

PROPOSED INTERNATIONAL STANDARD ON AUDITING 250**(REDRAFTED)****CONSIDERATION OF LAWS AND REGULATIONS IN AN AUDIT OF FINANCIAL
STATEMENTS**

(Effective for audits of financial statements for periods beginning on or after December 15, 2009)

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International Standard on Auditing (ISA) 250 (Redrafted), "Consideration of Laws and Regulations in an Audit of Financial Statements" should be read in conjunction with [proposed] ISA 200 (Revised and Redrafted), "Overall Objective of the Independent Auditor, and the Conduct of an Audit in Accordance with International Standards on Auditing."

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.

Effect of Laws and Regulations

2. The effect 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 subject only 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 fines, litigation or other consequences for the entity that may have a material effect on the financial statements.

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 systems designed to prevent, or detect and correct, non-compliance with laws and regulations. (Ref: Para. A1-A2) **[ISSUE E]**

Responsibility of the Auditor

4. The requirements in this ISA are designed to assist the auditor in identifying material misstatement in the financial statements due to non-compliance with laws and regulations. However, the auditor is not, and cannot be held responsible for preventing non-compliance or for detecting non-compliance with all laws and regulations.
5. The auditor 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 takes into account the applicable legal and regulatory framework. Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements in 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 than for other risks of material misstatement 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 ultimately a matter for legal determination by a court of law.

Ordinarily, 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.

6. Owing to the matters referred to above, this ISA distinguishes the auditor's responsibilities in relation to compliance with two different categories of laws and regulations as follows:
 - (a) Those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial statements such as income tax and pension laws and regulations (see paragraph 11); and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, but compliance with which may be fundamental to the operating aspects of the business, to an entity's ability to continue its business, or to avoid material penalties (for example, compliance with the terms of an operating licence, compliance with regulatory solvency requirements, or compliance with environmental regulations); non-compliance with such laws and regulations may therefore have a material effect on the financial statements (see paragraph 12).

In this ISA, differing requirements are specified for each of the above categories of laws and regulations. The auditor is also required to remain alert to the possibility that other audit procedures applied for the purpose of forming an opinion on financial statements may bring instances of possible non-compliance to the auditor's attention (see paragraph 13). Maintaining an attitude of professional skepticism throughout the audit, as required by [proposed] ISA 200 (Revised and Redrafted)¹, is important in this context, given the extent of laws and regulations that affect the entity. (Ref: Para. A3-A6)

Effective Date

7. This ISA is effective for audits of financial statements for periods beginning on or after December 15, 2009.

¹ [Proposed] ISA 200 (Revised and Redrafted), "Overall Objective of the Independent Auditor, and the Conduct of an Audit in Accordance with International Standards on Auditing," paragraph 13.

Objectives

8. The objectives of the auditor are: **ISSUE B**
- (a) To obtain sufficient appropriate audit evidence that the financial statements are not materially misstated due to non-compliance with laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements;
 - (b) To identify instances of non-compliance with other laws and regulations that are known to the entity and that may have a material effect on the financial statements; and **ISSUE A**
 - (c) To respond appropriately to identified or suspected non-compliance with laws and regulations that has come to the auditor's attention during the course of the audit.

Definition

9. For the purposes of this ISA, the following term has the meaning attributed below:
- 'Non-compliance – 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. As part of obtaining an understanding of the entity and its environment, 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. A7-A9)
11. The auditor shall obtain sufficient appropriate audit evidence that the financial statements are not materially misstated due to non-compliance with laws and regulations that, in the auditor's judgement, have a direct effect on the determination of material amounts and disclosures in the financial statements, as described in paragraph 6(a). (Ref: Para. A8) **ISSUE C**
12. The auditor shall perform the following audit procedures to identify instances of possible non-compliance with other laws and regulations that are known to the entity and, in the auditor's judgement, may have a material effect on the financial statements, as described in paragraphs 6(b): **ISSUES A and C**
- (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, if any, with the relevant licensing or regulatory authorities.
(Ref: Para. A10)

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. A11)
14. The auditor shall request management, and where appropriate, those charged with governance, to provide written representations that all known instances of identified 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. A12)
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.

Audit Procedures when Non-compliance is Identified or Suspected

16. When the auditor becomes aware of information concerning an instance of possible non-compliance, the auditor shall obtain: (Ref: Para. A13)
 - (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. 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 sufficient information that supports that the entity is in compliance with laws and regulations and, in the auditor's judgement, the effect of the possible non-compliance may be material to the financial statements, the auditor shall consider the need to obtain legal advice. (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 opinion.
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 Identified or Suspected 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 identified or suspected non-compliance already communicated by the auditor, the auditor shall communicate with those charged with governance matters involving non-compliance with laws and regulations that come to the auditor's attention during the course of the audit, 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 and material, 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 concludes that the communication has not been acted on in a timely manner or is unsure as to the person to whom to report, the auditor shall consider 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, in accordance with [proposed] ISA 705 (Revised and Redrafted),³ express a qualified or adverse opinion on the financial statements.
25. If the auditor is precluded by management or those charged with governance 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 disclaim an 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).
26. If the auditor is unable to determine whether non-compliance has occurred because of limitations imposed by the circumstances rather than by management or those charged with governance, the auditor shall evaluate the effect on the auditor's opinion in accordance with [proposed] ISA 705 (Revised and Redrafted).

² In accordance with paragraph 9 of 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 [Proposed] ISA 705 (Revised and Redrafted), "Modifications to the Opinion in the Independent Auditor's Report," paragraphs 10 and 11.

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 the auditor has a responsibility to report the identified or suspected non-compliance to parties outside the entity. (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 relevant, 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 or they may refer to the applicable financial reporting framework. 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 with laws and regulations:
- 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.
- A compliance function.

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 auditor 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 with laws and regulations is a matter for legal determination, which is ordinarily beyond the auditor's professional competence to determine. Nevertheless, 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.
- 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, [proposed] ISA 700 (Redrafted)⁴ or [proposed] ISA 800 (Revised and Redrafted)⁵ deal 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. **ISSUE D]**

Considerations Specific to Public Sector Entities

- A6 In the public sector there may be additional audit responsibilities with respect to the consideration of laws and regulations which may relate to the audit of financial statements or may extend to other aspects of the entity's operations.

The Auditor's Consideration of Compliance with Laws and Regulations

Obtaining an Understanding of the Legal and Regulatory Framework (Ref: Para. 10)

- A7. To obtain a general understanding of the legal and regulatory framework and how the entity complies with that framework, the auditor may, for example:
- Use the existing understanding of the entity's industry, regulatory and other external factors;
 - 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;

⁴ Proposed ISA 700 (Redrafted) "The Independent Auditor's Report on General Purpose Financial Statements."

⁵ Proposed ISA 800 (Revised and Redrafted) "Special Considerations-Audits of Special Purpose Financial Statements and Specific Elements, Accounts or Items of a Financial Statement."

- Inquire of management concerning the entity's policies and procedures regarding compliance with laws and regulations;
- Inquire of management regarding the policies or procedures adopted for identifying, evaluating and accounting for litigation claims; and
- Discuss the legal and regulatory framework with auditors of subsidiaries or parent entities in other countries (for example, if a subsidiary is required to adhere to the securities regulations of the parent company).

A8. Certain laws and regulations are well-established, known to the entity and within the industry or sector, and relevant to 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 also 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.

A9. Certain other laws and regulations may need particular attention by the auditor because they have a fundamental effect on the operations of the entity. 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). There are also many laws and regulations relating principally to the operating aspects of the entity that typically do not affect the financial statements and are not captured by the entity's information systems relevant to financial reporting.

Procedures to identify instances of Non-compliance – Other Laws and Regulations (Ref: Para. 12)

A10. As the financial reporting consequences of other laws and regulations (i.e., laws and regulations other than those generally recognized to have a direct 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 are known to the entity and, in the auditor's judgement, may have a material effect on the financial statements to the auditor's attention.

Non-compliance Brought to the Auditor's Notice by Other Audit Procedures (Ref: Para. 13)

A11. 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 in-house or external legal counsel concerning litigation, claims and assessments; and
- Performing substantive tests of details of classes of transactions, account balances or disclosures.

Written Representations (Ref: Para. 14)

A12. Because the effect on financial statements of laws and regulations can vary considerably, written representations provide necessary audit evidence about management's knowledge of identified or suspected non-compliance with laws and regulations, whose effects may have a material effect on the financial statements. However, written representations do not provide sufficient appropriate audit evidence on their own and, accordingly, do not affect the nature and extent of other audit evidence that is to be obtained by the auditor.

Audit Procedures when Non-compliance is Identified or Suspected

Indications of Non-compliance with Laws and Regulations (Ref: Para. 16)

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:

- Investigations 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.

- Adverse media comment.

Matters Relevant to the Auditor's Evaluation (Ref: Para. 16(b))

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, for example, 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.

Audit Procedures (Ref: Para. 17-20)

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 sufficient information to the auditor that the entity is in fact in compliance with laws and regulations, the auditor may consider it appropriate to consult with the entity's in-house legal counsel or external legal counsel 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 evaluates 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. 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, unless prohibited by law or regulation, withdrawal from the engagement is necessary when management or those charged with governance do 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.

Reporting of Identified or Suspected Non-compliance

Reporting Non-compliance to Regulatory and Enforcement Authorities (Ref: Para. 27)

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, where applicable, those charged with governance fail to take corrective action. **[ISSUE D]**

A21. The auditor may consider it appropriate to obtain legal advice to determine the appropriate course of action.

Considerations Specific to Public Sector Entities

A22. A public sector auditor may be obliged to report on instances of non-compliance to governing authorities or to report them in the auditor's 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.
- Minutes of discussions held with management, those charged with governance or parties outside the entity.