

**PROPOSED INTERNATIONAL STANDARD ON AUDITING 250
(REDRAFTED)**

**THE AUDITOR'S RESPONSIBILITIES RELATING TO LAWS AND REGULATIONS
IN AN AUDIT OF FINANCIAL STATEMENTS**

(Effective for audits of financial statements for periods beginning on or after [date])^{*}

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<p>International Standard on Auditing (ISA) 250 (Redrafted), "The Auditor's Responsibilities Relating to Laws and Regulations in an Audit of Financial Statements" should be read in the context of the "Preface to the International Standards on Quality Control, Auditing, Review, Other Assurance and Related Services," which sets out the authority of ISAs.</p>
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^{*} See footnote 1.

Introduction

Scope of this ISA

1. This International Standard on Auditing (ISA) deals with the auditor's responsibilities relating to laws and regulations when performing an audit of financial statements. This ISA does not apply to other assurance engagements in which the auditor is specifically engaged to test and report separately on compliance with specific laws or regulations.

Nature of Laws and Regulations

2. The impact on financial statements of laws and regulations varies considerably. Those laws and regulations to which an entity is subject constitute the legal and regulatory framework. Some laws or regulations determine the form or content of an entity's financial statements or the amounts to be recorded or the disclosures to be made in financial statements. Other laws or regulations are to be complied with by management or set the provisions under which the entity is allowed to conduct its business. Some entities operate in heavily regulated industries (such as banks and chemical companies). Others are only subject to the many laws and regulations that relate generally to the operating aspects of the business (such as those related to occupational safety and health, and equal employment opportunity). Non-compliance with laws and regulations may result in financial consequences for the entity such as fines and litigation.

Responsibility of Management for Compliance with Laws and Regulations

3. It is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with laws and regulations, including compliance with laws and regulations that determine the form or content of the entity's financial statements. This includes responsibility for the prevention and detection of non-compliance with laws and regulations. (Ref: Para. A1-A2)

Responsibility of the Auditor

4. An auditor conducting an audit in accordance with ISAs is responsible for obtaining reasonable assurance that the financial statements, taken as a whole, are free from material misstatement, whether caused by fraud or error. In conducting an audit of financial statements, the auditor has regard to the applicable legal and regulatory framework. Owing to the inherent limitations of an audit, as described in [proposed] ISA 200 (Revised and Redrafted), "Overall Objective of the Independent Auditor and Concepts Relevant to an Audit of Financial Statements," there is an unavoidable risk that some material misstatements of the financial statements will not be detected, even though the audit is properly planned and performed in accordance with the ISAs. This unavoidable risk may be higher, with regard to material misstatements resulting from non-compliance with laws and regulations, due to factors such as the following:
 - There are many laws and regulations, relating principally to the operating aspects of an entity, that typically do not affect the financial statements and are not captured by the entity's information systems relevant to financial reporting.

- Much of the audit evidence obtained by the auditor is persuasive rather than conclusive in nature.
- Non-compliance may involve conduct designed to conceal it, such as collusion, forgery, deliberate failure to record transactions, management override of controls or intentional misrepresentations being made to the auditor.
- Whether an act constitutes non-compliance is a matter for legal determination which is ordinarily beyond the auditor's professional competence to determine.

Generally, the further removed non-compliance is from the events and transactions reflected in the financial statements, the less likely the auditor is to become aware of it or to recognize the possible non-compliance.

5. Owing to the difficulties referred to above, this ISA distinguishes the auditor's responsibilities in relation to compliance with different categories of laws and regulations as follows:
 - (a) those laws and regulations generally recognized by the auditor to have an effect on the determination of material amounts and disclosures in the financial statements; such laws and regulations include income tax and pensions law and regulations (see paragraph 11); and
 - (b) other laws and regulations non-compliance with which may have a material effect on the financial statements and which should therefore also be considered during their preparation; such laws and regulations do not directly determine the amounts and disclosures in the financial statements, but compliance with them may be essential to an entity's ability to continue its business or to avoid material penalties (for example, the terms of an operating licence or compliance with regulatory solvency requirements) (see paragraph 12).

Specific, but differing requirements are specified for each category of laws and regulations. For laws and regulations outside those categories, the auditor is required to remain alert to the possibility of non-compliance (see paragraph 13). Maintaining an attitude of professional skepticism throughout the audit, as required by [Proposed] ISA 200 (Revised), is important in this context, given the extent of laws and regulations that affect the operations of an entity.

6. The requirements in this ISA are designed to assist the auditor in identifying material misstatement of the financial statements due to non-compliance with laws and regulations. The auditor is not, and cannot be, held responsible for preventing non-compliance. However, the fact that an audit is carried out may act as a deterrent. (Ref: Para. A3-A5)

Effective Date

7. This ISA is effective for audits of financial statements for periods beginning on or after [date].¹

Objectives

8. The objectives of the auditor are:
 - (a) To obtain sufficient appropriate audit evidence that the financial statements are not materially misstated due to non-compliance with laws and regulations; and
 - (b) To respond appropriately to identified or suspected non-compliance with laws and regulations.

Definition

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

Requirements

The Auditor's Consideration of Compliance with Laws and Regulations

10. When obtaining an understanding of the entity, the auditor shall obtain a general understanding of:
 - (a) The legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates; and
 - (b) How the entity is complying with that framework. (Ref: Para A6-A7)
11. After obtaining the above general understanding, the auditor shall obtain sufficient appropriate audit evidence regarding compliance with those laws and regulations generally recognized by the auditor to have an effect on the determination of material amounts and disclosures in the financial statements.
12. In addition, the auditor shall perform audit procedures to identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements, specifically:

¹ This date will not be earlier than December 15, 2008.

- (a) Inquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations; and
 - (b) Inspecting correspondence with the relevant licensing or regulatory authorities. (Ref: Para A8-A9)
13. During the audit, the auditor shall be alert to the possibility that other audit procedures applied may bring instances of possible non-compliance with laws and regulations to the auditor's attention. (Ref: Para. A10)
14. The auditor shall request management, and where appropriate, those charged with governance, to provide written representations that all known actual or possible non-compliance with laws and regulations whose effects should be considered when preparing financial statements have been disclosed to the auditor. (Ref: Para. A11)
15. In the absence of identified or suspected non-compliance, the auditor is not required to perform audit procedures regarding the entity's compliance with laws and regulations, other than those set out in paragraphs 10 to 14, since this would be outside the scope of an audit of the financial statements. (Ref: Para A12)

Audit Procedures when Non-compliance is Identified or Suspected

16. When the auditor becomes aware of information concerning a possible instance of non-compliance, the auditor shall obtain:
- (a) An understanding of the nature of the act and the circumstances in which it has occurred; and
 - (b) Further information to evaluate the possible effect on the financial statements. (Ref: Para. A13-A14)
17. When the auditor believes there may be non-compliance, the auditor shall discuss the matter with management and, where appropriate, those charged with governance. (Ref: Para. A15)
18. When management, or as appropriate those charged with governance, do not provide information that supports that the entity is in compliance with laws and regulations and, in the auditor's judgement, the effect of non-compliance may be material to the financial statements, the auditor shall assess the need to obtain legal advice concerning possible non-compliance. (Ref: Para. A16)
19. When sufficient information about suspected non-compliance cannot be obtained, the auditor shall evaluate the effect of the lack of sufficient appropriate audit evidence on the auditor's report.
20. The auditor shall evaluate the implications of non-compliance in relation to other aspects of the audit, including the auditor's risk assessment and the reliability of written representations, and take appropriate action. (Ref: Para. A17-A19)

Reporting of Non-compliance

Reporting Non-compliance to Those Charged with Governance

21. Unless all of those charged with governance are involved in management of the entity, and therefore are aware of matters² involving non-compliance already communicated by the auditor, the auditor shall communicate with those charged with governance:
 - (a) Any significant matters involving non-compliance with laws and regulations that have a material effect on the financial statements and
 - (b) Any other matters involving non-compliance with laws and regulations that come to the auditor's attention, other than when the matters are clearly inconsequential.
22. If in the auditor's judgment the non-compliance referred to in paragraph 21 is believed to be intentional, the auditor shall communicate the matter to those charged with governance as soon as practicable.
23. If the auditor suspects that management or those charged with governance are involved in non-compliance, the auditor shall communicate the matter to the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. Where no higher authority exists, or if the auditor believes that the communication may not be acted upon or is unsure as to the person to whom to report, the auditor shall assess the need to obtain legal advice.

Reporting Non-compliance to the Users of the Auditor's Report on the Financial Statements

24. If the auditor concludes that the non-compliance has a material effect on the financial statements, and has not been adequately reflected in the financial statements, the auditor shall modify the audit opinion so as to express a qualified or an adverse opinion in accordance with [proposed] ISA 705 (Revised and Redrafted), "Modifications to the Opinion in the Independent Auditor's Report."³
25. If the auditor is precluded by the entity from obtaining sufficient appropriate audit evidence to evaluate whether non-compliance that may be material to the financial statements has, or is likely to have, occurred, the auditor shall express a qualified opinion or a disclaimer of opinion on the financial statements on the basis of a limitation on the scope of the audit in accordance with [proposed] ISA 705 (Revised and Redrafted).

² In accordance with [proposed] ISA 260 (Revised and Redrafted), "Communication with Those Charged with Governance," where all of those charged with governance are also involved in managing the entity, when matters are communicated with person(s) with management responsibilities, and those person(s) also have governance responsibilities, the matter need not be communicated again with those same person(s) in their governance role.

³ The IAASB has a project in progress to revise extant ISA 701, "Modifications to the Independent Auditor's Report." Where this Exposure Draft refers to proposed draft wording under consideration at present, the IAASB will consider the need for modification of the wording of this ISA as part of the deliberations relating to the future exposure and finalization of proposed revised and redrafted ISA 705.

26. If the auditor is unable to determine whether non-compliance has occurred because of limitations imposed by the circumstances rather than by the entity, in accordance with [proposed] ISA 705 (Revised and Redrafted) the auditor shall evaluate the effect on the audit opinion.

Reporting Non-compliance to Regulatory and Enforcement Authorities

27. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether there is a responsibility to report the identified or suspected non-compliance to a party outside the entity. Although the auditor's professional duty to maintain the confidentiality of client information may ordinarily preclude such reporting, the auditor's legal responsibilities may override the duty of confidentiality in some circumstances. (Ref: Para. A20-A22)

Documentation

28. The auditor shall document identified or suspected non-compliance with laws and regulations and the results of discussion with management, and where applicable, those charged with governance and other parties outside the entity. (Ref: Para. A23)

Application and Other Explanatory Material

Responsibility for Compliance with Laws and Regulations

Responsibility of Management for Compliance with Laws and Regulations (Ref: Para. 3)

- A1. Management, with the oversight of those charged with governance, is responsible for ensuring that the entity's operations are conducted in accordance with laws and regulations. Laws and regulations may affect an entity's financial statements in different ways: for example, most directly, they may affect specific disclosures required of the entity in the financial statements. They may also establish certain legal rights and obligations of the entity, some of which will be recognised in an entity's financial statements. In addition, laws and regulations may impose penalties in cases of non-compliance.
- A2. The following policies and procedures, among others, may assist those charged with governance and management in discharging their responsibilities for the prevention and detection of non-compliance:
- Monitoring legal requirements and ensuring that operating procedures are designed to meet these requirements.
 - Instituting and operating appropriate internal control.
 - Developing, publicizing and following a code of conduct.
 - Ensuring employees are properly trained and understand the code of conduct.

- Monitoring compliance with the code of conduct and acting appropriately to discipline employees who fail to comply with it.
- Engaging legal advisors to assist in monitoring legal requirements.
- Maintaining a register of significant laws with which the entity has to comply within its particular industry and a record of complaints.

In larger entities, these policies and procedures may be supplemented by assigning appropriate responsibilities to the following:

- An internal audit function.
- An audit committee.

Responsibility of the Auditor (Ref: Para. 4-6)

- A3. Non-compliance by the entity with laws and regulations may result in a material misstatement of the financial statements. However, an audit cannot be expected to detect non-compliance with all laws and regulations. Detection of non-compliance, regardless of materiality, may affect other aspects of the audit, including for example, the auditor's consideration of the integrity of management or employees.
- A4. Whether an act constitutes non-compliance is a matter for legal determination, which is ordinarily beyond the auditor's professional competence to determine. However, the auditor's training, experience and understanding of the entity and its industry or sector may provide a basis to recognize that some acts, coming to the auditor's attention, may constitute non-compliance with laws and regulations. Determining whether a particular act constitutes or is likely to constitute non-compliance is generally based on the advice of an informed expert qualified to practice law but ultimately can only be determined by a court of law.
- A5. In accordance with specific statutory requirements, the auditor may be specifically required to report, as part of the audit of the financial statements, on whether the entity complies with certain provisions of laws or regulations. In these circumstances, ISA 700 (Revised), "The Independent Auditor's Report on General Purpose Financial Statements" deals with how these audit responsibilities are addressed in the auditor's report. Furthermore, where there are specific statutory reporting requirements, it may be necessary for the audit plan to include appropriate tests for compliance with these provisions of the laws and regulations.

The Auditor's Consideration of Compliance with Laws and Regulations (Ref: Para. 10-15)

Obtaining an Understanding of the Legal and Regulatory Framework

- A6. In obtaining a general understanding of the legal and regulatory framework applicable to the entity and the industry or sector, certain laws and regulations that may give rise to business risks, and which have a fundamental effect on the operations of the entity, may need particular attention by the auditor. Non-compliance with laws and regulations that have a fundamental effect on the operations of the entity may cause the entity to cease

operations, or call into question the entity's continuance as a going concern. For example, non-compliance with the requirements of the entity's license or other entitlement to perform its operations could have such an impact (for example, for a bank, non-compliance with capital or investment requirements).

A7. To obtain the general understanding of laws and regulations and how the entity complies with them, the auditor may, for example:

- Use the existing understanding of the entity's industry, regulatory and other external factors;
- Inquire of management concerning the entity's policies and procedures regarding compliance with laws and regulations;
- Inquire of management as to the laws or regulations that may be expected to have a fundamental effect on the operations of the entity and its financial statements; and
- Inquire of management regarding the policies or procedures adopted for identifying, evaluating and accounting for litigation claims.

A8. Certain laws and regulations are well-established, known to the entity and within the industry or sector, and relevant to every set of the entity's financial statements. They could include those that relate to, for example:

- The form and content of financial statements;
- Industry specific financial reporting issues;
- Accounting for transactions under government contracts; or
- The accrual or recognition of expenses for income tax or pensions costs.

Some matters may be relevant to specific assertions (for example, the completeness of income tax provisions), while others may be relevant to the financial statements as a whole (for example, the required statements constituting a complete set of financial statements). Other ISAs address the auditor's responsibilities in relation to obtaining sufficient appropriate audit evidence about whether the financial statements have been prepared in accordance with the financial reporting framework, which includes laws and regulations that form part of that framework.

Procedures to identify instances of Non-compliance

A9. As the financial reporting consequences of other laws and regulations (i.e., laws and regulations other than those generally recognized to have an effect on the determination of material amounts and disclosures in financial statements) can vary depending on the entity's operations, the audit procedures required by paragraph 12 are directed to bringing instances of possible non-compliance with laws and regulations that may have a material effect on the financial statements to the auditor's attention.

Non-compliance brought to notice by other audit procedures

A10. Audit procedures applied to form an opinion on the financial statements may bring instances of possible non-compliance with laws and regulations to the auditor's attention. For example, such audit procedures may include:

- Reading minutes;
- Inquiring of the entity's management and legal counsel concerning litigation, claims and assessments; and
- Performing substantive tests of details of classes of transactions, account balances or disclosures.

Written Representations

A11. Because the impact on financial statements of laws and regulations can vary considerably and there are risks to the detection of non-compliance, written representations provide audit evidence about management's knowledge of actual or suspected non-compliance with laws and regulations, whose effects may have a material effect on the financial statements. However, of themselves, written representations do not provide sufficient appropriate audit evidence and, accordingly, do not relieve the auditor of the responsibility to obtain other audit evidence.

Limit on Extent of Audit Procedures to be undertaken

A12. In the absence of audit evidence to the contrary, the auditor is entitled to assume the entity is in compliance with laws and regulations.

Audit Procedures when Non-compliance is Identified or Suspected (Ref: Para. 16-20)

A13. When the auditor becomes aware of either the existence of, or information about, the following matters, it may be an indication of non-compliance with laws and regulations:

- Investigation by regulatory organisations and government departments or payment of fines or penalties.
- Payments for unspecified services or loans to consultants, related parties, employees or government employees.
- Sales commissions or agent's fees that appear excessive in relation to those ordinarily paid by the entity or in its industry or to the services actually received.
- Purchasing at prices significantly above or below market price.
- Unusual payments in cash, purchases in the form of cashiers' cheques payable to bearer or transfers to numbered bank accounts.
- Unusual transactions with companies registered in tax havens.
- Payments for goods or services made other than to the country from which the goods or services originated.

- Payments without proper exchange control documentation.
- Existence of an information system which fails, whether by design or by accident, to provide an adequate audit trail or sufficient evidence.
- Unauthorised transactions or improperly recorded transactions.
- Media comment.

A14. Matters relevant to the auditor's evaluation of the possible effect on the financial statements include:

- The potential financial consequences of possible non-compliance with laws and regulations on the financial statements, including the imposition of fines, penalties, damages, threat of expropriation of assets, enforced discontinuation of operations and litigation.
- Whether the potential financial consequences require disclosure.
- Whether the potential financial consequences are so serious as to call into question the fair presentation of the financial statements, or otherwise make the financial statements misleading.

A15. The auditor may discuss the findings with those charged with governance where they may be able to provide additional audit evidence. For example, the auditor may confirm that those charged with governance have the same understanding of the facts and circumstances relevant to transactions or events that have led to the possibility of non-compliance with laws and regulations.

A16. If management, or as appropriate those charged with governance, do not provide information to the auditor that the entity is in fact in compliance with laws and regulations, the auditor may consider whether to consult with the entity's lawyer about the application of the laws and regulations to the circumstances, including the possibility of fraud, and the possible effects on the financial statements. When it is not considered appropriate to consult with the entity's lawyer or when the auditor is not satisfied with the lawyer's opinion, the auditor may consider it appropriate to consult the auditor's own lawyer as to whether a contravention of a law or regulation is involved, the possible legal consequences, including the possibility of fraud, and what further action, if any, the auditor would take.

A17. As required by paragraph 20, the auditor reconsiders the risk assessment and the reliability of written representations in case of non-compliance not detected by the entity's internal controls or not included in written representations by management. The implications of particular instances of non-compliance identified by the auditor will depend on the relationship of the perpetration and concealment, if any, of the act to specific control activities and the level of management or employees involved, especially implications arising from the involvement of the highest authority within the entity.

A18. In exceptional cases, the auditor may consider whether withdrawal from the engagement is necessary when the entity does not take the remedial action that the auditor considers necessary in the circumstances, even when the non-compliance is not material to the

financial statements. When deciding whether withdrawal from the engagement is necessary the auditor may consider seeking legal advice.

Considerations Specific to Public Sector Entities

A19. In the public sector, withdrawal from the engagement may not be an option. In such cases, the auditor may consider alternative actions, including describing the non-compliance in an “Other Matter(s)” paragraph in the auditor’s report.⁴

Reporting of Non-compliance (Ref: Para. 21-27)

Reporting Non-compliance to Regulatory and Enforcement Authorities

A20. The auditor’s professional duty to maintain the confidentiality of client information may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity. However, the auditor’s legal responsibilities vary by country and, in certain circumstances, the duty of confidentiality may be overridden by statute, the law or courts of law. In some countries, the auditor of a financial institution has a statutory duty to report the occurrence, or suspected occurrence, of non-compliance with laws and regulations to supervisory authorities. Also, in some countries the auditor has a duty to report misstatements to authorities in those cases where management and those charged with governance fail to take corrective action.

A21. The auditor may consider it appropriate to obtain legal advice to determine the appropriate course of action in the circumstances, the purpose of which is to ascertain the steps necessary in considering the public interest aspects of identified or suspected non-compliance with laws and regulations.

Considerations Specific to Public Sector Entities

A22. Many public sector engagements may include additional audit responsibilities with respect to consideration of laws and regulations, which may relate to the audit of financial statements or extend to other aspects of the entity’s operations. A public sector auditor may be obliged to report on instances of non-compliance to governing authorities or to report them in the audit report.

Documentation (Ref: Para. 28)

A23. The auditor’s documentation of findings regarding identified or suspected non-compliance with laws and regulations may include for example:

- Copies of records or documents; and

⁴ The IAASB has a project in progress to revise extant ISA 701, “Modifications to the Independent Auditor’s Report.” Where this Exposure Draft refers to proposed draft wording under consideration at present, the IAASB will consider the need for modification of the wording of this ISA as part of the deliberations relating to the future exposure and finalization of proposed revised and redrafted ISA 706, “Emphasis of Matter Paragraphs and Other Matter(s) Paragraphs in the Independent Auditor’s Report.”

- Minutes of discussions held with management or those charged with governance or parties outside the entity.

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