

**PROPOSED SECTION 225 OF THE INTERNATIONAL ETHICS STANDARDS
BOARD FOR ACCOUNTANTS' CODE OF ETHICS FOR PROFESSIONAL
ACCOUNTANTS (IESBA CODE)**

Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations

(CLEAN)

Purpose

- 225.1 In the course of providing a professional service to a client, a professional accountant in public practice may come across non-compliance or suspected non-compliance with laws and regulations. The purpose of this section is to guide the professional accountant in assessing the implications of such non-compliance and the possible courses of action in responding to it.
- 225.2 Non-compliance with laws and regulations comprises acts of omission or commission, intentional or unintentional, committed by a client or by those charged with governance, management or employees of a client which are contrary to the prevailing laws or regulations.
- 225.3 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance with laws and regulations, the objectives of the professional accountant are:
- (a) To comply with the fundamental principles of integrity and professional behavior;
 - (b) Through alerting management or, where appropriate, those charged with governance of the client, to seek to:
 - (i) Have them rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
 - (c) To take such further action as may be needed in the public interest.
- 225.4 What constitutes the public interest will depend on:
- (a) The facts and circumstances of the non-compliance or suspected non-compliance; and
 - (b) The nature and extent of the consequences to investors, creditors, employees and the wider public.

Scope

- 225.5 This section addresses:
- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and
 - (b) 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.

225.6 Examples of laws and regulations which this section addresses include:

- Laws addressing fraud, corruption and bribery.
- Laws against money laundering and terrorist financing, and those addressing proceeds of crime.
- Securities laws and regulations.
- Banking and prudential laws and regulations in the financial services industry.
- Tax and pension laws and regulations.
- Environmental regulations.
- Regulations governing, for example, public health and safety.

225.7 Non-compliance with those laws and regulations may result in fines, litigation or other consequences for the client that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to the client, investors, creditors, employees or the wider public. 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.

225.8 This section does not address:

- (a) Matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders or the wider public;
- (b) Personal misconduct unrelated to the business activities of the client; and
- (c) Non-compliance with laws and regulations committed by persons other than the client, those charged with governance, management or employees of the client. The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Client, Its Management and Those Charged with Governance

225.9 It is the responsibility of the client or its management, with the oversight of those charged with governance, to ensure that the client's business activities are conducted in accordance with laws and regulations. It is also the responsibility of the client, its management and those charged with governance to identify and address any non-compliance with laws and regulations by the client or by those charged with governance, management or employees of the client.

Responsibilities of Professional Accountants Performing Audits of Financial Statements

Complying with Applicable Laws and Regulations

225.10 In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance with laws and regulations. The professional accountant shall obtain an understanding of those provisions and

comply with them, including any prohibitions on alerting (“tipping-off”) the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

Obtaining an Understanding of the Matter

- 225.11 If, in the course of performing an audit of financial statements, the professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall obtain an understanding of the matter, including:
- The nature of the act and the circumstances in which it has been or may be committed; and
 - The application of the relevant laws and regulations to the circumstances.
- 225.12 If the professional accountant suspects that non-compliance with laws and regulations has been or may be committed, the professional accountant shall discuss the matter with the appropriate level of management and, where appropriate, those charged with governance.
- 225.13 Such discussion serves to clarify the professional accountant’s understanding of the facts and circumstances relevant to the matter and its potential consequences. The information conveyed by the professional accountant may prompt management or those charged with governance to duly investigate the matter.
- 225.14 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the audit. Whether an act constitutes actual non-compliance is ultimately a matter for legal determination by a court of law. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the firm, a network firm, a relevant professional body, or legal counsel.
- 225.15 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:
- The nature and circumstances of the matter.
 - The individuals actually or potentially involved.
 - The likelihood of collusion.
 - The potential consequences of the matter.
 - Whether that level of management is able to investigate the matter and take appropriate action.
- 225.16 The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. If the professional accountant believes that management is involved in the non-compliance or suspected non-compliance, the professional accountant shall discuss the matter with those charged with governance, where they are independent of management. The professional accountant may also consider discussing the matter with internal auditors, where applicable. In the context of a group, the appropriate level may be management at an entity that controls the client.

- 225.17 The professional accountant is encouraged to obtain legal advice if:
- (a) No higher level of authority exists;
 - (b) The professional accountant is unsure as to the person with whom to discuss the matter;
 - (c) Insufficient information is obtained to satisfy the professional accountant that the client is in compliance with laws and regulations; or
 - (d) Management or those charged with governance disagree with the professional accountant's assessment of the situation, including the potential consequences of the matter.

Addressing the Matter with Management and Those Charged with Governance

- 225.18 If management and, where appropriate, those charged with governance agree that non-compliance has been or may be committed, the professional accountant shall prompt them to take appropriate and timely actions, if they have not already done so, to:
- (a) Rectify, remediate or mitigate the consequences of the non-compliance;
 - (b) Deter the commission of the non-compliance where it has not yet occurred; or
 - (c) Disclose the matter to an appropriate authority where required by law or regulation or where considered necessary in the public interest.
- 225.19 The professional accountant shall consider whether the client, its management and those charged with governance understand their legal or regulatory responsibilities with respect to the matter. If not, the professional accountant may suggest appropriate sources of information or recommend that they obtain legal advice.
- 225.20 In light of the professional accountant's understanding of the matter based on the information obtained, and having regard to how management has responded to the matter, the professional accountant shall comply with applicable:
- (a) Laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance with laws and regulations to an appropriate authority. In this regard, some laws and regulations may stipulate a period within which reports are to be made; and
 - (b) Requirements under professional standards, including:
 - Communication with those charged with governance.
 - Communication with the group engagement team in the case of a group audit.
 - Consideration of the implications of the matter for the auditor's report, including disclosure in the report.

Determining Whether Further Action is Needed

- 225.21 The professional accountant shall determine if further action is needed to achieve the professional accountant's objectives under this section.
- 225.22 Whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.
- The urgency of the matter.
- The pervasiveness of the matter throughout the client.
- Whether the professional accountant continues to have confidence in the integrity of management and, if they are independent of management, those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- The likelihood of continuing consequences for the entity, investors, creditors, employees or the wider public.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees or the wider public. An act that causes substantial harm is one that results in immediate or ongoing serious adverse consequences to any of these parties in financial or non-financial terms.

225.23 Relevant factors to consider in judging the appropriateness of the response of management and those charged with governance include whether:

- The non-compliance or suspected non-compliance has been adequately investigated.
- Action has been, or is being, taken to rectify, remediate or mitigate the consequences of the non-compliance.
- Action has been, or is being, taken to deter the commission of the non-compliance where it has not yet occurred.
- Appropriate steps have been, or are being, taken to reduce the risk of re-occurrence, for example, additional controls or training.
- The non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

225.24 Examples of circumstances that may cause the professional accountant no longer to have confidence in the integrity of management and, where applicable, those charged with governance include situations where:

- The professional accountant suspects or has evidence of their involvement or intended involvement in the non-compliance.
- The professional accountant is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements, have not reported, or authorized reporting of, the matter to an appropriate authority within a reasonable period.

225.25 Further action may include:

- Disclosing the matter to an appropriate authority notwithstanding that there is no legal or regulatory requirement to do so.

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

225.26 In determining the nature and extent of further action needed, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest.

225.27 As consideration of the matter may involve complex analysis and judgments, the professional accountant may consider obtaining legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action. The professional accountant may also consider consulting on a confidential basis with a regulator or relevant professional body.

Determining Whether to Disclose the Matter to an Appropriate Authority

225.28 In determining whether to disclose the matter to an appropriate authority, relevant factors to consider include:

- The nature and extent of the actual or potential harm to the interests of the entity, investors, creditors, employees or the wider public. For example:
 - Whether the matter could threaten the client's license to operate.
 - If the client is listed on a securities exchange, whether the matter could adversely impact the fair and orderly market in the client's securities or pose a systemic risk to the financial markets.
 - Whether products that could be harmful to public health or safety would be likely to continue to be sold by the entity.
- Whether there is an appropriate authority that can receive the information and cause the matter to be investigated.
- 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 professional accountant or other individuals.

Disclosure would be precluded if it would be contrary to law or regulation.

225.29 The appropriate authority to which to disclose the matter will depend on the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.

225.30 If the professional accountant decides that disclosure of the matter to an appropriate authority would be an appropriate course of action in the circumstances, this would not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is

appropriate to inform the client of the professional accountant's intentions before disclosing the matter

Withdrawal from the Engagement and the Professional Relationship

225.31 Where the professional accountant determines that withdrawing from the engagement and the professional relationship would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the professional accountant's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the professional accountant and withdrawal may be the only available course of action. When withdrawing from the professional relationship, the professional accountant shall comply with the requirements of section 210.

Documentation

225.32 Matters of non-compliance with laws and regulations will ordinarily be significant matters in the context of an audit engagement. *International Standards on Auditing* (ISAs) require a professional accountant performing an audit of financial statements to:

- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions;
- Document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and
- Include in the documentation 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.

225.33 Matters to be documented in this regard would in particular include:

- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the professional accountant considered and the decisions that were taken, having regard to the reasonable and informed third party perspective.
- How the professional accountant is satisfied that the professional accountant's objectives under this section have been met.

Responsibilities of Professional Accountants in Public Practice Providing Professional Services Other Than Audits of Financial Statements

Complying with Applicable Laws and Regulations

225.34 In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance with laws and regulations. The professional accountant shall obtain an understanding of those provisions and comply with them, including any prohibitions on alerting ("tipping-off") the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

Obtaining an Understanding of the Matter and Addressing It with Management and Those Charged with Governance

- 225.35 If, in the course of providing a professional service to a client or when acting for the client, the professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall seek to obtain an understanding of the matter, including:
- The nature of the act and the circumstances in which it has been committed or may be about to be committed; and
 - The application of the relevant laws and regulations to the circumstances.
- 225.36 If the professional accountant suspects that non-compliance with laws and regulations has been or may be committed, the professional accountant shall discuss the matter with the appropriate level of management and, if the professional accountant has access to them and where appropriate, those charged with governance.
- 225.37 Such discussion serves to clarify the professional accountant's understanding of the facts and circumstances relevant to the matter and its potential consequences. The information conveyed by the professional accountant may prompt management or those charged with governance to duly investigate the matter.
- 225.38 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. Whether an act constitutes actual non-compliance is ultimately a matter for legal determination by a court of law. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the firm, a network firm, a relevant professional body, or legal counsel.
- 225.39 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include:
- The nature and circumstances of the matter.
 - The individuals actually or potentially involved.
 - The likelihood of collusion.
 - The potential consequences of the matter.
 - Whether that level of management is able to investigate the matter and take appropriate action.
- 225.40 If the professional accountant is performing a non-audit service for an audit client of the firm, the professional accountant shall communicate the matter within the firm. This is to enable the engagement partner for the audit to be informed about it and for the audit engagement team to determine how it should be addressed in accordance with the provisions of this section.
- 225.41 If the professional accountant is performing a non-audit service for an audit client of a network firm, the professional accountant shall consider whether to communicate the matter to the network firm so as to enable the engagement partner for the audit to be informed about it.

Determining Whether Further Action is Needed

- 225.42 The professional accountant shall also consider whether further action is needed beyond consideration of the professional accountant's association with the client to achieve the professional accountant's objectives under this section.
- 225.43 Whether the professional accountant can remain associated with the client and the nature and extent of further action will depend on factors such as:
- The legal and regulatory framework.
 - The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.
 - The urgency of the matter.
 - The involvement of management or those charged with governance in the matter.
 - The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the wider public.
 - The likelihood of continuing consequences for the client, investors, creditors, employees or the wider public.
- 225.44 Further action may include:
- If the client is not an audit client of the firm or a network firm, disclosing the matter to the external auditor, if any.
 - Disclosing the matter to an appropriate authority notwithstanding that there is no legal or regulatory requirement to do so.
- 225.45 In considering whether to disclose outside the client, relevant factors include:
- Whether doing so would be contrary to law or regulation.
 - Whether the terms or nature of the engagement preclude disclosure of information about the client to third parties, such as when there is legal privilege or similar (for example, where the professional accountant is engaged by a law firm to conduct a forensic assignment).
 - Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor (for example, to avoid tipping-off) in an ongoing investigation into the non-compliance or suspected non-compliance.
- 225.46 If the professional accountant decides that disclosure of the matter to an appropriate authority would be an appropriate course of action in the circumstances, this would not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before disclosing the matter.
- 225.47 The professional accountant may consider obtaining legal advice to understand the professional or legal implications of taking any particular course of action. The professional accountant may also consider consulting on a confidential basis with a regulator or relevant professional body.

Considering Whether to Remain Associated with the Client

- 225.48 To comply with the fundamental principles of integrity and professional behavior, the professional accountant shall consider whether the professional accountant can remain associated with the client.

Documentation

- 225.49 The professional accountant is encouraged to document:

- The identified or suspected non-compliance with laws and regulations.
- The results of discussion with management and, where applicable, those charged with governance and other parties.
- How management and, where applicable, those charged with governance have responded to the matter.
- The courses of action the professional accountant considered and the decisions that were taken.
- How the professional accountant is satisfied that the professional accountant's objectives under this section have been met.

As such documentation may be used in a court of law, how it is prepared requires appropriate care and diligence.

- 225.50 Documentation provides a number of benefits, including the following:

- It provides evidence of the professional accountant's judgments in forming conclusions.
- It may serve to protect the professional accountant if challenged in legal or disciplinary proceedings to justify the professional accountant's actions in responding to the matter.
- It may assist the professional accountant if required to appear before a court of law or tribunal to provide testimony regarding the matter.

PROPOSED SECTION 360 OF THE IESBA CODE

Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations

(CLEAN)

Purpose

- 360.1 In the course of carrying out their employment responsibilities, a professional accountant in business may come across non-compliance or suspected non-compliance with laws and regulations. The purpose of this section is to guide the professional accountant in assessing the implications of such non-compliance and the possible courses of action in responding to it.
- 360.2 Non-compliance with laws and regulations comprises acts of omission or commission, intentional or unintentional, committed by the professional accountant's employing organization or by those charged with governance, management or employees of the employing organization which are contrary to the prevailing laws or regulations.
- 360.3 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance with laws and regulations, the objectives of the professional accountant are:
- (a) To comply with the fundamental principles of integrity and professional behavior;
 - (b) Through alerting management or, where appropriate, those charged with governance of the employing organization, to seek to:
 - (i) Have them rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
 - (c) To take such further action as may be needed in the public interest.
- 360.4 What constitutes the public interest will depend on:
- (a) The facts and circumstances of the non-compliance or suspected non-compliance; and
 - (b) The nature and extent of the consequences to investors, creditors, employees and the wider public.

Scope

- 360.5 This section addresses:
- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization's financial statements; and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organization's financial statements, but compliance with which may be fundamental to the operating aspects of the employing organization's business, to its ability to continue its business, or to avoid material penalties.
- 360.6 Examples of laws and regulations which this section addresses include:
- Laws addressing fraud, corruption and bribery.

- Laws against money laundering and terrorist financing, and those addressing proceeds of crime.
- Securities laws and regulations.
- Banking and prudential laws and regulations in the financial services industry.
- Tax and pension laws and regulations.
- Environmental regulations.
- Regulations governing, for example, public health and safety.

360.7 Non-compliance with those laws and regulations may result in fines, litigation or other consequences for the employing organization that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to the employing organization, investors, creditors, employees or the wider public. 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.

360.8 This section does not address:

- (a) Matters that are clearly inconsequential, judged by their nature of the matter and impact, financial or otherwise, on the employing organization, its stakeholders or the wider public;
- (b) Personal misconduct unrelated to the business activities of the employing organization; and
- (c) Non-compliance with laws and regulations committed by persons other than the employing organization or those charged with governance, management or employees of the employing organization. The professional accountant may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Employing Organization and Its Management and Those Charged with Governance

360.9 It is the responsibility of the employing organization and its management, with the oversight of those charged with governance, to ensure that the employing organization's business activities are conducted in accordance with laws and regulations. It is also the responsibility of the employing organization, its management and those charged with governance to identify and address any non-compliance with laws and regulations by the employing organization or by those charged with governance, management or employees of the employing organization.

Responsibilities of Professional Accountants in Business

360.10 In some jurisdictions, there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance with laws and regulations. The professional accountant shall obtain an understanding of those provisions and comply with them.

360.11 Many employing organizations have established protocols and procedures (for example, an ethics policy) regarding how non-compliance or suspected non-compliance with laws and regulations by the employing organization should be raised internally. Such protocols and

procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the professional accountant's employing organization, the professional accountant shall consider them in determining how to respond to the matter.

Responsibilities of Senior Professional Accountants in Business

360.12 Senior professional accountants in business are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organization's human, financial, technological, physical and intangible resources. Because of their roles, positions and spheres of influence within the employing organization, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance with laws and regulations than other professional accountants within the employing organization.

Obtaining an Understanding of the Matter

360.13 If, in the course of carrying out employment responsibilities, a senior professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall obtain an understanding of the matter, including:

- The nature of the act and the circumstances in which it has been or may be committed;
- The application of the relevant laws and regulations to the circumstances; and
- The potential consequences to the employing organization, investors, creditors, employees or the wider public.

360.14 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional accountant's role within the employing organization. Whether an act constitutes actual non-compliance is ultimately a matter for legal determination by a court of law. Depending on the nature and significance of the matter, the professional accountant may cause, or take appropriate steps to cause, the matter to be investigated internally. The professional accountant may also consult on a confidential basis with others within the employing organization, a relevant professional body or legal counsel.

Addressing the Matter

360.15 If non-compliance has been or may be committed, the professional accountant shall, subject to paragraph 360.11, discuss the matter with the professional accountant's immediate superior, if any, to enable a determination to be made as to how the matter should be addressed. If the professional accountant's immediate superior appears to be involved in the matter, the professional accountant shall discuss the matter with the next higher level of authority within the employing organization. The professional accountant may also discuss how the matter should be addressed with one or more senior colleagues.

- 360.16 The professional accountant shall also take appropriate steps to:
- (a) Have the matter communicated with those charged with governance to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities;
 - (b) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance with laws and regulations to an appropriate authority;
 - (c) Have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated;
 - (d) Reduce the risk of re-occurrence; and
 - (e) Seek to deter the commission of the non-compliance if it has not yet occurred.
- 360.17 The professional accountant shall disclose the matter to the employing organization's external auditor, if any, pursuant to the professional accountant's duty or legal obligation to provide all information and explanations necessary to enable the auditor to perform the audit.

Determining Whether Further Action is Needed

- 360.18 The professional accountant shall determine if further action is needed to achieve the professional accountant's objectives under this section.
- 360.19 Whether further action is needed, and the nature and extent of it, will depend on various factors, including:
- The legal and regulatory framework.
 - The appropriateness and timeliness of the response of the professional accountant's immediate superior, if any, and those charged with governance.
 - The urgency of the matter.
 - The pervasiveness of the matter throughout the employing organization.
 - Whether the professional accountant continues to have confidence in the integrity of those charged with governance.
 - Whether the non-compliance or suspected non-compliance is likely to recur.
 - The likelihood of continuing consequences for the employing organization, investors, creditors, employees or the wider public.
 - Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organization, investors, creditors, employees or the wider public. An act that causes substantial harm is one that results in immediate or ongoing serious adverse consequences to any of these parties in financial or non-financial terms.
- 360.20 Relevant factors to consider in judging the appropriateness of the response of the professional accountant's immediate superior, if any, and those charged with governance include whether:

- They have authorized appropriate action to be taken to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.
 - The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- 360.21 Examples of circumstances that may cause the professional accountant no longer to have confidence in the integrity of those charged with governance include situations where:
- The professional accountant suspects or has evidence of their involvement or intended involvement in the non-compliance.
 - Contrary to legal or regulatory requirements, they have not reported the matter, or authorized the matter to be reported, to an appropriate authority within a reasonable period.
- 360.22 Further action may include:
- Informing the parent entity of the matter if the employing organization is a member of a group.
 - Disclosing the matter to an appropriate authority notwithstanding that there is no legal or regulatory requirement to do so.
 - Resigning from the employing organization.
- 360.23 In determining the nature and extent of any further action needed, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest.
- 360.24 As consideration of the matter may involve complex analysis and judgments, the professional accountant may consider obtaining legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action. The professional accountant may also consider consulting on a confidential basis with a regulator or relevant professional body.

Determining Whether to Disclose the Matter to an Appropriate Authority

- 360.25 In determining whether to disclose the matter to an appropriate authority, relevant factors to consider include:
- The nature and extent of the actual or potential harm to the interests of the employing organization, investors, creditors, employees or the wider public. For example:
 - Whether the matter could threaten the employing organization's license to operate.
 - If the employing organization is listed on a securities exchange, whether the matter could adversely impact the fair and orderly market in the employing organization's securities or pose a systemic risk to the financial markets.
 - Whether products that could be harmful to public health or safety would be likely to continue to be sold by the employing organization.

- Whether there is an appropriate authority that can receive the information and cause the matter to be investigated.
- 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 professional accountant or other individuals.

Disclosure would be precluded if it would be contrary to law or regulation.

- 360.26 The appropriate authority to which to disclose the matter will depend upon the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- 360.27 If the professional accountant decides that disclosure of the matter to an appropriate authority would be an appropriate course of action in the circumstances, this would not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions.

Resigning from the Employing Organization

- 360.28 Where the professional accountant determines that resigning from the employing organization would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the professional accountant's objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the professional accountant and resignation may be the only available course of action.

Responsibilities of Other Professional Accountants in Business

- 360.29 Paragraphs 360.30-33 apply to professional accountants in business other than those who meet the description of a senior professional accountant in business in paragraph 360.12 above.
- 360.30 If, in the course of carrying out employment responsibilities, a professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the professional accountant shall seek to obtain an understanding of the matter, including:
- The nature of the act and the circumstances in which it has been or may be committed; and
 - The application of the relevant laws and regulations to the circumstances.
- 360.31 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional accountant's role within the employing organization. Whether an act constitutes actual non-compliance is ultimately a matter for legal determination by a court of law. Depending on the nature and significance of the matter, the professional accountant may consult on a confidential basis with others within the employing organization, a relevant professional body or legal counsel.

- 360.32 If the professional accountant suspects that non-compliance with laws and regulations has been or may be committed, the professional accountant shall, subject to paragraph 360.11, inform an immediate superior to enable the superior to take appropriate action. If the professional accountant's immediate superior appears to be involved in the matter, the professional accountant shall inform the next higher level of authority within the employing organization.
- 360.33 In exceptional circumstances, the professional accountant may decide that disclosure of the matter to an appropriate authority would be an appropriate course of action. If the professional accountant were to do so, this would not be considered a breach of the duty of confidentiality under Section 140 of this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions.

Documentation

- 360.34 Regardless of the level of authority of the professional accountant in business within the employing organization, the professional accountant is encouraged to document:
- The identified or suspected non-compliance with laws and regulations.
 - The results of discussion with management and, where applicable, those charged with governance and other parties.
 - How management and, where applicable, those charged with governance have responded to the matter.
 - The courses of action the professional accountant considered and the decisions that were taken.
 - How the professional accountant is satisfied that the professional accountant's objectives under this section have been met.

As such documentation may be used in a court of law, how it is prepared requires appropriate care and diligence.

- 360.35 Documentation provides a number of benefits, including the following:
- It provides evidence of the professional accountant's judgments in forming conclusions.
 - It may serve to protect the professional accountant if challenged in legal or disciplinary proceedings to justify the professional accountant's actions in responding to the matter.
 - It may assist the professional accountant if required to appear before a court of law or tribunal to provide testimony regarding the matter.