

# NOCLAR

SUPPLEMENTARY MATERIAL RELATED  
TO NON-COMPLIANCE WITH LAWS  
AND REGULATIONS (NOCLAR)

OVERVIEW AND SUMMARY OF THE RESPONSE  
FRAMEWORK IN TERMS OF THE NOCLAR  
PROVISIONS OF THE SAICA CODE OF  
PROFESSIONAL CONDUCT  
(NOVEMBER 2017)<sup>1</sup>



LAW

REQUIREMENTS



REGULATIONS



ETHICS

POLICIES



# INTRODUCTION

## PLEASE NOTE:

- Every effort has been made to ensure that the information in this document is complete and accurate. Nevertheless, information is given purely as guidance with respect to the subject matter and SAICA will have no responsibility to any person for any claim of any nature whatsoever which may arise out of or related to the contents of this document.
- The information provided in this document does not constitute legal advice and should be read in that context.
- Where the document suggests a particular view, such a view is based on SAICA's interpretation at that point in time, of the relevant laws, regulations, standards, codes and related pronouncements (as may be applicable). Although SAICA has consulted with respect to the overview and summary provided herein, other options or interpretations are also possible and a different view or approach may ultimately be followed in practice; for example, in instances where further guidance or clarification may be issued, or a regulator adopts a particular view or interpretation.
- Given that compliance with the NOCLAR provisions in the SAICA Code of Professional Conduct is highly fact specific and dependent on the circumstances of each case, it would be prudent for a member or associate or firm to seek appropriate legal or professional advice for their circumstances.
- This document is not a substitute for any laws and regulations that are relevant to the business of any particular entity, or to a SAICA member or associate for purposes of performing a given engagement, or in relation to his or her role within an employing organisation. Furthermore, it is not a substitute for the Pronouncements of SAICA, the Independent Regulatory Board for Auditors (IRBA), as well as those issued by the International Ethics Standards Board for Accountants (IESBA) and the International Auditing and Assurance Standards Board (IAASB).

In line with the changes to the International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants (IESBA Code), the SAICA Code of Professional Conduct (SAICA Code) was updated in December 2016 to include ethics requirements and guidance to assist members and associates in dealing with non-compliance with laws and regulations (NOCLAR). The NOCLAR provisions in section 260 and section 360 of the SAICA Code are effective as of 15 July 2017.

The SAICA Code is applicable to all SAICA members and associates; i.e. Chartered Accountants (CAs(SA)) and Associate General Accountants (AGAs(SA)), as well as trainee accountants under registered training contracts. Throughout this document CAs(SA) and AGAs(SA), as applicable, are generically referred to as **professional accountants (PA / PAs)** (this is the generic term that is used in the IESBA Code).

Furthermore, CAs(SA) who are registered as Registered Auditors (RAs) with the Independent Regulatory Board for Auditors (IRBA) are also required to comply with the IRBA Code of Professional Conduct for Registered Auditors (IRBA Code) and any further publications from the IRBA (information is available on the [IRBA NOCLAR webpage](#)). An RA also ensures that an audit of financial statements is planned and performed in accordance with International Standards on Auditing (ISAs).

**The aim of this supplementary material** is to provide an overview and summary of the response framework in terms of the NOCLAR provisions of the SAICA Code that may be used as a convenient reference to consider the context for and steps involved when a PA responds to NOCLAR or suspected NOCLAR. It addresses all

four categories of PAs in terms of sections 260 and 360 of the SAICA Code and enables a comparison between the different categories in terms of the various stages within the response framework.

This is supplementary material only and is not a substitute for the SAICA Code or the IRBA Code, as applicable (access the [SAICA Code](#) and the [IRBA Code](#)). SAICA members and associates are required to be familiar with and understand their responsibilities under the various Codes applicable to them and, for this purpose, they should always refer to the original text of the Codes concerned, since this is the authoritative text.

This supplementary material / summary document does not specifically address the PA's responsibilities to report reportable irregularities under the following legislation:

- Section 45 of the Auditing Profession Act (Act 26 of 2005)  
RAs can refer to the IRBA Revised Guide, Reportable Irregularities in terms of the Auditing Profession Act (on the [IRBA website](#)), as well as the IRBA, Frequently Asked Questions (FAQs) on NOCLAR for RAs (on the [IRBA NOCLAR webpage](#)).
- Section 29 of the Companies Regulations (2011)  
Members and associates can refer to the SAICA Circular 3/2017, Engagement Letter Template for Independent Review Engagements and SAICA Circular 3/2016, Illustrative Reportable Irregularity Letters for Independent Reviews (on the [SAICA website](#))

# INTRODUCTION

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**The new 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. 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.

**NOCLAR comprises (SAICA Code, paragraphs 260.5 A1 and 360.5 A1): Any act of omission or commission, intentional or unintentional, committed by a client or the professional accountant's employing organisation, or by those charged with governance (TCWG), by management or by other individuals working for or under the direction of a client or employing organisation which is contrary to the prevailing laws or regulations.**

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. 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. 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. These and other relevant factors for the PA's consideration are addressed in the Table that commences on page 4, below.

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. 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.

Refer to the [SAICA NOCLAR webpage](#) for further information and access to further resources, including Frequently Asked Questions (FAQs) for members and associates of SAICA. This summary document includes specific references to the following IESBA FAQs:

- IESBA Staff questions and answers: Responding to non-compliance with laws and regulations – Professional accountants in public practice  
Referred to as IESBA FAQ-PAIPP-Q[number]
- IESBA Staff questions and answers: Responding to non-compliance with laws and regulations – Professional accountants in business  
Referred to as IESBA FAQ-PAIB-Q[number]

**The Table that commences on page 4 provides an overview and summary of the NOCLAR response framework, under the following headings:**

- **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**
- **Exceptional circumstances override**

# INTRODUCTION

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Throughout, where reference is made to “NOCLAR” it refers to NOCLAR or suspected NOCLAR as may be required by the context.

Furthermore, all references to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA.

The following terms or abbreviations are used in the Table and have the meanings as indicated:

**AUDIT** Refers to an audit of financial statements as contemplates in section 1 of the Auditing Profession Act (Act 26 of 2005). Paragraph R360.10 – 360.28 A1 of the SAICA Code (and IRBA Code), under the heading “Audits of financial statements”, applies to an audit of a complete set of financial statements (general purpose or special purpose) performed in accordance with International Standards on Auditing (ISAs), and irrespective of whether the audit is a mandatory audit or a voluntary audit.

Also refer to IESBA FAQ-PAIPP-Q23 and Q46 for additional guidance in relation to audits of financial statements and distinguishing an audit from professional services other than audits of financial statements.

**AUDITOR** In the context of the Code, “Auditor” refers to a PA in public practice that has been engaged to perform an audit of financial statements. In the South African context, this refers to registered auditors (RAs) that have been registered with the Independent Regulatory Board for Auditors (IRBA) in terms of the Auditing Profession Act (Act 26 of 2005).

An RA may be engaged to perform an audit of financial statements or to provide professional services other than audits of financial statements. CAs(SA) who are registered as RAs are required to comply with the SAICA Code and the IRBA Code.

**PAIB** Professional accountant in business

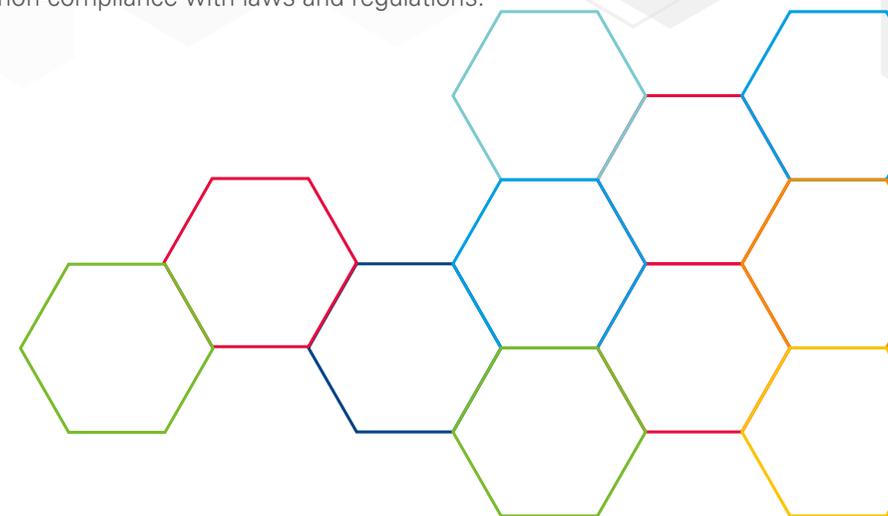
**PAIPP** Professional accountant in public practice

**Please note:** Where this summary refers to the responsibilities of the PAIPP in the context of performing an audit of financial statements, this is subject to the Auditing Profession Act (Act 26 of 2005) that determines that audits of financial statements in South Africa can only be performed by RAs.

A PAIPP is always required to consider the acceptance and continuance of an engagement or client relationship in accordance with the relevant requirements, as may be applicable in the context of a particular engagement, of the SAICA Code (and the IRBA Code), ISQC 1 (Quality control for firms that perform audits and reviews of financial statements, and other assurance and related services engagements), and laws and regulations that address certain engagements.

**SECTION 260** Section 260 of the SAICA Code, which deals with the responsibilities of SAICA members and associates in business in responding to non-compliance with laws and regulations.

**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.



# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

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

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

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

## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

### Categories of PAs in public practice

Section 360 distinguishes between two categories of PAs in public practice:

- Auditor / PAIPP engaged to perform an audit of financial statements – refer to paragraphs 360.1 – R360.9; R360.10 – 360.28 A1
- PAIPP who provides professional services other than audits of financial statements – refer to paragraphs 360.1- R360.9; R360. 29 – 360.40 A1

The requirements of the Code apply to the individual auditor or PAIPP, as well as to the firm. In terms of ISQC 1, the firm is required, among other, to establish policies and procedures designed to provide it with reasonable assurance that the firm and its personnel comply with relevant ethical requirements. Also refer to IESBA FAQ-PAIPP-Q2, Q3 and Q7.

Please note: When a PAIPP has been appointed as the auditor of an entity to perform the audit of its financial statements, and the PA also provides other professional services to the entity (subject to the relevant independence requirements of the SAICA Code and the IRBA Code, and any independence requirements in terms of applicable legislation), he/she is always acting in that capacity in the first instance (i.e. as auditor). Therefore, paragraphs R360.10- 360.28 A1 will apply in relation to the PA's responsibilities to consider and respond to NOCLAR. Also refer to IESBA FAQ-PAIPP-Q44 and Q45.

### Categories of PAs in business

Section 260 distinguishes between two categories of PAs in business:

- Senior PAIB – refer to paragraph 260.1 – R260.10; 260.11 A1 – 23 A1
- Other PAIB – refer to paragraph 260.24 – R260.10; R260.24 – 260. 27 A1

“Senior PAIB” refers to directors, officers or senior employees able to exert significant influence over, and make decisions regarding the acquisition, deployment and control of the employing organisation’s human, financial, technological, physical and intangible resources (paragraph 260.11 A1). Also refer to IESBA FAQ-PAIB-Q24.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

### Scope of laws and regulations in terms of section 360

A PA is expected to recognise NOCLAR within the context of his/her knowledge as a PA based on his/her training and experience, and areas about which the PA possesses knowledge in a particular field. PAs have no additional responsibility to detect NOCLAR at their clients (beyond what may already be required for purposes of a specific engagement / type of engagement), but rather to respond appropriately when they become aware of NOCLAR.

Nothing in the Code increases the range of laws and regulations the PA is required to have knowledge of for purposes of performing a given engagement. It is important to distinguish the following types / categories of laws and regulations:

- Those laws and regulations that generally deal with areas in which a PA is trained; i.e. that would generally be expected to fall within the scope of their professional training. Section 360 deals with the approach to be taken by a PA who encounters or is made aware of NOCLAR or suspected NOCLAR with (paragraph 360.3);
  - Laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and
  - Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which may be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

### Scope of laws and regulations in terms of section 260

A PA is expected to recognise NOCLAR within the context of his/her knowledge as a PA based on his/her training and experience, and areas about which the PA possesses knowledge in a particular field. PAs have no additional responsibility to detect NOCLAR at their employing organisations (beyond any responsibility they may already have because they are in a management role or they are part of TCWG at the organisation), but rather to respond appropriately when they become aware of NOCLAR.

Nothing in the Code increases the range of laws and regulations the PA is required to have knowledge of for purposes of the PA's role within the employing organisation. It is important to distinguish the following types / categories of laws and regulations:

- Those laws and regulations that generally deal with areas in which a PA is trained; i.e. that would generally be expected to fall within the scope of their professional training. Section 260 deals with the approach to be taken by a PA who encounters or is made aware of NOCLAR or suspected NOCLAR with (paragraph 260.3):
  - Laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the employing organisation's financial statements; and
  - Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organisation's financial statements, but compliance with which may be fundamental to the operating aspects of the employing organisation's business, to its ability to continue its business, or to avoid material penalties.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

Examples of such laws and regulations are provided in paragraph 360.5. A2.

- Those laws and regulations that address areas about which the PA possesses knowledge in a particular field (including specialised skills). PAs who work in or specialise in a particular field need to have an understanding of laws and regulations relevant to that particular field to an extent sufficient to competently undertake a given engagement related to that field. These could include the examples of laws and regulations in paragraph 360.5 A2, but could also extend beyond those. Also refer to IESBA FAQ-PAIPP-Q14-Q17.

Therefore, the overriding principle is that the PA would be expected to be able to recognise NOCLAR or suspected NOCLAR in relation to laws and regulations that he/she needs an understanding of, to an extent sufficient to competently perform a given engagement. The PA is not required to have specialised legal knowledge and skills, but only to have a level of knowledge of laws and regulations necessary for providing professional services to his/her clients.

Examples of such laws and regulations are provided in paragraph 260.5 A2.

- Those laws and regulations that address areas about which the PA possesses knowledge in a particular field (including specialised skills). PAs who work in a particular field in the employing organisation need to have an understanding of laws and regulations relevant to that particular field to an extent sufficient to competently carry out their employment duties. These could include the examples of laws and regulations in paragraph 260.5 A2, but could also extend beyond those. Also refer to IESBA FAQ-PAIB-Q9-Q11.

Therefore, the overriding principle is that the PA would be expected to be able to recognise NOCLAR in relation to laws and regulations that he/she needs an understanding of, to an extent sufficient to competently discharge his/her professional duties / carry out his/her professional activities for the employing organisation. The PA is not required to have specialised legal knowledge and skills, but only to have a level of knowledge of laws and regulations necessary to carry out his/her employment duties.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

### **Not within the scope of section 360 (i.e. scoped out)**

The following NOCLAR are excluded; i.e. a PA does not have a responsibility to further pursue the following matters in accordance with the section 360:

- Matters that are clearly inconsequential (not important or insignificant), judged by their nature and their impact, financial or otherwise, on the client, its stakeholders (investors or creditors or employees) and the general public (also refer to IESBA FAQ-PAIPP-Q11);
- Matters that relate to personal misconduct of someone unrelated to the business activities of the client; and
- NOCLAR other than by the client or TCWG, management or other individuals working for or under the direction of the client (also refer to IESBA FAQ-PAIPP-Q9 and Q10)

### **Not within the scope of section 260 (i.e. scoped out)**

The following NOCLAR are excluded; i.e. the PA does not have a responsibility to further pursue the following matters in accordance with the section 260:

- Matters that are clearly inconsequential (not important or insignificant), judged by their nature and their impact, financial or otherwise, on the employing organisation, its stakeholders (investors or creditors or employees) and the general public (also refer to IESBA FAQ-PAIB-Q6);
- Matters that relate to personal misconduct of someone unrelated to the business activities of the employing organisation; and
- NOCLAR other than by the employing organisation or TCWG, management or other individuals working for or under the direction of the employing organisation (also refer to IESBA FAQ-PAIB-Q4 and Q5)

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

### A PA may encounter or be made aware of NOCLAR

- “May encounter”; i.e. come upon unexpectedly; while performing an audit of the financial statements, or in the course of providing a professional service
- “Be made aware of”; i.e. another party may bring the matter to the PA’s attention

#### **POINTS TO NOTE:**

- > There are no additional responsibilities to detect NOCLAR (also refer to IESBA FAQ-PAIPP-Q12).
- > A PA may encounter NOCLAR irrespective of the objectives of an audit or of any other professional service/(s) being provided
- > The information can come from any source; NOCLAR responsibilities apply regardless of the source of the information or how the PA became aware of it

### A PA may encounter or be made aware of NOCLAR

- “May encounter”; i.e. come upon unexpectedly; while carrying out professional activities for an employing organisation
- “Be made aware of”; i.e. another party may bring the matter to the PA’s attention

#### **POINTS TO NOTE:**

- > There are no additional responsibilities to detect NOCLAR (also refer to IESBA FAQ-PAIB-Q8).
- > A PA may encounter NOCLAR irrespective of the objectives of his/her position with the employing organisation or the nature and scope of his/her functions
- > The information can come from any source; NOCLAR responsibilities apply regardless of the source of the information or how the PA became aware of it

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

### **A PAIPP or a PAIB considers NOCLAR within the context of the relevant legal and regulatory framework**

The PA has to comply with the law and should not take any action that is contrary to the law or prohibited by law or regulation. In particular, any action in terms of section 360 or section 260 (as applicable) would be precluded if doing so would be contrary to law or regulation.

The following aspects of the legal and regulatory framework in South Africa are of relevance:

**PLEASE NOTE:** *Although some examples are provided here in the South African context, this summary document cannot be expected to, and does not provide an overview or comprehensive list of laws and regulations that may be relevant for purposes of performing a given engagement for a client or for purposes of a PA's role and professional activities within a particular employing organisation. The listing of examples is not a substitute for any laws and regulations that are relevant to the business of any particular entity (whether such entity is a client of a PAIPP, or the employing organisation of a PAIB), and readers should always consult the full text of any applicable legislation for the authoritative text / information. Also, be alert to the fact that legislation and its content may change from time to time. PAs are cautioned to seek appropriate professional or legal advice for their circumstances. The following examples were originally included as part of the SAICA NOCLAR Seminar that was first presented in June 2017.*

- Laws and regulations in SA that require the disclosure of, or impose a positive reporting obligation linked to non-compliance, irregularities, unlawful activity, money laundering, crime and corruption.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

WHO MUST REPORT (as defined in the legislation)

**FOR EXAMPLE:**

Auditing Profession Act, No. 26 of 2005, section 45

Auditor

Banks Act, No. 94 of 1990, sections 63, 74

Auditor; Bank or controlling company

Close Corporations Act, No. 69 of 1984, section 62

Accounting officer

Companies Regulations, 2011, regulation 29

Independent reviewer

Financial Advisory and Intermediary Services Act, No. 37 of 2002, section 19

Auditor

Financial Intelligence Centre Act, No. 38 of 2001, sections 28A, 29

Accountable institution; A person who carries on, manages or is employed by a business

Financial Markets Act, No. 19 of 2012, sections 50; 91

Licensed clearing house; Auditor

National Credit Act, No. 34 of 2005, regulation 67, 68

Auditor / Accounting officer / Person appointed in terms of Regulation 67

Pension Funds Act, No. 24 of 1956, section 9

Auditor

Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, section 34

Person who holds a position of authority

Protection of Constitutional Democracy Against Terrorism and Related Activities Act, section 12

Any person

Short-Term Insurance Act, No. 53 of 1998, sections 19, 19A

Auditor; Statutory actuary

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

- Laws and regulations in SA that do not impose a positive reporting obligation linked to non-compliance (as in the previous bullet point), but that require the reporting of certain incident or events or occurrences (not as a result of on-compliance per se). Where reporting of such incidents or events or occurrences are required, non-reporting thereof would represent non-compliance with the relevant legislation.

WHO MUST REPORT (as defined in the legislation)

**FOR EXAMPLE:**

Compensation for Occupational Injuries and Diseases Act, No. 30 of 1993, sections 39, 68, 80, 82  
 Employer Financial Advisory and Intermediary Services Act, No. 37 of 2002, sections 17, 19  
 Compliance officer; Authorised financial service provider  
 Financial Intelligence Centre Act, No. 38 of 2001, section 28  
 Financial Markets Act, No. 19 of 2012, sections 25, 52, 69  
 Mine Health and Safety Act, No. 29 of 1996, sections 2A, 10, 11, 13, 14, 16, 64, 72  
 National Credit Act, No. 34 of 2005, section 86  
 National Environmental Management Act, No. 107 of 1998, section 30  
 National Environmental Management Waste Act, No. 59 of 2008, section 36  
 Occupational Health and Safety Act, No. 85 of 1993, sections 24, 25  
 Pension Funds Act, No. 24 of 1956, section 15  
 Protection of Personal Information Act, No. 4 of 2013, sections 21, 22, 58

Accountable institution / Reporting institution  
 Financial institution; Licenced clearing house; Market infrastructure  
 Employer; Mine; Medical Practitioner; Inspector; Person presiding at injury  
 Debt counsellor  
 Responsible person / Owner of hazardous substance / Person in control; Employer  
 Owner of land  
 Employer; Medical practitioner  
 Registered fund  
 Operator; Responsible party  
 Short-term insurer  
 Tax Ombud; Participant in a reportable arrangement  
 Short-Term Insurance Act, No. 53 of 1998, section 18  
 Tax Administration Act, No. 28 of 2011, sections 19, 38

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## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

- Laws and regulations in SA that prohibit alerting the client before making any disclosure about NOCLAR (i.e. anti-tipping-off provisions)

**FOR EXAMPLE:** Financial Intelligence Centre Act, No. 38 of 2001, section 29(4)

- Considerations with respect to when the PA may be prohibited from disclosing information about NOCLAR, including prohibited from disclosing confidential information

**FOR EXAMPLE:** Legal privileged information. Where a PA encounters information about NOCLAR in circumstances falling within the scope of legal privilege, then the disclosure of such information without the consent of the client would be prohibited in most circumstances. In general terms, legal privilege is a rule that protects communications between an appropriately qualified legal advisor and that advisor's client (subject to the rules that apply to legal privilege).

Laws and regulation that prohibit certain disclosures, such as:

- Protection of Information Act, No. 84 of 1982
- Protection of Personal Information Act, No. 4 of 2013
- National Credit Act, No. 34 of 2005

Contractual confidentiality

However, the PA should note that a contract (such as an engagement letter or standard professional services terms and conditions, or an employment contract) may include a clause that draws attention to, and permits the disclosure of information under, e.g. the NOCLAR provisions of the SAICA Code (provided that it is not contrary to any legal obligation or precluded under any law or regulation). Such clause increases the certainty for the PA and the client or employing organisation around the NOCLAR provisions and when disclosure may take place, and would serve to protect the contracting parties in this regard. Also refer to IESBA FAQ-PAIPP-Q6.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

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

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

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

## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

- Considerations with respect to protection when disclosing information about NOCLAR, including confidential information

**FOR EXAMPLE:** Protected Disclosures Act, No. 26 of 200

Section 159 of the Companies Act, No. 71 of 2008

Relevant contractual clause/(s) that address confidentiality, subject to identified professional obligations such as the NOCLAR provisions (i.e. clarifying when disclosure is permitted). Also refer to the previous bullet point.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

**In addition** to complying with laws and regulations when responding to NOCLAR, the PAIPP is also required to consider the effect of the following in the circumstances and comply with related requirements:

- **Firm policies and methodologies** that address the response process to NOCLAR within the firm (i.e. how such matter should be escalated within the engagement team and within the firm). Generally, a firm's policies and methodologies will be aligned to the SAICA Code (and IRBA Code, where applicable), ISQC 1 and relevant engagement standards, and cannot prescribe less stringent requirements. Also refer to IESBA FAQ-PAIPP-Q7.
- **Professional standards / pronouncements** adopted for use in South Africa regarding the acceptance and performance of a given engagement (e.g. the International Standards of the International Auditing and Assurance Standards Board (IAASB))

Depending on the nature and significance of the NOCLAR, the PA may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

**In addition** to complying with laws and regulations when responding to NOCLAR, the PAIB is also required to consider the effect of the following in the circumstances and comply with related requirements:

- **Internal protocols and procedures** established by the employing organisation regarding how NOCLAR or suspected NOCLAR by the employing organisation should be raised internally (e.g. an ethics policy or internal whistle-blowing mechanism). In terms of paragraph 260.9 A1 the PA shall consider such internal protocols and procedures in determining how to respond.

Depending on the nature and significance of the NOCLAR, the PA may consult on a confidential basis with others within the employing organisation or a professional body, or with legal counsel.

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

## OVERALL CONTEXT AND SCOPE OF REQUIREMENTS

**It is the responsibility of the client's management, with the oversight of TCWG**, to ensure that the client's business activities are conducted in accordance with laws and regulations, and to identify and address any NOCLAR or suspected NOCLAR (paragraph 360.8 A1).

The PAIPP does not assume the responsibility of management and TCWG of a client in this regard (also subject to the relevant independence requirements of the SAICA Code and the IRBA Code, as applicable). In essence, the PAIPP alerts management or, where appropriate, TWCG of the client to seek to enable them to rectify, remediate or mitigate the consequences of the identified or suspected NOCLAR, or to deter the commission of the NOCLAR where it has not yet occurred (i.e. seek to enable them to fulfil the duties for which they have responsibility). The PAIPP also determines, in the circumstances, whether further action is needed in the public interest, after consideration of a range of factors, including the appropriateness of the response of management and, where applicable, TCWG. There is a greater level of expectation of an auditor compared to other PAIPPs in responding to NOCLAR. Also refer to IESBA FAQ-PAIPP-Q44 and Q45.

**It is the responsibility of the employing organisation's management, with the oversight of TCWG**, to ensure that the employing organisation's business activities are conducted in accordance with laws and regulations, and to identify and address any NOCLAR or suspected NOCLAR (paragraph 260.8 A1).

The PAIB alerts management or, where appropriate, TWCG of the employing organisation to seek to enable them to rectify, remediate or mitigate the consequences of the identified or suspected NOCLAR, or to deter the commission of the NOCLAR where it has not yet occurred. The senior PAIB will often be part of management and/or TWCG of the employing organisation and would therefore be required to comply with his/her duties in this regard. The senior PAIB also determines, in the circumstances, whether further action is needed in the public interest, after consideration of a range of factors, including the appropriateness of the response of management and, where applicable, TWCG. There is a greater level of expectation of a senior PAIB compared to other PAIBs in responding to NOCLAR. Also refer to IESBA FAQ-PAIB-Q24.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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

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

The PA becomes aware of NOCLAR or suspected NOCLAR **within the scope of section 360**. The rows below describe the appropriate considerations and responses in terms of the SAICA Code (the Code).

**General:** 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 or the general public (paragraph R360.10).

- "Timely basis" is not described further. The Code does not impose an explicit reporting obligation on the PA that demands clear timelines as in the case of, for example, the reporting of a reportable irregularity by a RA under the Auditing Profession Act. Although reporting a matter to an appropriate authority despite the absence of a legal obligation to do so could be an appropriate further action in the circumstances, it is not definite and it would be at the end stage of the process in relation to serious identified or suspected NOCLAR, after following all of the steps in the PA's response framework. Therefore, as stated, "timely basis" should be evaluated having regard to the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.
- "Potential harm" is referred to in the context of the possible adverse consequences, in financial or non-financial terms, of the NOCLAR to the entity, investors, creditors, employees or the general public.

The PA becomes aware of NOCLAR or suspected NOCLAR **within the scope of section 260**. The rows below describe the appropriate considerations and responses in terms of the SAICA Code (the Code).

**General:** 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 employing organisation, investors, creditors, employees or the general public (paragraph R260.10).

- "Timely basis" is not described further. The Code does not impose an explicit reporting obligation on the PA that demands clear timelines as would be the case when there is a reporting requirement in terms of specific legislation. Although reporting a matter to an appropriate authority despite the absence of a legal obligation to do so could be an appropriate further action in the circumstances, it is not definite and it would be at the end stage of the process in relation to serious identified or suspected NOCLAR, after following all of the steps in the PA's response framework. Therefore, as stated, "timely basis" should be evaluated having regard to the nature of the matter and the potential harm to the interests of the employing organisation, investors, creditors, employees or the general public.
- "Potential harm" is referred to in the context of the possible adverse consequences, in financial or non-financial terms, of the NOCLAR to the employing organisation, investors, creditors, employees or the general public.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

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

The PAIPP should consider **firm policies and methodologies** in determining how to respond, including escalating a matter within the engagement team and within the firm.

Also refer to the discussion around firm policies and methodologies in the “Overall context and scope of requirements”-section earlier in this table.

First and foremost, the PAIPP must at all times **comply with applicable laws and regulations**, including those that impose a positive reporting obligation regarding NOCLAR, as well as those that may preclude reporting or prohibit the disclosure of confidential information.

Also refer to the discussion around the legal and regulatory framework in South Africa in the “Overall context and scope of requirements”-section earlier in this table.

**After** complying with the provisions of any applicable laws and regulations, continue to consider whether there are any other provisions of section 360 that still need to be complied with (recognising any particular prohibitions under law or regulation). Also refer to IESBA FAQ-PAIPP-Q4 and Q5.

**Note**, the steps taken to comply with applicable laws and regulations and the steps taken to comply with relevant sections of the Code (as described in the rows below) could also take place concurrently.

If the employing organisation has **internal protocols and procedures** regarding how NOCLAR should be raised internally, the PAIB shall consider these in determining how to respond (paragraph 260.9 A1).

Also refer to the discussion around internal protocols and procedures in the “Overall context and scope of requirements”-section earlier in this table.

First and foremost, the PAIB must at all times **comply with applicable laws and regulations**, including those that impose a positive reporting obligation regarding NOCLAR, as well as those that may preclude reporting or prohibit the disclosure of confidential information.

Also refer to the discussion around the legal and regulatory framework in South Africa in the “Overall context and scope of requirements”-section earlier in this table.

**After** complying with the provisions of any applicable laws and regulations, continue to consider whether there are any other provisions of section 260 that still need to be complied with (recognising any particular prohibitions under law or regulation). Also refer to IESBA FAQ-PAIB-Q2 and Q3.

**Note**, the steps taken to comply with applicable laws and regulations and the steps taken to comply with relevant sections of the Code (as described in the rows below) could also take place concurrently.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

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

The auditor shall, parallel to his/her responsibilities under the Code, also comply with ISA 360 (Revised) (and other ISAs, as relevant to the audit) in performing the audit of financial statements.

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.

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 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.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## STEP 2 – OBTAIN AN UNDERSTANDING OF THE MATTER

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 (this flows logically from step 1, above).



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 (this flows logically from step 1, above).



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 (this flows logically from step 1, above).



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 (this flows logically from step 1, above).



# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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

## STEP 2 – OBTAIN AN UNDERSTANDING OF THE MATTER

- 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.

- 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.

“seek to obtain” implies a lower level in terms of the extent of effort, compared to what is expected of an auditor (refer to column to the left). The PA is required to make an attempt at gathering such understanding, recognising that there may be limitations on access to information in the circumstances. Also refer to IESBA FAQ-PAIPP-Q44 and Q45.

- 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.

- 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.

“seek to obtain” implies a lower level in terms of the extent of effort, compared to what is expected of a senior PAIB (refer to column to the left). The PA is required to make an attempt at gathering such understanding, recognising that there may be limitations on access to information in the circumstances. Also refer to IESBA FAQ-PAIB-Q25 and Q26.

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

## STEP 2 – OBTAIN AN UNDERSTANDING OF THE MATTER

If at any time during the course of obtaining an understanding, or seeking to obtain and 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 360, the PA is not required to pursue the matter further in terms of the Code.

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

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## STEP 3 – DISCUSS THE MATTER

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

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).

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

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.

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

## STEP 3 – DISCUSS THE MATTER

- Considers whether the client’s management and TCWG understand their legal or regulatory responsibilities with respect to the NOCLAR. 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.

- 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 re-occurrence; and
  - Seek to deter the commission of the NOCLAR if it has not yet occurred.

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## STEP 3 – DISCUSS THE MATTER

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.

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)

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)

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).

[Apart from paragraph R260.15, the Code does not provide further guidance in this instance. By analogy, the senior PAIB could consider factors similar to those described in paragraph R360.33 – 360.35 A1 to consider the need to disclose the matter to the employing organisation's external auditor]

[Not applicable]

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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

## STEP 3 – DISCUSS THE MATTER

Please note: These responsibilities in relation to a group audit are *in addition* to fulfilling all other responsibilities with respect to responding to the NOCLAR in terms of section 360 of the Code.

Please note: These responsibilities in relation to a client's external auditor are *in addition* to fulfilling all other responsibilities with respect to responding to the NOCLAR in terms of section 360 of the Code.

Please note: These responsibilities in relation to the employing organisation's external auditor are *in addition* to fulfilling all other responsibilities with respect to responding to the NOCLAR in terms of section 260 of the Code.

If at any time during the course of discussing the matter, the PA determines that the matter does not represent NOCLAR or suspected NOCLAR within the scope of section 360, the PA is not required to pursue the matter further in terms of the Code.

If at any time during the course of discussing the matter, the PA determines that the matter does not represent NOCLAR or suspected NOCLAR within the scope of section 260, the PA is not required to pursue the matter further in terms of the Code.

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## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

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
- 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. *Each of these MCs is described in more detail in the rows that follow.*

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]

These considerations are addressed in paragraphs R360.36 – 360.36 A1. Consider all relevant factors individually and collectively. *Each of these MCs is described in more detail in the rows that follow.*

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

These considerations are addressed in paragraphs R260.16 – 18. Consider all relevant factors individually and collectively. *Each of these MCs is described in more detail in the rows that follow.*

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. **Refer to the "Exceptional circumstances override"-section in this table, below.**

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

### **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  
[This is not described further. 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. Also refer to the discussion of “timely basis”, by analogy, as part of Step 1 of the response framework earlier in this table.]

### **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.]

### **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  
[This is not described further. 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 employing organisation, investors, creditors, employees or the general public. Also refer to the discussion of “timely basis”, by analogy, as part of Step 1 of the response framework earlier in this table.]

### **MC1**

[Not applicable]

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## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

- 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
- 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

*Consider MC1-MC3 individually and collectively*

- 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

*Consider MC1-MC3 individually and collectively*

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

### **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 360.20 A1):

- The legal and regulatory framework
- The urgency of the matter
- The pervasiveness of the matter throughout the client
- Whether the PA continues to have confidence in the integrity of management and, where applicable, TCWG (paragraph 360.20 A2 provides examples of factors to consider in this regard)
- Whether the NOCLAR is likely to recur



### **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



### **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
- 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



### **MC2**

[Not applicable]

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

<ul style="list-style-type: none"> <li>Whether there is credible evidence of actual or potential <b>substantial harm</b> to the interests of the entity, investors, creditors, employees or the general public</li> </ul> <p><i>Consider MC1-MC3 individually and collectively</i></p>	<ul style="list-style-type: none"> <li>The likelihood of <b>substantial harm</b> to the interests of the entity, investors, creditors, employees or the general public</li> </ul> <p><i>Consider these factors individually and collectively</i></p>	<ul style="list-style-type: none"> <li>Whether there is credible evidence of actual or potential <b>substantial harm</b> to the interests of the employing organisation, investors, creditors, employees or the general public</li> </ul> <p><i>Consider MC1-MC3 individually and collectively</i></p>	
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# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

### SUBSTANTIAL HARM

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.

“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. 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.

### SUBSTANTIAL HARM

For a PAIB paragraph 260.5 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.

“These parties” refer to the affected stakeholders in the circumstances, namely, the employing organisation, investors, creditors, employees or the general public.

Reference can also be made to paragraph 260.20 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. Hence, paragraph 260.20 A2 – A3 serves to provide further context in terms of when potential harm is substantial/serious. The examples included are:

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

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

- 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.

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).

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.

- The employing organisation is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the employing organisation'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 employing organisation.
- The employing organisation is promoting a scheme to its clients to assist them in evading taxes.

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 employing organisation, investors, creditors, employees or the general public (also taking into account what could reasonably be expected of the PAIB in the circumstance, i.e. being a senior PAIB or other PAIB).

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.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

### **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).
- 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.

*Consider MC1-MC3 individually and collectively*

### **MC3**

[No reference to "a reasonable and informed third party" in this instance]

### **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).
- 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.

*Consider MC1-MC3 individually and collectively*

### **MC3**

[Not applicable]

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## STEP 4 – DETERMINE WHETHER FURTHER ACTION IS NEEDED

### 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.

### Conclude

After considering MC1 to MC3 (above), as applicable, the PA reaches a conclusion:

- No further action is required. Also consider paragraph 360.40 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.

### Conclude

After considering MC1 to MC3 (above), 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.

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. Also consider paragraph 3260.27 A1 that *encourages* the PA to prepare and maintain certain documentation – refer to step 6, below.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

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.

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.

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.

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. **Refer to the “Exceptional circumstances override”-section in this table, below.**

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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



**Note**, further action may include either one or both of these actions. The possible further actions (**FA1; FA2**) are discussed in the rows that follow.

The nature and extent of any further action is also affected by MC1-MC3, as discussed in step 4 above.

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 – refer to step 6, below.



**Note**, further action may include either one or both of these actions. The possible further actions (**FA1; FA2**) are discussed in the rows that follow.

The nature and extent of any further action is also affected by MC1 and MC2, as discussed in step 4 above.

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.

Also consider paragraph 360.40 A1 that *encourages* the PA to prepare and maintain certain documentation – refer to step 6, below.



**Note**, further action may include any one or combination of FA1, FA2 and FA3. Further actions **FA1 and FA2** are discussed in the rows that follow.

The nature and extent of any further action is also affected by MC1-MC3, as discussed in step 4 above.

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.

Also consider paragraph 260.23 A1 that *encourages* the PA to prepare and maintain certain documentation – refer to step 6, below.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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

### **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.
- Also refer to IESBA FAQ-PAIPP-Q37.



### **FA1**

Withdraw from the engagement and the professional relationship where permitted by law or regulation.

[Section 360 provides no additional information in this instance]

### **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.
- Also refer to IESBA FAQ-PAIB-Q22.



### **FA1**

[Not applicable]

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



- 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). Also refer to IESBA FAQ-PAIPP-Q40 to Q43.



- [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.]

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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

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. 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.

[Not applicable. Section 320 of the Code applies to PAs in public practice]

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

**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.

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



**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.

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



**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.

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



**FA2**  
 [Not applicable]

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

<p><b>A PAIPP engaged by a client to perform an audit of financial statements (an audit)</b></p>	<p><b>A PAIPP engaged to provide any other professional service/(s) (other than an audit of financial statements) to a client</b></p>	<p><b>A Senior PAIB, i.e. employed by an organisation in a position or at a level that meets the definition of Senior PAIB</b></p>	<p><b>Other PAIB, i.e. employed by an organisation other than in a position or at a level of Senior PAIB</b></p>
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## STEP 5 – IF APPLICABLE, DECIDE ON APPROPRIATE FURTHER ACTION

<p>▼</p> <p>▼</p>	<p>▼</p> <p>Other factors also mentioned for this category of PAIPP:</p> <ul style="list-style-type: none"> <li>• Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the NOCLAR</li> <li>• 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. Also refer to IESBA FAQ-PAIPP-Q48.</li> </ul> <p>▼</p>	<p>▼</p> <p>▼</p>	<p>▼</p> <p>▼</p>
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# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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

### ▼ 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
- Refer to the discussion of substantial harm in step 4, above
- Disclosure to an appropriate authority only becomes a consideration if *substantial harm* is indicated in the circumstances

Also refer to IESBA FAQ-PAIPP-Q36

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

- In step 4, above, the PAIPP considered, among other, the likelihood of *substantial harm* to the entity, investors, creditors, employees or the general public
- Refer to the discussion of substantial harm in step 4, above
- Disclosure to an appropriate authority only becomes a consideration if *substantial harm* is indicated in the circumstances

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

- In step 4, above, the senior PAIB considered, among other, whether there is credible evidence of actual or potential *substantial harm* to the employing organisation, investors, creditors, employees or the general public
- Refer to the discussion of substantial harm in step 4, above
- Disclosure to an appropriate authority only becomes a consideration if *substantial harm* is indicated in the circumstances

Also refer to IESBA FAQ-PAIB-Q20

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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



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



### EXTERNAL FACTORS

[Section 360 does not specifically refer to the consideration of external factors for the other PAIPP (as is the case for the auditor – refer to column to the left). 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.]



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



# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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



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.



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.



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.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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## STEP 6 – DOCUMENTATION

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
  - 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

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

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

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

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## STEP 6 – DOCUMENTATION



- 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.

Also refer to IESBA FAQ-PAIPP-Q39



- 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.

Also refer to IESBA FAQ-PAIPP-Q49



- 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.

Also refer to IESBA FAQ-PAIB-Q12



Also refer to IESBA FAQ-PAIB-Q12

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

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## EXCEPTIONAL CIRCUMSTANCES OVERRIDE

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.

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). Also refer to IESBA FAQ-PAIPP-Q38.

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.

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).

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.

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). Also refer to IESBA FAQ-PAIB-Q23.

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.

# NOCLAR RESPONSE FRAMEWORK IN TERMS OF THE SAICA CODE OF PROFESSIONAL CONDUCT (THE CODE)

[References to the SAICA Code are consistent with the same paragraphs in the IRBA Code, as may be applicable to CAs(SA) who are also registered as RAs with the IRBA]

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## EXCEPTIONAL CIRCUMSTANCES OVERRIDE

### EXCEPTIONAL CIRCUMSTANCES

Section 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. 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.

### SUBSTANTIAL HARM

Refer to the discussion of *substantial harm* in step 4, above.

### EXCEPTIONAL CIRCUMSTANCES

Section 260 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. 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.

### SUBSTANTIAL HARM

Refer to the discussion of *substantial harm* in step 4, above.

## References

1 References to the SAICA Code of Professional Conduct (Revised 2018) has been updated in July 2020



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