MC2

- Consider the effect of matters that characterise the nature, cause, circumstances and extent of the NOCLAR.

**Various factors play a role, including (these are the factors mentioned in paragraph 260.17 A1):**

- The legal and regulatory framework
- The urgency of the matter
- The pervasiveness of the matter throughout the employing organisation

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Senior Accountant in Business

### MC2

Various factors play a role, including (these are the factors mentioned in paragraph 260.17 A1):

- Whether the PA continues to have confidence in the integrity of the PA's superiors and TCWG (paragraph 260.17 A2 provides examples of factors to consider in this regard)
- Whether the NOCLAR is likely to recur
- Whether there is credible evidence of actual or potential ***substantial harm*** to the interests of the employing organisation, investors, creditors, employees or the general public

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Senior Accountant in Business

### MC3

- Exercise professional judgement and 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 PA has acted appropriately in the public interest.

### **Further context to this evaluation:**

- It is a consideration at the time that the PA made his/her decision (it is not a hindsight judgement).

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Senior Accountant in Business

### MC3

#### Further context to this evaluation (continued):

- It is intended to bring an essential element of objectivity to the PA's determination around further action.
- Also take into account the PA's overall objectives as described in paragraph 260.4.

# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Senior Accountant in Business

### Conclude

- After considering MC1 to MC3, as applicable, the PA reaches a conclusion:
  - No further action is required.
    - Also consider paragraph 260. 23 A1 that encourages the PA to prepare and maintain certain documentation – refer to step 6, below.

OR

- Further action is required in the public interest.
  - Proceed to step 5 and step 6 below.



# STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

## Accountant in Business

- The other PAIB has no specific responsibility to determine whether further action is needed.
- However, the PA may in any event, in exceptional circumstances, decide that disclosure of the matter to an appropriate authority is an appropriate course of action.
- If the other PAIB has informed an immediate superior to enable the superior to take appropriate action, as discussed above, no further action is required.



## **MODULE 6**

**STEP 5 – IF APPLICABLE, DECIDE ON  
APPROPRIATE FURTHER ACTION**

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Auditor

- If the conclusion in step 4, above, is that further action is needed, the auditor considers whether to:
- [Further actions (FA) are addressed in paragraphs 360.21 A1 – R360.26]
- FA1 Withdraw from the engagement and the professional relationship where permitted by law or regulation.
- FA2 Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- The nature and extent of any further action is also affected by MC1-MC3.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Auditor

- As the consideration of the matter may involve complex analysis and judgement, the auditor may consider consulting internally, obtaining legal advice to understand his/her options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.
- Conclude the matter by complying with the relevant documentation requirements in paragraphs R360.28 – 360.28 A1.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Auditor

### FA1

- Withdraw from the engagement and the professional relationship where permitted by law or regulation.
- Note the following:
- This would not be a substitute for taking other actions that may be needed to achieve the auditor's objectives under section 360 (refer to paragraph 360.4); however, also consider whether the available courses of action may be limited by laws and regulations in the circumstances.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Auditor

### FA1

- Where the predecessor auditor has withdrawn from the client relationship as a result of a NOCLAR matter, the predecessor auditor shall, on request by the proposed successor auditor, provide all such facts and other information concerning the NOCLAR that, in the predecessor auditor's opinion, the proposed successor auditor needs to be aware of before deciding whether to accept the audit appointment, despite paragraph R320.8 of the Code (unless prohibited by laws or regulation).

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

**Auditor**

**Public Practice, not Auditor**

## **FA1**

- Generally, the PAIPP should ensure that the firm's client acceptance and continuance considerations are updated in relation to the NOCLAR provisions, including the above matters with respect to section 320 of the Code, Professional appointment.

## **Note:**

- In South Africa, the SAICA Code and the IRBA Code (applicable to registered auditors), have an additional requirement in section 320 (paragraph R320.6a SA), over and above what is required in terms of paragraph R320.8, above, and this section 360.



# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

**Auditor**

**Public Practice, not Auditor**

**FA1**

**Note:**

- In terms of paragraph R320.6a SA, where the proposed client refuses to give permission for the proposed PA to communicate with the existing PA, or fails to do so, the proposed PA shall decline the appointment, unless there are exceptional circumstances of which the proposed PA has full knowledge, and the proposed PA is satisfied regarding all relevant facts, by some other means.



# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

**Auditor**

## FA2

- Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- The purpose being to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

**Auditor**

## FA2

- Relevant factors to consider in determining whether to disclose a matter to an appropriate authority:

## **LAW OR REGULATION**

- Whether disclosure is prohibited by or would be contrary to law or regulation
- If disclosure is precluded, the PA would not pursue FA2 as a further action

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

**Auditor**

**FA2**

## **NATURE AND EXTENT OF THE ACTUAL OR POTENTIAL HARM**

- In step 4, above, the auditor considered, among other, whether there is credible evidence of actual or potential substantial harm to the entity, investors, creditors, employees or the general public.
- Disclosure to an appropriate authority only becomes a consideration if substantial harm is indicated in the circumstances.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

**Auditor**

**FA2**

## **EXTERNAL FACTORS**

Whether to disclose to an appropriate authority also depends on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

**Auditor**

**FA2**

## **EXTERNAL FACTORS**

Whether to disclose to an appropriate authority also depends on external factors such as:

- Whether there are actual or potential threats to the physical safety of the PA or other individuals

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Auditor

### FA2

#### EXTERNAL FACTORS

- If, after due consideration of the factors discussed above, the auditor determines that disclosure of the matter to an appropriate authority is an appropriate course of action:
- Such disclosure will not be considered a breach of the duty of confidentiality under section 114 of the Code.
- When making such disclosure, the auditor shall act in good faith and exercise caution when making statements and assertions.
- Also consider whether it is appropriate to inform the client of the auditor's intentions before disclosing the matter.



# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Public Practice, not Auditor

- If the conclusion in step 4, above, is that further action is needed, the PA considers whether to:
- [Further actions (FA) are addressed in paragraphs 360.36 A2 – R360.37, 360.39 A1]
- FA1 Withdraw from the engagement and the professional relationship where permitted by law or regulation
- FA2 Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Public Practice, not Auditor

- Note, further action may include either one or both of these actions.
- The nature and extent of any further action is also affected by MC1 and MC2.
- Although there is generally a lower level of expectation as compared to an auditor, the other PAIPP considers all relevant factors in the circumstances and may consider consulting internally, obtaining legal advice to understand the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Public Practice, not Auditor

### FA1

- Withdraw from the engagement and the professional relationship where permitted by law or regulation.
- [Section 360 provides no additional information in this instance]

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Public Practice, not Auditor

### FA2

- Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- The purpose being to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Public Practice, not Auditor

### FA2

**Relevant factors to consider in determining whether to disclose a matter to an appropriate authority:**

### **LAW OR REGULATION**

- Whether disclosure is prohibited by or would be contrary to law or regulation
- If disclosure is precluded, the PA would not pursue FA2 as a further action

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Public Practice, not Auditor

### FA2

#### LAW OR REGULATION

#### Other factors also mentioned for this category of PAIPP:

- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the NOCLAR
- Whether the purpose of the engagement undertaken by the PAIPP is to investigate potential non-compliance within the entity to enable it to take appropriate action.



# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

**Public Practice, not Auditor**

FA2

## **NATURE AND EXTENT OF THE ACTUAL OR POTENTIAL HARM**

- Disclosure to an appropriate authority only becomes a consideration if substantial harm is indicated in the circumstances

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Public Practice, not Auditor

### FA2

#### EXTERNAL FACTORS

- Section 360 does not specifically refer to the consideration of external factors for the other PAIPP
- It is implicit in the Code that the PA is permitted to evaluate and weigh all relevant factors in the circumstances, including his/her own personal position (including factors such as protection, threats, the legal and regulatory framework, etc.); i.e. considering the same external factors by analogy.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Public Practice, not Auditor

### FA2

- If, after due consideration of the factors discussed above, the PA determines that disclosure of the matter to an appropriate authority is an appropriate course of action:
  - Such disclosure will not be considered a breach of the duty of confidentiality under section 114 of the Code.
  - When making such disclosure, the PA shall act in good faith and exercise caution when making statements and assertions.
  - Also consider whether it is appropriate to inform the client of the PA's intentions before disclosing the matter.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

If the conclusion in step 4, above, is that further action is needed, the PA considers whether to:

- [Further actions (FA) are addressed in paragraphs 260.18 A1 – R260.21]
- FA1 Resign from the employing organisation.
- FA2 Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- FA3 Inform the management of the parent entity of the matter if the employing organisation is a member of a group.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

- Note, further action may include any one or combination of FA1, FA2 and FA3.
- The nature and extent of any further action is also affected by MC1-MC3.
- As the consideration of the matter may involve complex analysis and judgement, the senior PAIB may consider consulting internally, obtaining legal advice to understand his/her options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

### FA1

- Resign from the employing organisation.
- Note the following:
  - This would not be a substitute for taking other actions that may be needed to achieve the PA's objectives under section 260 (refer to paragraph 260.4); however, also consider whether the available courses of action may be limited by laws and regulations in the circumstances.



# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

### FA1

- [It is implicit in the Code that the senior PAIB is permitted to evaluate and weigh all relevant factors in the circumstances, including his/her own personal position (including factors such as protection, threats, the legal and regulatory framework, etc.).]
- [Again, the PA may consider consulting internally, obtaining legal advice or consulting on a confidential basis with a regulator or professional body.]

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

### FA2

- Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- The purpose being to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

### FA2

- Relevant factors to consider in determining whether to disclose a matter to an appropriate authority:

### **LAW OR REGULATION**

- Whether disclosure is prohibited by or would be contrary to law or regulation
- If disclosure is precluded, the PA would not pursue FA2 as a further action

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

### FA2

#### NATURE AND EXTENT OF THE ACTUAL OR POTENTIAL HARM

- Disclosure to an appropriate authority only becomes a consideration if substantial harm is indicated in the circumstances.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

### FA2

#### EXTERNAL FACTORS

- Whether to disclose to an appropriate authority also depends on external factors such as:
  - Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken
  - Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

### FA2

#### EXTERNAL FACTORS

- Whether to disclose to an appropriate authority also depends on external factors such as:
  - Whether there are actual or potential threats to the physical safety of the PA or other individuals



# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Senior Accountant in Business

### FA2

- If, after due consideration of the factors discussed above, the PA determines that disclosure of the matter to an appropriate authority is an appropriate course of action:
- Such disclosure will not be considered a breach of the duty of confidentiality under section 114 of the Code.
- When making such disclosure, the PA shall act in good faith and exercise caution when making statements and assertions.

# STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

## Accountant in Business

- The other PAIB has no specific responsibility to determine whether further action is needed.
- However, the PA may in any event, in exceptional circumstances, decide that disclosure of the matter to an appropriate authority is an appropriate course of action.

# **MODULE 7**

## **STEP 6 – DOCUMENTATION**

# STEP 6 – DOCUMENTATION

## Auditor

- In relation to NOCLAR that falls within the scope of section 360, the auditor is required to (paragraphs R360.28 – 360.28 A1):
- Comply with the documentation requirements under International Standards on Auditing (ISAs). This includes in particular the documentation requirements of ISA 250 (Revised), paragraph 30.
- **In addition, document:**
  - How management and, where applicable, TCWG have responded to the matter

# STEP 6 – DOCUMENTATION

## Auditor

- The courses of action the auditor considered, the judgements made and the decisions that were taken, having regard to the reasonable and informed third party perspective.
- How the auditor is satisfied that he/she has fulfilled the responsibility set out in paragraph R360.20; i.e. has appropriately determined, in light of the response of management and, where applicable, TCWG, whether further action is needed in the public interest.

## STEP 6 – DOCUMENTATION

### Public Practice, not Auditor

- In relation to NOCLAR that falls within the scope of section 360, the PAIPP (other than the auditor) is encouraged to have the following matters documented (paragraph 360.40 A1):
  - The matter
  - The results of discussions with management and, where applicable, TCWG and other parties
  - How management and, where applicable, TCWG have responded to the matter
  - The courses of action the PAIPP considered, the judgements made and the decisions that were taken



## STEP 6 – DOCUMENTATION

### Public Practice, not Auditor

- How the PAIPP is satisfied that he/she has fulfilled the responsibility set out in paragraph R360.36; i.e. has appropriately considered whether further action is needed in the public interest.

# STEP 6 – DOCUMENTATION

## Senior Accountant in Business

- In relation to NOCLAR that falls within the scope of section 260, the senior PAIB is encouraged to have the following matters documented (paragraph 260.23 A1):
  - The matter
  - The results of discussions with the PA's superiors, if any, and TCWG and other parties
  - How the PA's superiors, if any, and TCWG have responded to the matter
  - The courses of action the senior PAIB considered, the judgements made and the decisions that were taken

# STEP 6 – DOCUMENTATION

## Senior Accountant in Business

- How the senior PAIB is satisfied that he/she has fulfilled the responsibility set out in paragraph R260.17; i.e. has appropriately determined, in light of the response of the PA's superiors, if any, and TCWG, whether further action is needed in the public interest.

# STEP 6 – DOCUMENTATION

## Accountant in Business

- In relation to NOCLAR that falls within the scope of section 260, the other PAIB is encouraged to have the following matters documented (paragraph 260.27 A1):
  - The matter
  - The results of discussions with the PA's superior, management and, where applicable, TCWG and other parties
  - How the PA's superior has responded to the matter
  - The courses of action the PAIB considered, the judgements made and the decisions that were taken

**MODULE 8**  
**STEP 7 – EXCEPTIONAL**  
**CIRCUMSTANCES OVERRIDE**

# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

## Auditor

### Paragraph R360.27

- Applies when the auditor, in exceptional circumstances, becomes aware of actual or intended conduct that the auditor 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.
- Consider whether it would be appropriate to discuss the matter with management or TCWG.
- Exercise professional judgement.



# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

## Auditor

- The PA may decide to immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation (i.e. without going through the entire response process as described above).

# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

## Public Practice, not Auditor

- Paragraph R360.38
- Applies when the PA, in exceptional circumstances, becomes aware of actual or intended conduct that the PA 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.
- Consider whether it would be appropriate to discuss the matter with management or TCWG.
- Exercise professional judgement.

# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

## Public Practice, not Auditor

- The PA may decide to immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation (i.e. without going through the entire response process as described above).

# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

## Senior Accountant in Business

- Paragraph R260.22
- Applies when the PA, in exceptional circumstances, becomes aware of actual or intended conduct that the PA 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.
- Consider whether it would be appropriate to discuss the matter with management or TCWG.
- Exercise professional judgement.

# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

## Senior Accountant in Business

- The PA may decide to immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation (i.e. without going through the entire response process as described above).

# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

## Accountant in Business

- Paragraph R260.26 (and 260.20 A2 – A3) Although the other PAIB has no specific responsibility to determine whether further action is needed, the PA may, in exceptional circumstances, decide that disclosure of the matter to an appropriate authority is an appropriate course of action.
- If the PA does so pursuant to paragraph 260.20 A2 – A3, this will not be considered a breach of the duty of confidentiality under section 114 of the Code. When making such disclosure, the PA shall act in good faith and exercise caution when making statements and assertions.



# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

**Accountant in Business**

**Senior Accountant in Business**

**Auditor**

**Public Practice, not Auditor**

- Section 260 & 360 of the Code does not describe what exceptional circumstances are.
- The term is used in the context of “an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public”.
- Generally, it would appear that whether a circumstance is exceptional will depend on the context in which the NOCLAR arises.



# STEP 7 – EXCEPTIONAL CIRCUMSTANCES OVERRIDE

Accountant in Business

Senior Accountant in Business

Auditor

Public Practice, not Auditor

- What is “exceptional” is dependent on the context and therefore what is considered “exceptional” will vary depending on the circumstances.
- An exceptional circumstance is generally one which is unusual; out of the ordinary; the general rule does not apply to it; something uncommon or different; markedly unusual or specifically different.

# RESOURCES

- SAICA NOCLAR INFORMATION PACK

<https://www.saica.org.za/about/general/ethics/noclar>

- SAICA FRAUD INFORMATION PACK

<https://www.saica.co.za/Technical/Assurance/FraudandAuditorEthicsResources/tabid/4303/language/en-US/Default.aspx>

# QUESTIONS

**Thank you  
for your participation**