

### Responding to Non-Compliance or Suspected Non-Compliance with Laws or Regulations — Issues and IAASB Task Force Recommendations

#### Minutes – International Auditing and Assurance Standards Board (IAASB) December 2015 Meeting

The IAASB received a presentation from Mr. Fleck, IESBA member and Chair of the IESBA's project addressing NOCLAR. Mr. Fleck updated the IAASB on the relevant significant comments received on the May 2015 re-exposure draft of the IESBA's NOCLAR proposals.

Members' questions and comments were on the following topics:

- Whether the IESBA was considering having a conditional requirement for the auditor to disclose NOCLAR to an appropriate authority in certain circumstances;
- The need for alignment of the terminology between the IESBA NOCLAR ED and the IAASB NOCLAR ED;
- The communication regarding NOCLAR between the group auditor and the component auditor; and
- The effect of the IESBA's project to restructure the IESBA Code on the timing of finalization of the IESBA's NOCLAR proposals.

#### WAY FORWARD

The IAASB will discuss the responses to the IAASB's NOCLAR ED and the Task Force's proposed responses at the March 2016 IAASB meeting.

#### Objective of the IAASB discussion

The objective of this Agenda Item is to provide a summary of responses to the July 2015 Exposure Draft (ED), *Responding to Non-Compliance or Suspected Non-Compliance with Laws or Regulations* (NOCLAR), to highlight the issues identified in the responses, and to seek views on the Task Force's recommendations.

## Background

### IAASB NOCLAR ED

1. The International Auditing and Assurance Standards Board (IAASB) NOCLAR ED was released for public exposure in July 2015 and the comment closed on October 20<sup>th</sup>, 2015. The IAASB NOCLAR ED comprised proposed amendments to ISA 250<sup>1</sup>, and other of the

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<sup>1</sup> ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*

IAASB’s International Standards<sup>2</sup> (henceforth “International Standards”) to address actual or perceived inconsistencies of the approach to responding to identified or suspected NOCLAR between the International Standards and the International Ethics Standards Board for Accountants (IESBA) Re-Exposure Draft, [Responding to Non-Compliance with Laws and Regulations](#) (IESBA NOCLAR ED), which was released in May 2015.

2. Forty-three (43) comment letters were received during the exposure period. A list of respondents is included in Appendix 2, and all responses can be accessed from the IAASB’s [website](#).
3. Comment letters were received from the following stakeholder groups:

Stakeholder Group	Number	Percentage
Regulators and Oversight Authorities	3	7%
National Auditing Standard Setters	10	23%
Accounting Firms	5	12%
Public Sector Organizations	3	7%
Member Bodies and Other Professional Organizations	20	47%
Academics	1	2%
Individuals and Others	1	2%
<b>Total</b>	<b>43</b>	<b>100%</b>

4. The geographic coverage of responses is shown below:

Geographic Region	Number	Percentage
Organizations with a Global Mandate	7	16%
Asia Pacific	11	26%
Europe	13	30%
Middle East/Africa	6	14%
North America	5	12%
South America	1	2%
<b>Total</b>	<b>43</b>	<b>100%</b>

<sup>2</sup> The IAASB’s International Standards comprise the International Standards on Auditing™ (ISAs™), International Standards on Review Engagements™ (ISREs™), International Standards on Assurance Engagements™ (ISAEs™), International Standards on Related Services™ (ISRSs™), and International Standards on Quality Control™ (ISQCs™).

5. For the purposes of this paper, and when considered necessary to provide context to the magnitude of responses, the following descriptive terms have been used:
- A few respondents = 2-3;
  - Some respondents = 4-6;
  - Several respondents = 7-11;
  - Many respondents = 12-21; and
  - A majority of respondents = 22 or more.

### Overall Comments Received

6. Overall, many respondents<sup>3</sup> were supportive of the IAASB's efforts to address actual or perceived inconsistencies of the approach to responding to identified or suspected NOCLAR between the International Standards and the IESBA NOCLAR ED. A few respondents<sup>4</sup> expressed particular support for the IAASB's approach in proposing limited amendments to the International Standards that do not explicitly duplicate in detail all of the specific requirements in the IESBA NOCLAR ED, allowing flexibility when other ethical codes are applied and to minimize the amount of material that would be incorporated into ISA 250 and other of the International Standards.
7. The matters highlighted in this Issues Paper are focused on the comments raised by respondents who suggested amendments or improvements to the International Standards. It is noted that many respondents were supportive of the IAASB NOCLAR ED, and these comments have not been elaborated in this Issues Paper.

### Monitoring Group Response

8. Only one Monitoring Group<sup>5</sup> member responded to the IAASB NOCLAR ED. The International Forum of Independent Audit Regulators expressed support for the IAASB's and IESBA's efforts to coordinate their work on the NOCLAR project, as they see a benefit in aligning the standards on auditing and ethics applied by the same auditors. They urged the IAASB to ensure that the final outcome of the IESBA NOCLAR project is taken into consideration as they see a risk of inconsistent outcomes if the latest IESBA developments are not incorporated equally on the IAASB side. They noted that the IAASB should continue monitoring the IESBA NOCLAR project through to finalization before closing out its revision of the International Standards.

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<sup>3</sup> *Regulators and Oversight Bodies:* UKFRC, IFIAR, IRBA; *National Auditing Standard Setters:* ASB, AUASB, CAASB, JICPA, NZAuASB; *Accounting Firms:* BDO, EYG; *Public Sector Organizations:* AGC, CIPFA, GAO; *Member Bodies and Other Professional Organizations:* CAANZ, CPAA, ICPAK, ISCA, SAICA, SMPC, WPK; *Individuals and Others:* CBarnard

<sup>4</sup> *Accounting Firms:* BDO; *Member Bodies and Other Professional Organizations:* FEE, ICAS

<sup>5</sup> The Monitoring Group comprises the following organizations: Financial Stability Board, International Forum of Independent Audit Regulators (IFIAR), International Organization of Securities Commissions, Basel Committee on Banking Supervision, International Association of Insurance Supervisors and The World Bank Group.

### *Level of Alignment between the International Standards and the IESBA NOCLAR ED*

9. Some respondents<sup>6</sup> requested more alignment between the IESBA NOCLAR ED and the International Standards, for example the inclusion of the work effort requirements from the IESBA NOCLAR ED in the International Standards<sup>7</sup>, or an enhanced link to the IESBA NOCLAR ED.<sup>8</sup> One respondent<sup>9</sup> had requested less alignment. Respondents<sup>10</sup> supporting the inclusion of the procedures set out in the IESBA NOCLAR ED believed that a significant number of firms would be complying with both the IESBA *Code of Ethics for Professional Accountants* (the IESBA Code) and the International Standards, and accordingly the incorporation of the procedures from the IESBA NOCLAR ED in the International Standards would facilitate more effective compliance with the IESBA Code and the International Standards.
10. The Task Force believed that, consistent with the IAASB NOCLAR ED, the intent was not to repeat the requirements of the IESBA NOCLAR ED in the International Standards, as doing so could place additional requirements on auditors who are bound by ethical codes other than the IESBA Code and it could be impracticable for such auditors to comply with the International Standards. Furthermore, not all of the procedures contemplated by the IESBA NOCLAR ED are designed for the purpose of providing sufficient appropriate evidence to support an opinion on the financial statements and are instead intended to support the auditor in fulfilling their ethical obligations by responding to non-compliance that the auditor comes across or of which the auditor is made aware.

### *Interactions with Comments on the IESBA NOCLAR ED*

11. Several respondents<sup>11</sup> emphasized their concerns and comments previously expressed in respect of the IESBA NOCLAR ED, with a few<sup>12</sup> highlighting the direct impact of such concerns on the International Standards, and one respondent<sup>13</sup> expressing their lack of support for the changes to the International Standards as a result. One respondent<sup>14</sup> believed that the IAASB did not do enough to challenge the IESBA NOCLAR proposals with respect to the impact on the audit. That respondent and two others<sup>15</sup> also raised concern that reporting NOCLAR to authorities could be to the detriment of audit quality as

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<sup>6</sup> *Regulators and Oversight Bodies:* IRBA; *National Auditing Standard Setters:* HKICPA; *Accounting Firms:* EYG, PWC; *Member Bodies and Other Professional Organizations:* FEE, SAICA

<sup>7</sup> *Accounting Firms:* PWC

<sup>8</sup> *Accounting Firms:* DTT

<sup>9</sup> *Member Bodies and Other Professional Organizations:* KICPA

<sup>10</sup> *Accounting Firms:* PWC

<sup>11</sup> *Regulators and Oversight Bodies:* IFIAR; *National Auditing Standard Setters:* IDW, NZAuASB; *Member Bodies and Other Professional Organizations:* ASSIREVI, CAI, FEE, FSR, IBR-IRE, ICPAK, SMPC, WPK

<sup>12</sup> *Regulators and Oversight Bodies:* IFIAR; *Member Bodies and Other Professional Organizations:* CAI

<sup>13</sup> *Member Bodies and Other Professional Organizations:* SMPC

<sup>14</sup> *National Auditing Standard Setters:* IDW

<sup>15</sup> *Member Bodies and Other Professional Organizations:* SMPC, WPK

it was argued that it could impair the relationship and transparency between the entity and the auditor.

12. The Task Force considered these views and noted that there was no evidence to suggest that there would be a negative impact on audit quality, as there are already a few jurisdictions where the reporting of NOCLAR is required, with no reported negative impact on audit quality in those jurisdictions. In recognizing the importance of close co-operation between the Boards, the respective IAASB and IESBA Task Forces both have representatives from each other's Task Forces, and the IAASB and IESBA staff discuss relevant matters as they arise. It is also noted that the IESBA NOCLAR ED proposed new interactions between the auditor and the entity that may enhance audit quality.
13. Many respondents<sup>16</sup> expressed concern that the IAASB may not take into account, or publicly expose changes to the International Standards that may result from the impact of any fundamental changes to the IESBA NOCLAR ED that are made subsequent to the IAASB NOCLAR ED being issued. Some respondents<sup>17</sup> expressed concerns about updating the International Standards for minor amendments as these require effort in translation and updates to firms' methodologies, at a time when there are more significant changes to deal with, such as auditor reporting. On the other hand, as discussed in paragraph 6, many respondents supported the efforts of the IAASB and the concurrent alignment of the International Standards with the IESBA NOCLAR ED.
14. The Task Force notes that issuing the IAASB NOCLAR ED shortly after the IESBA NOCLAR ED allowed respondents to comment on both at the same time. This enabled respondents to consider whether the IAASB's proposed amendments removed inconsistencies between the International Standards and the IESBA NOCLAR ED. The Task Force also notes that, in accordance with the [Due Process and Working Procedures](#), the IAASB will be required to vote on whether there has been substantial change to the exposed document such that re-exposure is necessary.

### Background to the IESBA NOCLAR Proposals

15. The IESBA released the Exposure Draft, *Responding to a Suspected Illegal Act*, in August 2012 and in response to comments received, issued the IESBA NOCLAR ED in May 2015.
16. IESBA's objective relating to its NOCLAR proposals is to guide professional accountants in dealing with NOCLAR and in deciding how best to act in the public interest. The scope of laws and regulations covered by the IESBA NOCLAR proposals are the same as the laws and regulations contemplated by paragraph 6(a) and (b) of ISA 250 (i.e. laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements or are fundamental to the operating aspects of the

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<sup>16</sup> *Regulators and Oversight Bodies:* IFIAR, IRBA; *National Auditing Standard Setters:* CNCC; *Accounting Firms:* BDO, MAZARS; *Member Bodies and Other Professional Organizations:* CAI, CPAA, FEE, IBR-IRE, ICAS, SAICA, SMPC

<sup>17</sup> *National Auditing Standard Setters:* CNCC; *Accounting Firms:* MAZARS; *Member Bodies and Other Professional Organizations:* FEE, ICAS

entity's business, to its ability to continue as a going concern or to avoid material penalties). It is important to note that the IESBA NOCLAR proposals only apply to NOCLAR that the professional accountant comes across or of which the professional accountant is made aware – in other words, there is no obligation on professional accountants to seek to identify instances of NOCLAR.

17. The IESBA NOCLAR proposals include a requirement for the professional accountant to take further action in certain circumstances, which may result in the reporting of identified or suspected NOCLAR to an appropriate authority. However, such a course of action is only contemplated when the professional accountant determines that further action is needed in the public interest, taking into consideration various factors set out in the proposals. Such a determination would typically take place after obtaining an understanding of the NOCLAR, discussing the matter with management or those charged with governance, including advising them to take further action, and assessing the appropriateness of their response.
18. The provisions of the IESBA NOCLAR proposals apply to all professional accountants, including those performing audits of financial statements, review engagements, other assurance engagements, compilation engagements and engagements to perform agreed-upon procedures.

#### *Changes to the IESBA NOCLAR ED*

19. The IESBA has been working on amendments to the IESBA NOCLAR ED in response to comments received on the IESBA NOCLAR ED. The key changes to section 225 of the IESBA NOCLAR ED, as well as the Task Force's consideration of the impact on the International Standards of these changes, are summarized in Appendix 1.

#### **Areas of Focus**

20. The paper below summarizes feedback from respondents, including a range of less significant issues that may nevertheless warrant further consideration and reflection prior to finalization of the changes to the IAASB's International Standards. The matters set out below are considered to be more significant due to the extent of discussion and debate that took place at the Task Force meeting in respect of such matters, the degree of changes to the IAASB NOCLAR ED that the Task Force recommends in response to such matters, or the potential impact of such matters on future IAASB projects.
  - [Legal or Ethical Duty or Right to Report NOCLAR and Complying with the Duty of Confidentiality](#). (See Item A below)
  - [Consistency between the IESBA NOCLAR ED and the International Standards Other Than ISAs](#) (See Item B below)
  - [Definition of "Non-compliance"](#). (See Item C below)
  - [Implications of NOCLAR for the Auditor's Report](#). (See Item D below)
  - [The Impact in Jurisdictions Who do not Adopt, or Plan to Adopt, the IESBA Code](#). (See Item M below)

21. The Task Force will consider the outcome of the IESBA Board Meeting to be held in March 2016 and the impact, if any, on the International Standards. The Task Force intends to present the final changes to the International Standards to the IAASB for approval at its June 2016 meeting, taking into consideration the final IESBA NOCLAR proposals that are expected to be approved by IESBA in April 2016.

## Significant Issues and Task Force Recommendations

### A. Legal or Ethical Duty or Right to Report NOCLAR and Complying with the Duty of Confidentiality

#### *Background and Respondents' Comments*

22. In drawing attention to the auditor's responsibilities to respond to NOCLAR, the IAASB NOCLAR ED made reference to the auditor having a "legal or ethical duty or right to report" NOCLAR, for example as set out in paragraph 28 of ISA 250. The amendments were included in order to recognize and reflect the changes to the auditor's duty of confidentiality, particularly the "legal or ethical duty or right to report" NOCLAR to an appropriate authority reflected in the IESBA's NOCLAR ED and to give appropriate emphasis to the proposed change in the IESBA NOCLAR ED. In addition, application material was included in paragraph A19 of ISA 250 to provide guidance to auditors on the considerations that the auditor would apply in reporting non-compliance to appropriate authorities, including the auditor's duty of confidentiality.
28. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a ~~responsibility~~ legal or ethical duty or right to report the identified or suspected non-compliance to parties outside the entity. (Ref: Para. A19–A20)
- A19. If the auditor has identified or suspects non-compliance with laws or regulations, the auditor may consider obtaining legal advice to determine whether the auditor has a legal or ethical duty or right to report to parties outside the entity and, when applicable, the appropriate course of action in light of such duty or right. For example~~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 duty of confidentiality may not apply or may be overridden by statute, the law or courts of law~~laws or regulations~~. In some jurisdictions, 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 jurisdictions, 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.

- The auditor may have the right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality.<sup>18</sup>
  - The auditor’s legal or ethical duties to maintain confidentiality may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.
23. Several respondents<sup>19</sup> had reservations with the use of the term “legal or ethical duty or right”. Some respondents<sup>20</sup> believed that the term is ambiguous and unclear, particularly where laws or regulations prohibit the breach of confidentiality and the auditor is not able to report NOCLAR outside of the entity (i.e., that in such cases the auditor’s right to report NOCLAR conflicts with the legal prohibition to report NOCLAR). Two respondents<sup>21</sup> were concerned that ISA 250 does not sufficiently emphasize the need for the auditor to be cognizant of jurisdictional laws or regulations which would normally take precedence over the proposed provisions set out in the IESBA NOCLAR ED in governing the need for reporting of NOCLAR to an appropriate authority. A respondent<sup>22</sup> argued that the term “right” does not reflect the underlying decision-making process and evaluation that would take place before exercising this “right” and that the use of the term “ethical right” does not make it clear that it is an ethical responsibility to report NOCLAR. Another respondent<sup>23</sup> pointed out that the IESBA NOCLAR ED does not refer within its proposals to the auditor having a “right” to report NOCLAR.
24. The IAASB NOCLAR ED indicated that in reporting NOCLAR to an appropriate authority, the duty of confidentiality may not apply or may be overridden by laws or regulations. Some respondents<sup>24</sup> were concerned with this phrasing and indicated that the duty of confidentiality always applies, but may be overridden.
25. A few comments<sup>25</sup> were also made on the auditor obtaining legal advice, as set out in paragraph A19, including that this should support obtaining other forms of advice and that paragraph A19 seems to focus on obtaining legal advice rather than determining whether the auditor should report NOCLAR to an appropriate authority. Furthermore, a

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<sup>18</sup> See, for example, Section 225.29 of the IESBA Code

<sup>19</sup> *National Auditing Standard Setters:* IDW; *Accounting Firms:* EYG, PWC; *Member Bodies and Other Professional Organizations:* FEE, FSR, ICAS, ICPAK, SMPC

<sup>20</sup> *National Auditing Standard Setters:* IDW; *Member Bodies and Other Professional Organizations:* FEE, FSR, ICAS, SMPC

<sup>21</sup> *Member Bodies and Other Professional Organizations:* ICPAK, SMPC

<sup>22</sup> *Accounting Firms:* EYG

<sup>23</sup> *Accounting Firms:* PWC

<sup>24</sup> *National Auditing Standard Setters:* NZAuASB; *Accounting Firms:* EYG, PWC; *Member Bodies and Other Professional Organizations:* CPAA

<sup>25</sup> *Regulators and Oversight Bodies:* IRBA; *Member Bodies and Other Professional Organizations:* SAICA; *Academics:* HC

respondent<sup>26</sup> noted that obtaining of legal advice would add to the cost of the audit, and possibly be unhelpful in determining ethical requirements beyond law or regulation.

26. Some suggestions for improvements to the International Standards were provided. Notably, a respondent<sup>27</sup> had proposed the use of the term “legal or ethical duty or right” be amended to “legal duty to report, or ethical responsibility to determine whether to report”, which better describes the work effort and considerations the auditor would apply in the circumstances. Another suggestion was that more prominence should be brought to the possible preclusion of reporting to an appropriate authority, and accordingly should be mentioned in paragraph 28.<sup>28</sup> Additionally, three respondents<sup>29</sup> recommended that guidance be included in ISA 250 regarding the legal and other risks that the auditor should consider when determining whether to report NOCLAR to an appropriate authority. These legal and other risks are set out in sections 225.33 of **Agenda Item 7-D**. Similarly, another respondent<sup>30</sup> recommended the inclusion of application material addressing the auditor’s consideration of the public interest in their determination of whether to report NOCLAR to an appropriate authority.

#### *Task Force Recommendations*

27. The Task Force notes that section 140.1 of the IESBA Code refers to the principle of confidentiality applying in all circumstances, unless proper and specific authority has been provided to disclose the confidential information or there is a *legal or professional right or duty to disclose* confidential information, with similar provisions contained in section 140.7. The Task Force recognizes the difficulty of aligning the International Standards and the IESBA Code where there are differences in terminology.
28. The Task Force agrees that the use of the term “legal or ethical duty or right” could be further clarified. Furthermore, the Task Force believes that the International Standards should be drafted to accommodate various ethical requirements and laws or regulations, with a link to the IESBA Code as appropriate to reflect examples of possible requirements. The Task Force has determined that there are four possible scenarios in responding to NOCLAR that should be recognized in ISA 250:
- Prohibition on reporting NOCLAR to an appropriate authority due to jurisdictional laws or regulations, as may be the case in some jurisdictions.
  - A legal or ethical requirement to report NOCLAR to an appropriate authority. It was noted that an ethical requirement to report NOCLAR to an appropriate authority may for example arise from the incorporation of a legal requirement into an ethical code.
  - An ethical responsibility to determine whether to report, or other circumstances where the auditor may report (without breaching the duty of confidentiality),

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<sup>26</sup> *Member Bodies and Other Professional Organizations: SMPC*

<sup>27</sup> *Accounting Firms: EYG*

<sup>28</sup> *Member Bodies and Other Professional Organizations: WPK*

<sup>29</sup> *National Auditing Standard Setters: HKICPA, IDW; Member Bodies and Other Professional Organizations: SMPC*

<sup>30</sup> *Regulators and Oversight Bodies: UKFRC*

- NOCLAR to an appropriate authority, where not prohibited by laws or regulations, such as the IESBA Code.
- No legal or ethical requirement to report, or to determine whether to report NOCLAR.
29. Furthermore, the Task Force notes that since the IESBA NOCLAR ED was issued, the IESBA has given stronger emphasis to the possibility that legal or regulatory provisions may exist, and that the professional accountant has a responsibility to understand such legal or regulatory requirements, with the inclusion of section 225.3 in **Agenda Item 7-D**. In addition, section 225.32 has been added to the IESBA proposals to indicate that disclosure of NOCLAR to an appropriate authority would be precluded if it is contrary to law or regulation.
30. Accordingly, the Task Force recommends a revision of paragraph 28 of ISA 250 to bring emphasis to the above possible scenarios, including scenarios where there is a legal prohibition on reporting NOCLAR to an appropriate authority. Furthermore, the Task Force has found that the application material in paragraph A19 could be streamlined and should reflect the scenarios identified in paragraph 28. In response to respondent's comments, the Task Force also recommends that paragraph A19 be improved by:
- Giving greater emphasis to the possible legal prohibition on reporting NOCLAR to an appropriate authority related to a duty of confidentiality; and
  - Addressing other possible scenarios, such as a legal right to report NOCLAR to an appropriate authority and other circumstances where the auditor is required to consider whether to report or may otherwise report NOCLAR, without breaching the duty of confidentiality.

Refer to **Agenda Item 7-B**, paragraph 28, A19, A19a and A19b.

31. The Task Force also agrees with respondents that the expression that “the duty of confidentiality may not apply” could be difficult to interpret in some jurisdictions, and accordingly recommends that this is changed to indicate that reporting to an appropriate authority is not considered to be a breach of confidentiality under some ethical requirements. Refer to **Agenda Item 7-B**, paragraph A19b.
32. The Task Force also notes that the IESBA NOCLAR proposals in **Agenda Item 7-D** refer to “disclosing” the matter to an appropriate authority, unlike the International Standards which mostly refer to “reporting” to an appropriate authority. The Task Force is of the view that the use of the term “reporting” is well understood by auditors, and using the term “disclosing” in the ISAs would be confused with “disclosure”, which has a different connotation in the ISAs (i.e., disclosure in the financial statements). Accordingly, the Task Force concurred that the use of the term “reporting” is appropriate, albeit that it is different from the current IESBA NOCLAR proposals.
33. Furthermore, the Task Force believes that the International Standards need to be clear that an appropriate authority is one outside of the entity, as it could be misinterpreted that an appropriate authority is one within the entity, for example those charged with governance, and accordingly reference should be made in the International Standards to “an appropriate authority outside the entity”.

34. Similar amendments addressing the above matters have been made to the following standards:
- Paragraph A56 of ISQC 1.<sup>31</sup>
  - Paragraph 43 of ISA 240.<sup>32</sup>
  - Paragraphs 52(d), A92, A92b and A92c of ISRE 2400 (Revised).<sup>33</sup>
  - Paragraph A192b of ISAE 3000 (Revised).<sup>34</sup>
  - Paragraph A21a of ISRS 4410 (Revised).<sup>35</sup>
35. However, due to the extent of supplementation that would be required to paragraph 43 and A65 of ISA 240 to explain the context surrounding the reporting to an appropriate authority, including the auditor's duty of confidentiality and possible preclusions on reporting to an appropriate authority, the Task Force recommends that paragraph A65 of ISA 240 have a cross reference to paragraphs A19-A19b of ISA 250 to address this matter.

**Matter for IAASB Consideration**

1. Does the IAASB agree that the proposed amendments to paragraphs 28 and A19-A19b provide better clarity on the possible scenarios encountered in practice in responding to NOCLAR and does the IAASB believe that the changes are sufficiently responsive to comments received on the IAASB NOCLAR ED?

**B. Consistency between the IESBA NOCLAR ED and the International Standards Other Than ISAs**

*Background and Respondents' Comments*

36. The IESBA NOCLAR ED requires a response to NOCLAR by a professional accountant providing professional services other than an audit of financial statements, for example when performing review engagements, other assurance engagements, compilation engagements and engagements to perform agreed-upon procedures. In terms of the IESBA NOCLAR ED, the laws and regulations that a professional accountant must respond to if the professional accountant is made aware of non-compliance or suspected non-compliance are the same as the laws and regulations covered by paragraph 6(a) and 6(b) of ISA 250 (i.e. laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements or are fundamental to the operating aspects of the entity's business, to its ability to continue as a going concern or to avoid material penalties).

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<sup>31</sup> ISQC 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*

<sup>32</sup> ISA 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*

<sup>33</sup> ISRE 2400 (Revised), *Engagements to Review Historical Financial Statements*

<sup>34</sup> ISAE 3000 (Revised), *Assurance Engagements other than Audits or Reviews of Historical Financial Information*

<sup>35</sup> ISRS 4410 (Revised), *Compilation Engagements*

37. A few respondents<sup>36</sup> had reservations about the scope of laws and regulations in the IESBA NOCLAR ED insofar as they apply to non-audit services, since they are inconsistent with the scope of the laws and regulations contemplated by the respective International Standards, such as ISRE 2400 (Revised) and ISAE 3000 (Revised).<sup>37</sup> Furthermore, it was indicated that the laws and regulations which the IESBA NOCLAR ED requires a response to are different than ISA 250, since the IESBA NOCLAR ED requires the auditor to respond to NOCLAR that *may* occur and the IESBA NOCLAR ED does not require the auditor to investigate matters which are clearly inconsequential, with ISA 250 adopting a risk-based approach.
38. Three respondents<sup>38</sup> raised concern with the inconsistency in work effort between the International Standards and the IESBA NOCLAR ED, indicating that the IESBA NOCLAR ED imposes an obligation on an auditor, and professional accountant performing non-audit engagements, beyond the requirements of the International Standards. It was suggested that such inconsistencies could create an expectations gap as to the extent of work performed by the professional accountant. For example, a professional accountant performing a limited assurance engagement would typically perform very limited procedures with regards to NOCLAR under ISAE 3000 (Revised), and the scope of such laws or regulations considered by the professional accountant under ISAE 3000 (Revised) is limited to those related to the subject matter information. However, under the IESBA NOCLAR ED the scope of the laws or regulations to which the professional accountant would respond would not be limited to those related to the subject matter information, and the investigative and responsive procedures expected of the professional accountant would require additional work effort typically not performed for the purposes of expressing a conclusion on the subject matter.
39. A few respondents<sup>39</sup> questioned whether the conforming amendments to the International Standards were adequate, as no amendments were proposed in the IAASB NOCLAR ED to some of the International Standards, for example paragraph 45(a) of ISAE 3000 (Revised) which addresses NOCLAR, and accordingly suggested additional alignment of the work effort between the IESBA NOCLAR ED and the International Standards.

#### *Task Force Recommendations*

40. The Task Force discussed the overarching comments regarding the perceived inconsistencies between the scope of the laws and regulations covered by the IESBA NOCLAR ED, and the scope (if any) contemplated in the International Standards other than the ISAs, as well as the work effort incorporated in these standards when NOCLAR is identified. It was re-iterated that the IESBA NOCLAR ED does not establish a

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<sup>36</sup> *National Auditing Standard Setters: IDW, NZAuASB*

<sup>37</sup> Paragraph 45(a) of ISAE 3000 (Revised) states “The practitioner shall make inquiries of the appropriate party(ies) regarding: (a) Whether they have knowledge of any actual, suspected or alleged intentional misstatement or non-compliance with laws and regulations affecting the subject matter information”.

<sup>38</sup> *National Auditing Standard Setters: IDW; Member Bodies and Other Professional Organizations: FEE SMPC*

<sup>39</sup> *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: FEE, SAICA*

responsibility for the professional accountant to identify NOCLAR, but instead requires the professional accountant to respond to NOCLAR when it comes to their attention.

41. The Task Force did not support any amendments to ISRE 2410<sup>40</sup>, on the basis that this standard is still in pre-clarity format and has not been recently amended to reflect conforming amendments in respect of other IAASB projects. Similarly, the Task Force notes that ISRS 4400<sup>41</sup> is the subject of a current IAASB project, and changes to ISRS 4400 can be considered by that Task Force.

#### Impact of Differing Scope of Laws and Regulations

42. The Task Force noted that IESBA's decision to use the same set of laws and regulations for both auditors of financial statements and other professional accountants may be particularly challenging for practitioners who have little or no experience in audits of financial statements. The Task Force noted that this may be a case in some applications of the ISAEs (many of which permit application by practitioners other than professional accountants) and the ISRSs. After discussing the matter, the Task Force concluded that this was ultimately a matter for IESBA's determination as IESBA have considered this point in their deliberations, as summarized in the [Explanatory Memorandum](#) to the IESBA NOCLAR ED:

22. *As auditors are already expected to have a working knowledge of those two categories of laws and regulations relevant to their particular client, the Board believes that these should also appropriately circumscribe the scope of their responsibilities under the Code. The Board further believes that those same categories of laws and regulations should also establish an appropriate scope for all other categories of PA. This is because it would be reasonable to expect them, by virtue of their professional training and expertise, and their knowledge of and experience with the entity (either through the provision of non-audit services to the entity or through an employment relationship), to recognize an act of NOCLAR or suspected NOCLAR in those two categories of laws and regulations if they came across it. This expectation would hold regardless of these other PAs' roles and levels of seniority. (See paragraphs 225.5 and 360.5.)*

43. Accordingly, and recognizing that IESBA's goals in setting ethical standards are not the same as the IAASB in setting assurance standards, the Task Force did not believe that the second category of laws and regulations set out in paragraph 6(b) of ISA 250 should be incorporated into ISRE 2400 (Revised), as there is no inconsistency between ISRE 2400 (Revised) and the IESBA NOCLAR ED as the procedures required to be performed under each in response to NOCLAR are to achieve a different purpose (i.e., to express a conclusion on the financial statements versus complying with an ethical responsibility). However, the Task Force agreed that additional application material was warranted in ISRE 2400 (Revised) to highlight that additional responsibilities may exist under relevant

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<sup>40</sup> ISRE 2410, *Review of Interim Financial Information Performed by the Independent Auditor of the Entity*

<sup>41</sup> ISRS 4400, *Engagements to Perform Agreed-upon Procedures Regarding Financial Information*

ethical requirements. Refer to **Agenda Item 7-B**, paragraph A87a, A92, A92b and A92c of ISRE 2400 (Revised).

44. The Task Force debated the impact of the IESBA NOCLAR ED on ISAE 3000 (Revised), and considered whether there were inconsistencies that needed to be addressed. Some Task Force members were concerned that a professional accountant, or other professional applying ISAE 3000 (Revised),<sup>42</sup> may not have the level of knowledge sufficient to be able to identify NOCLAR with respect to the scope of laws and regulations contemplated by the IESBA NOCLAR ED as they would not have sufficient skills and experience to be able to know which laws and regulations are generally recognized to have a direct effect on the determination of material amounts and disclosures in the entity's financial statements. However, other Task Force members thought that NOCLAR related to the laws and regulations covered by the IESBA NOCLAR ED would be apparent to any professional accountant by virtue of their training, their ability to readily acquire that competence, including through interactions with the accounting profession, and due to the extent of severity of non-compliance required to trigger the provisions of the IESBA NOCLAR ED. Section 225.39 of **Agenda Item 7-D** states:

225.39 The professional accountant is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding 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 to be determined by a court or other appropriate adjudicative body. 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 professional body, or legal counsel.

The Task Force understands that IESBA Staff will recommend to the IESBA that it commission the development of implementation support resources for the IESBA NOCLAR proposals once these are finalized, and that one of the matters that will be covered is the expected level of understanding of the laws and regulations within the scope of the IESBA NOCLAR proposals for professional accountants who are not performing the audit of the financial statements.

45. An issue was also raised with regards to laws or regulations related to the subject matter information that the professional accountant would be required to address under paragraph 45(a) of ISAE 3000 (Revised) (which requires the auditor to perform a specified procedure regarding identification of non-compliance with laws and regulations related to the subject matter information). In cases where there is non-compliance with laws and regulations related to the subject matter information, the non-compliance may not always relate to the laws and regulations included in the scope of the IESBA NOCLAR ED. The Task Force believes that respondents' comments on this matter should be addressed through additional application material in ISAE 3000 (Revised) addressing the fact that the professional accountant may have additional responsibilities regarding NOCLAR. Refer to **Agenda Item 7-B**, paragraphs A101a, A192a and A192b of ISAE 3000 (Revised).

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<sup>42</sup> ISAE 3000 (Revised) can be applied by practitioners other than professional accountants, such as engineers.

46. The Task Force discussed the impact of the IESBA NOCLAR ED on ISAE 3402<sup>43</sup> and debated to what extent application material should be incorporated, for example whether the tipping off provisions regarding communicating with management and those charged with governance should be included, and additional discussion on reporting NOCLAR to an appropriate authority or the entity's financial statement auditor. The Task Force concluded that the additional application material proposed for ISAE 3000 (Revised) would be adequate as an engagement conducted under ISAE 3402 also must comply with ISAE 3000 (Revised), with minor changes largely to align terminology to ISA 250.
47. With regards to ISRS 4410 (Revised), the Task Force agreed that application material should be incorporated to draw attention to the professional accountant's responsibilities to respond to NOCLAR, similar to that included in ISAE 3000 (Revised). Refer to **Agenda Item 7-B**, paragraph A21a and A41a of ISRS 4410 (Revised).

**Matter for IAASB Consideration**

2. The IAASB is asked whether the limited revisions to the International Standards other than the ISAs to emphasize to the professional accountant that ethical requirements may require the professional accountant to respond to instances of NOCLAR are appropriate.

**C. Definition of “Non-compliance”**

*Background and Respondents' Comments*

48. No changes were proposed to the definition of non-compliance with laws and regulations in ISA 250 in the IAASB NOCLAR ED, which is as follows:
  11. Acts of omission or commission by the entity, 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.
49. However, three respondents<sup>44</sup> highlighted that the definition of non-compliance was not consistent with the IESBA NOCLAR ED and should include personal misconduct related to the business activities of the entity, as well as include acts on behalf of the entity by individuals not employed by the entity.

*Task Force Recommendations*

50. The Task Force notes that ISA 250 has a specific definition of non-compliance, while the IESBA NOCLAR proposals (see **Agenda Item 7-D**) incorporate the concept in sections 225.2 and 225.9. Some Task Force members were of the view that changing the definition is beyond the scope of the NOCLAR project and such a change would constitute a review

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<sup>43</sup> ISAE 3402, *Assurance Reports on Controls at a Service Organization*

<sup>44</sup> *Accounting Firms: EYG, PWC; Member Bodies and Other Professional Organizations: ICAS*

of the standard. However, the majority of the Task Force believed that aligning the definition more closely to the respective paragraphs in the **Agenda Item 7-D** would have no impact on the auditor, and would be responsive to comments in this regard. Refer to **Agenda Item 7-B**, paragraph 11.

51. It was also pointed out that section 225.2 of **Agenda Item 7-D** has been specifically amended since the IESBA NOCLAR ED to include other individuals working for or under the direction of a client, as this is frequently the case that such individuals may also be involved in the non-compliance. Furthermore, section 225.2 and 225.9 of **Agenda Item 7-D** do not make reference to “transactions”, as is the case in the ISA 250 definition of non-compliance, as this is considered too limiting and it obscures the fact that the non-compliance arises out of an action or inaction.
52. The Task Force debated whether the definition of non-compliance, which explains non-compliance in terms of what it is not, is appropriate, (i.e., “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”). However, the Task Force has agreed to align the wording of the definition in ISA 250 to section 225.9 of **Agenda Item 7-D**, which explains non-compliance in the context of what it is not.

#### **Matter for IAASB Consideration**

3. Does the IAASB believe that the proposed amendments to the definition of non-compliance are appropriate and that it does not implicitly extend the scope of ISA 250?

### **D. Implications of NOCLAR for the Auditor’s Report**

#### *Background and Respondents’ Comments*

53. In extant ISA 250, paragraphs 25 to 27 address the considerations for the auditor’s opinion where NOCLAR has been identified, and paragraph A18 indicates that the inclusion of an Other Matter paragraph may be appropriate in circumstances where withdrawal from the engagement is not possible.
54. A few respondents<sup>45</sup> believed that ISA 250 should incorporate more considerations relating to the impact of NOCLAR on the auditor’s report, for example key audit matters. It was pointed out that NOCLAR could qualify as a key audit matter, yet, be completely unrelated to the financial statements. Furthermore, communication of NOCLAR in the auditor’s report could be highly sensitive or there may be a circumstance where it should not be communicated due to the possibility of tipping-off management, those charged with governance or other external parties.

#### *Task Force Recommendations*

55. The Task Force considered the views expressed by respondents and agree that the application material in ISA 250 is inconsistent as it only makes reference to an Other Matter paragraph, in the context of the auditor being unable to withdraw from the

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<sup>45</sup> *Accounting Firms: EYG; Member Bodies and Other Professional Organizations: SMPC*

engagement. Accordingly, the Task Force recommends the inclusion of additional application material addressing the consideration of key audit matters and other matters. Refer to **Agenda Item 7-B**, paragraph A18b.

56. The Task Force discussed the possible preclusion in terms of laws or regulations of communicating certain NOCLAR in the auditor's report, in particular in describing the basis for a modified opinion. It is noted that ISA 701<sup>46</sup> acknowledges a possible preclusion on including a key audit matter in the auditor's report. In addition, the inclusion of an Other Matter paragraph in the auditor's report is judgmental and accordingly ISA 701 and ISA 706 (Revised)<sup>47</sup> appropriately deal with such a scenario. However, the Task Force determined that there may be scenarios where the auditor would be unable to describe the basis for modification, and believes that this is important to highlight in ISA 250. Refer to **Agenda Item 7-B**, paragraph A18a.

**Matter for IAASB Consideration**

4. Does the IAASB support the inclusion of additional application material addressing the impact of NOCLAR on the auditor's report?

**E. Group Audits**

*Background and Respondents' Comments*

57. One respondent<sup>48</sup> noted that there are potential loopholes and a lack of guidance within the ISAs (and the IESBA NOCLAR ED) with respect to cross-border situations, including group audits. This respondent specifically mentioned:
- Strict requirements to preserve confidentiality in certain jurisdictions, which could create conflict in reporting NOCLAR; and
  - Laws and regulations that have an extraterritorial outreach which could also be problematic in reporting NOCLAR.
58. Some respondents<sup>49</sup> suggested improvements to ISA 600,<sup>50</sup> with one<sup>51</sup> respondent suggesting that these improvements be considered as part of the IAASB's current project relating to group audits.

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<sup>46</sup> ISA 701, *Communicating Key Audit Matters in the Independent Auditor's Report*, paragraph 14

<sup>47</sup> ISA 706 (Revised), *Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report*

<sup>48</sup> *Member Bodies and Other Professional Organizations*: WPK

<sup>49</sup> *Regulators and Oversight Bodies*: UKFRC; *National Auditing Standard Setters*: JICPA; *Accounting Firms*: EYG; *Member Bodies and Other Professional Organizations*: ICAG

<sup>50</sup> ISA 600, *Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors)*

<sup>51</sup> *Accounting Firms*: EYG

59. There was also a request for the development of guidance for group audit scenarios where signs of NOCLAR are evident, especially in cases where the components are operating in jurisdictions that have not adopted the IESBA Code.<sup>52</sup>

#### *Task Force Recommendations*

60. The Task Force noted that amendments are being proposed for approval at the March 2016 IESBA meeting to incorporate, in the IESBA Code, specific provisions related to communication of NOCLAR in a group audit. These provisions are subject to discussions at the IESBA meeting prior to finalization. In summary, the proposed amendments require the following:
- Communication of NOCLAR to the group engagement partner by an auditor performing an audit of a component's financial statements, for example a statutory audit, or a component auditor performing an audit of the component's financial information for group audit purposes. (Section 225.20 of **Agenda Item 7-D**)
  - Communication of NOCLAR by the group engagement partner to auditors of components where the NOCLAR is relevant to the component. This provision applies to all components, including those subject to an audit other than for group audit purposes (for example, a statutory audit) and components where component auditors are performing other work (for example, a review, specified audit procedures or an audit of certain account balances, classes of transactions or disclosures). (Section 225.21 of **Agenda Item 7-D**)
  - Communication of NOCLAR to the group engagement partner by a professional accountant performing work for group audit purposes, for example, a review, specified audit procedures or an audit of certain account balances, classes of transactions or disclosures. (Section 225.45 of **Agenda Item 7-D**)
  - Consideration of communication of NOCLAR to the group engagement partner by a professional accountant performing non-audit services for a component of an audit client. If it relates to a component of an audit client of the firm or network firm, the requirement indicates that the reporting would be in accordance with the firm's or network firm's protocols or procedures. (Section 225.43 of **Agenda Item 7-D**)
61. The Task Force considered the feedback from respondents and recognizes that there will likely be a need for ISA 600 to more specifically address the IESBA NOCLAR proposals in **Agenda Item 7-D**, particularly in light of the comments received on exposure. However, recognizing that the IAASB is currently consulting on, and will shortly commence a project to revise, ISA 600, the Task Force does not believe that the comments and likely amendments needed to respond to them warrant immediate conforming amendments to ISA 600. Rather, the Task Force will liaise with the Group Audits Working Group about the comments received on the IAASB NOCLAR ED and the subsequent amendments to the IESBA NOCLAR ED, as set out in **Agenda Item 7-D**, in respect of Group Audits. To this end, the Task Force is in the process of preparing an Issues Paper regarding the impact of NOCLAR on ISA 600, for further consideration by the Group Audits Working Group.

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<sup>52</sup> National Auditing Standard Setters: JICPA; Member Bodies and Other Professional Organizations: ISCA

**Matter for IAASB Consideration**

5. Does the IAASB concur with the view that immediate revisions to ISA 600 are not necessary?

**F. Laws or Regulations Within the Scope of ISA 250, Including Examples**

*Background and Respondents' Comments*

62. Paragraph 6 of ISA 250 describes the categories of laws and regulations which are within the scope of ISA 250. The IAASB NOCLAR ED proposed the inclusion of the examples of laws and regulations contained in section 225.6 of the IESBA NOCLAR ED to supplement paragraph 6, and at the same time align ISA 250 with the requirements of the IESBA Code. The IAASB NOCLAR ED included the following proposal in ISA 250:

6. This ISA distinguishes the auditor's responsibilities in relation to compliance with two different categories of laws and regulations as follows: (Ref: Para. A5a)
- (a) The provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements such as tax and pension laws and regulations (see paragraph 13); 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 license, 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 14).

A5a. Examples of laws and regulations that may be included in the categories described in paragraph 6 include those that deal with:

- Fraud, corruption and bribery.
  - Money laundering, terrorist financing and proceeds of crime.
  - Securities markets and trading.
  - Banking and other financial products and services.
  - Tax and pension liabilities and payments.
  - Environmental protection.
  - Public health and safety.
63. Some respondents<sup>53</sup> found the examples to create more confusion as there is no separation between the examples that relate to category 6(a) or 6(b). Two respondents<sup>54</sup> acknowledged the difficulty in differentiating between the categories in 6(a) and 6(b), as the classification is dependent on the nature of the entity and its environment.
64. A few respondents<sup>55</sup> highlighted that the examples of laws or regulations contained in the IESBA NOCLAR ED are for a different purpose or application than ISA 250, and accordingly the examples in ISA 250 should not be the same as the IESBA NOCLAR ED. Concern was also raised that the inclusion of these examples would increase the expectations gap in terms of what the auditor does with these examples versus what the public would expect them to do.<sup>56</sup> Two respondents<sup>57</sup> also believed that the examples are outside of the auditor's skillset, or would not be within the scope of ISA 250, such as environmental protection and public health and safety, while three respondents<sup>58</sup> thought that the example relating to securities markets and trading is inappropriate as they understood it was included to incorporate insider trading within the scope of ISA 250, which is not within the ambit of an audit.
65. Suggestions were provided on how to improve the examples, including:
- The removal of paragraph A5a and combining the examples with those included in paragraph 6(a) and 6(b), as well as the examples contained in paragraphs A8 and A9.<sup>59</sup>
  - Classifying the examples in A5a between the respective categories set out in paragraph 6(a) and 6(b), with caveats indicating that the classification is dependent on the nature and circumstances of the entity.<sup>60</sup>

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<sup>53</sup> *Regulators and Oversight Bodies:* IRBA; *National Auditing Standard Setters:* JICPA, NZAuASB; *Accounting Firms:* EYG; *Member Bodies and Other Professional Organizations:* SAICA

<sup>54</sup> *National Auditing Standard Setters:* NBA; *Accounting Firms:* EYG

<sup>55</sup> *National Auditing Standard Setters:* JICPA; *Member Bodies and Other Professional Organizations:* KICPA

<sup>56</sup> *National Auditing Standard Setters:* IDW; *Member Bodies and Other Professional Organizations:* ICAS

<sup>57</sup> *National Auditing Standard Setters:* CNCC; *Accounting Firms:* BDO

<sup>58</sup> *National Auditing Standard Setters:* IDW; *Member Bodies and Other Professional Organizations:* FEE, ICAS

<sup>59</sup> *National Auditing Standard Setters:* JICPA

<sup>60</sup> *Member Bodies and Other Professional Organizations:* NZAuASB

- The inclusion of an appropriate disclaimer to clarify that the examples are not exhaustive and that the auditor would have to consider what represents relevant laws or regulations in the context of the particular engagement, the entity's industry and the regulatory framework.<sup>61</sup>
- Inclusion of additional examples such as company and corporate law, data protection, labor laws, tender process legislation, protection of personal information, breaches of fiduciary duty, expenditures of grants and other public funds and industry specific laws and regulations.<sup>62</sup>

#### *Task Force Recommendations*

66. The Task Force explored a combination of the above suggestions, in particular the relocation of the examples in paragraphs 6(a) and (b), and A5a into paragraphs A8 and A9. Although it is recognized that this is more orderly with the examples located in the same place, it requires the classification of the examples between paragraphs 6(a) and 6(b) and this proves to be challenging, given that appropriate classification depends on the nature and circumstances of the entity. This would create the wrong expectation that auditors must perform the procedures set out in ISA 250 on all of the laws and regulations included in the examples, in all circumstances.
67. The Task Force believes that the auditor should apply judgment in determining which laws or regulations fall within the scope of ISA 250, and which category the laws or regulations fall into (i.e. paragraph 6(a) or 6 (b)). Accordingly, the Task Force suggests that no amendments are made to the presentation of the examples in the IAASB NOCLAR ED, including those contained in paragraphs 6(a) and 6(b), A5a and A8 and A9, although additional emphasis in paragraph A5a should be included to indicate that the classification of the laws or regulations between paragraphs 6(a) and 6(b) is dependent on the nature and circumstances of the entity. Refer to **Agenda Item 7-B**, paragraph A5a.
68. In regard to the additional examples suggested by respondents, the Task Force is of the view that the examples provided are not meant to be exhaustive, and the initial inclusion of the examples in the IAASB NOCLAR ED was for the purpose of aligning ISA 250 to the IESBA NOCLAR ED, which did not contain the additional suggestions. The Task Force also notes that the examples in section 225.6 of **Agenda Item 7-D** include "Data Protection" as an additional example, which has been added to paragraph A5a.

#### **Matter for IAASB Consideration**

6. Does the IAASB agree with the Task Force's recommendations regarding paragraph A5a?

<sup>61</sup> *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: SAICA*

<sup>62</sup> *Regulators and Oversight Bodies: IRBA; National Auditing Standard Setters: JICPA; Public Sector Organizations: GAO; Member Bodies and Other Professional Organizations: CPAA, SAICA*

## G. Tipping-off Provisions

### *Background and Respondents' Comments*

69. In terms of ISA 250, the auditor is required to discuss NOCLAR with management, and where appropriate those charged with governance. New guidance was included in ISA 250 to recognize that laws or regulations may prohibit alerting (“tipping-off”) the entity when, for example, the auditor is required to report NOCLAR to an appropriate authority pursuant to money laundering legislation.
19. If the auditor suspects there may be non-compliance, the auditor shall discuss the matter with management and, where appropriate, those charged with governance. If 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 judgment, the effect of the suspected non-compliance may be material to the financial statements, the auditor shall consider the need to obtain legal advice. (Ref: Para. A15–A16)
- 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. However, in some jurisdictions, laws or regulations may prohibit alerting (“tipping-off”) the entity when, for example, the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation.
70. Four respondents<sup>63</sup> were concerned that paragraph 19 of ISA 250 indicates that the auditor shall discuss the suspected non-compliance with management, and where appropriate, those charged with governance, without sufficient emphasis to the consideration of the tipping-off provision. It was pointed out that paragraph 7 of ISA 260<sup>64</sup> includes the tipping-off provision in the paragraph rather than in the application material. In addition, it was noted that similar tipping-off provisions, which are linked to paragraph 19, should also be linked to paragraph 22 that deals with communication to those charged with governance.<sup>65</sup>
71. A respondent<sup>66</sup> highlighted that paragraph 7 of ISA 260 includes a limitation on communication with management or those charged with governance that might prejudice an investigation by an appropriate authority, which should be consistently explained in all of the International Standards, such as ISA 250. One respondent<sup>67</sup> suggested that the tipping-off provision in paragraph A15 should also refer to management, and it was also

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<sup>63</sup> *Regulators and Oversight Bodies: UKFRC; Accounting Firms: EYG; Member Bodies and Other Professional Organizations: ICAS, SMPC*

<sup>64</sup> *ISA 260 (Revised), Communication with Those Charged with Governance*

<sup>65</sup> *Accounting Firms: EYG; Member Bodies and Other Professional Organizations: ICAS*

<sup>66</sup> *Accounting Firms: EYG*

<sup>67</sup> *Member Bodies and Other Professional Organizations: SMPC*

suggested that the tipping-off provision should extend to more than just anti-money laundering legislation.<sup>68</sup>

72. A respondent<sup>69</sup> also believed that the requirements relating to obtaining legal advice as set out in paragraph 19 of ISA 250 were limited and should include some of the additional requirements to seek legal advice as set out in the IESBA NOCLAR ED, such as when further actions are required by ethical codes or when there are other implications for the audit.

#### *Task Force Recommendations*

73. The Task Force agrees that bringing additional emphasis to the tipping-off provisions in the requirements of the International Standards, such as paragraph 19 and 22 of ISA 250 would aid in the application of the International Standards. Accordingly the Task Force proposes including a provision that communication is required “unless prohibited by law or regulation”. The Task Force notes that IESBA has located the tipping-off provisions in paragraph 225.3 of **Agenda Item 7-D**, which adds to the prominence of this provision. The Task Force also supports the recommendations to link the tipping-off provisions to paragraph 22 of ISA 250, which deals with communication to those charged with governance, and to include management in the scope of paragraph A15. The Task Force notes that IESBA has amended the IESBA NOCLAR ED to remove the term “tipping-off” and as such, suggest removing this phrase from the International Standards.
74. The Task Force agrees that limitations may exist in communicating NOCLAR to management or those charged with governance relating to an investigation by an appropriate authority into an actual, or suspected, illegal act, and accordingly should also be highlighted in paragraph A15 of ISA 250. The Task Force recommends that paragraph 7 of ISA 260 be used as a basis for the additional guidance to be incorporated into paragraph A15 of ISA 250.
75. In response to the request for additional guidance addressing legal advice, the Task Force notes that paragraph 19 of ISA 250 already suggests obtaining legal advice in respect of NOCLAR when it is material to the financial statements, and paragraph A16 indicates that the auditor may consult with legal counsel on whether there is a contravention of law or regulation, the possible legal consequences and what further action the auditor would take. Accordingly, the Task Force believes that additional guidance is not warranted, other than addressing seeking legal advice in circumstances where the auditor is unable to communicate with management or those charged with governance, due to confidentiality requirements.
76. Similar amendments addressing the above matters have been made to the following standards:
- Paragraphs 40 and A59a of ISA 240.
  - Paragraph 7 of ISA 260.

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<sup>68</sup> *Accounting Firms: DTT*

<sup>69</sup> *Accounting Firms: EYG*

- Paragraph A8 of ISA 450.<sup>70</sup>
- Paragraph 52(a) of ISRE 2400 (Revised).
- Paragraph A192a of ISAE 3000 (Revised).
- Paragraph A53 of ISAE 3402.
- Paragraph 78 of ISAE 3410.<sup>71</sup>
- Paragraph A41a of ISRS 4410 (Revised).

#### **Matter for IAASB Consideration**

7. Does the IAASB believe that the proposed amendments to paragraph 19, 22 and A15 sufficiently emphasize the possible preclusion on communicating matters to management or those charged with governance?

## **H. Withdrawal from the Engagement**

### *Background and Respondents' Comments*

77. Paragraph A18 of ISA 250 contemplates the possibility of withdrawal in certain circumstances. The IAASB NOCLAR ED did not propose any amendments to this paragraph:

A18. In exceptional cases, the auditor may consider whether withdrawal from the engagement, where withdrawal is possible under applicable law or regulation, is necessary when management or those charged with governance do not take the remedial action that the auditor considers appropriate 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. If withdrawal from the engagement is not possible, the auditor may consider alternative actions, including describing the non-compliance in an Other Matter paragraph in the auditor's report.

78. Section 225.28 of **Agenda Item 7-D** indicates that withdrawal from the engagement and the professional relationship may be a possible course of further action.
79. One respondent<sup>72</sup> noted that the requirements of ISA 250 are not aligned to the IESBA NOCLAR ED. It was identified that the ISA refers to "in exceptional cases, the auditor may consider whether withdrawal from the engagement...is necessary when management or those charged with governance do not take the remedial action that the auditor considers appropriate". There are two inconsistencies between the IESBA NOCLAR ED and ISA 250:

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<sup>70</sup> ISA 450, *Evaluation of Misstatements Identified during the Audit*

<sup>71</sup> ISAE 3410, *Assurance Engagements on Greenhouse Gas Statements*

<sup>72</sup> *National Auditing Standard Setters: MAASB*

- Under the IESBA NOCLAR ED, the possibility of withdrawal arises when assessing whether further action is needed, and is based on a consideration of factors, such as the urgency of the NOCLAR, the level of involvement of management or those charged with governance or the likelihood of substantial harm. ISA 250 requires the consideration of withdrawal when management or those charged with governance have not taken appropriate remedial action. Accordingly, ISA 250 only contemplates withdrawal in a more limited situation than the IESBA NOCLAR ED.
  - ISA 250 refers to the possibility of withdrawal as being an “exceptional case”, which is not contemplated in the IESBA NOCLAR ED.
80. One respondent<sup>73</sup> highlighted that the IESBA NOCLAR ED is clear that withdrawing from the engagement is not a substitute for taking other actions, and believed similar guidance is necessary in ISA 250, as well as highlighting that legal advice may also be needed to determine whether further actions may be required, despite withdrawing from the engagement.

#### *Task Force Recommendations*

81. The Task Force notes that throughout the ISAs the manner in which withdrawal from the engagement is described or required varies due to the circumstances in which withdrawal is contemplated. The Task Force is of the view that “in exceptional circumstances” may imply that withdrawal is a last resort, which is inconsistent with the intention of the IESBA NOCLAR ED. Furthermore, the Task Force believes that withdrawal may be appropriate in some scenarios even if management has appropriately dealt with the non-compliance, for example when there are questions about management’s integrity. Refer to **Agenda Item 7-B**, paragraph A18.
82. The Task Force debated whether to include additional guidance, similar to the IESBA NOCLAR ED, of factors to consider in determining whether to withdraw from the engagement. However, the Task Force believes that this is going beyond what is contained in other ISAs that contain similar withdrawal provisions.
83. The Task Force agrees with the suggestion that additional emphasis should be brought to the auditor’s other responsibilities to respond to NOCLAR, for example reporting NOCLAR to an appropriate authority, in order that there is clarity that withdrawal is not a possible mechanism for avoiding such responsibilities. Refer to **Agenda Item 7-B**, paragraph A18.

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<sup>73</sup> *Accounting Firms: EYG*

**Matter for IAASB Consideration**

8. Does the IAASB agree that the proposed amendments to the withdrawal provisions are more consistent with the IESBA NOCLAR ED, and that the removal of the “in exceptional circumstances” provision is appropriate?

**I. Additional Responsibilities Under Relevant Ethical Requirements**

*Background and Respondents’ Comments*

84. A paragraph was added to ISA 250 in the IAASB NOCLAR ED, in order to bring emphasis to the additional ethical requirements which may exist under ethical codes:
- 8a. The auditor may have additional responsibilities under relevant ethical requirements regarding an entity’s non-compliance with laws and regulations. Complying with those additional responsibilities may provide further information that is relevant to the auditor’s work in accordance with this and other ISAs (for example, regarding the integrity of management or, where appropriate, those charged with governance).
85. A few respondents<sup>74</sup> believed that the additional guidance could be further clarified, or better linked to the IESBA NOCLAR ED. A respondent<sup>75</sup> was of the opinion that ethical responsibilities are not “additional” to the responsibilities under an audit, whilst another respondent<sup>76</sup> raised concern that reference to the additional ethical responsibilities implicitly creates additional procedures for the auditor.

*Task Force Recommendations*

86. The Task Force concurs with the view that additional clarity should be added to the meaning of “additional responsibilities” as set out in paragraph 8a of ISA 250. Refer to **Agenda Item 7-B**, paragraph 8a.
87. The Task Force debated whether paragraph 8a of ISA 250 should also refer to additional responsibilities under laws or regulations, but believes this would only be necessary where there are laws or regulations that require the auditor to perform additional procedures, which is considered to be rare.

**Matter for IAASB Consideration**

9. Does the IAASB believe the proposed amendments to paragraph 8a of ISA 250 improve the clarity of the additional responsibilities which may exist under relevant ethical requirements to respond to NOCLAR?

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<sup>74</sup> Accounting Firms: DTT, EYG; Member Bodies and Other Professional Organizations: FEE

<sup>75</sup> National Auditing Standard Setters: JICPA

<sup>76</sup> Accounting Firms: MAZARS

## J. Communication with the Predecessor Auditor

### *Background and Respondents' Comments*

88. The IAASB NOCLAR ED proposed the inclusion of additional guidance in ISA 220<sup>77</sup> addressing the responsibility of the auditor to communicate with the predecessor auditor as follows:

A8a. Law, regulation, or relevant ethical requirements may require the auditor to request, prior to accepting the engagement, the predecessor auditor to provide known information regarding any facts or circumstances that, in the predecessor auditor's judgment, the auditor needs to be aware of before deciding whether to accept the engagement.

89. Some respondents<sup>78</sup> raised concern that the predecessor auditor may not be willing to provide the information, or may not have the client's permission to do so, and requested clarification of this in paragraph A8a of ISA 220. One respondent<sup>79</sup> suggested that examples of "facts and circumstances" be included (e.g. non-compliance with laws and regulations), while another<sup>80</sup> proposed referencing to section 210.13 of **Agenda Item 7-D**.

### *Task Force Recommendations*

90. The Task Force notes that since the IESBA NOCLAR ED, amendments have been made to address the professional accountant's responsibilities when withdrawing from the professional relationship that require, unless prohibited by law or regulation, the communication of NOCLAR to the successor auditor, even if permission from the entity has not been obtained. These requirements also impose an obligation on the successor auditor to obtain information regarding the change of appointment if the successor auditor is unable to communicate with the predecessor auditor. Refer section 225.30 of **Agenda Item 7-D**.

91. The Task Force believes that there could be confusion as to whether or not the auditor is required to communicate information to a successor auditor, without having the permission of the client to do so.

92. In order to bring clarity to paragraph A8a of ISA 220, the Task Force recommends the inclusion of a reference in ISA 220 to sections 210.13 and 225.30 of **Agenda Item 7-D**, together with emphasis to the requirement for the predecessor auditor to communicate NOCLAR to the successor auditor regardless of whether or not the entity's consent has been obtained. Refer to **Agenda Item 7-B**, paragraph A8a of ISA 220.

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<sup>77</sup> ISA 220, *Quality Control for an Audit of Financial Statements*

<sup>78</sup> *National Auditing Standard Setters: IDW, NBA; Member Bodies and Other Professional Organizations: ICAG, SMPC*

<sup>79</sup> *Member Bodies and Other Professional Organizations: CPAA*

<sup>80</sup> *Accounting Firms: EYG*

**Matter for IAASB Consideration**

10. Does the IAASB believe that references to sections 210.13 and 225.30 of **Agenda Item 7-D** provide sufficient clarity to the auditor’s responsibility to communicate with the successor auditor?

**K. Other Matters Relating to the Alignment of the International Standards with the IESBA NOCLAR ED**

*Background and Respondents’ Comments*

93. Communication to an appropriate level of management: Three respondents<sup>81</sup> pointed out that the IESBA NOCLAR ED refers to discussing NOCLAR with an appropriate level of management, yet ISA 250 refers to communicating to management.
94. Documentation requirements: Five respondents<sup>82</sup> believed that the documentation requirements of ISA 250 should be aligned to the documentation requirements set out in section 225.36 of **Agenda Item 7-D**, which requires additional documentation for significant matters, for example the judgements made by the auditor and decisions that were taken and how management has responded to the matter.

*Task Force Recommendations*

95. Communication to an appropriate level of management: The Task Force notes that some of the other ISAs, such as paragraph 40 of ISA 240 and paragraph 8 of ISA 450, refer to “the appropriate level of management”, and therefore the Task Force recommends that ISA 250 also make a similar reference. Refer to **Agenda Item 7-B**, paragraph 19, A15.
96. Documentation requirements: The Task Force has identified that there are some inconsistencies across the ISAs in terms of the required level of documentation, although there is no precedent in terms of a circumstance where a requirement outside of the International Standards, such as the IESBA Code, contains a documentation requirement, and how this has been contemplated in the ISAs. However, the Task Force agrees that, at a minimum, ISA 250 should draw attention to the potential additional documentation requirements contained in the relevant ethical requirements. Refer to **Agenda Item 7-B**, paragraph A22.

**Matter for IAASB Consideration**

11. Does the IAASB agree with these changes to align with the IESBA NOCLAR ED?

**L. Other amendments in response to comments**

*Respondents’ Comments and Task Force recommendations*

<sup>81</sup> National Auditing Standard Setters: HKICPA; National Auditing Standard Setters: MAASB Accounting Firms: PWC

<sup>82</sup> Regulators and Oversight Bodies: IRBA; National Auditing Standard Setters: NZAuASB; Accounting Firms: PWC; Member Bodies and Other Professional Organizations: KICPA, SAICA

97. Two respondents<sup>83</sup> recommended that paragraph A24 of ISA 210<sup>84</sup> should include the auditor's legal duty or ethical responsibility to report NOCLAR in the engagement letter. The Task Force agreed with this suggestion.
98. Additional application material was added to paragraph A26 of ISA 500,<sup>85</sup> with the inclusion of an additional paragraph, ISA 500 paragraph A33a. These amendments were made to ensure the consistency of ISA 500 with other NOCLAR amendments, i.e. to highlight that audit evidence may arise from other sources, such as ethical requirements, and that NOCLAR may provide further information relevant to the audit. The Task Force supported the inclusion of this additional guidance.
99. Certain respondents provided editorial corrections, some of which have been made by the Task Force.

## **M. The Impact in Jurisdictions Who do not Adopt, or Plan to Adopt, the IESBA Code**

### *Background and Respondents' Comments*

100. Overall, the majority of respondents<sup>86</sup> indicated that there is no conflict between local jurisdictional codes or laws or regulations in jurisdictions that have not adopted, or do not plan to adopt, the IESBA Code, and the proposed amendments to the International Standards.
101. However, two respondents<sup>87</sup> believed that conflicts would arise between local jurisdictional codes or laws and regulations and the International Standards and three respondents<sup>88</sup> raised concern that, if the IESBA proposals are reflected in the ISAs, future compliance with the International Standards may be difficult for auditors who do not apply the IESBA Code in their jurisdiction (or do not form part of larger firm networks that have adopted the IESBA Code in their policies and procedures). One respondent<sup>89</sup> acknowledged that amendments to jurisdictional laws or regulations may be required to be able to disclose non-compliance outside of the entity, although did not indicate that conflicts with the International Standards would arise.
102. A few respondents<sup>90</sup> questioned how ethical codes applied by professional accountants would be measured to determine their restrictiveness in light of the stringent NOCLAR requirements being included in the IESBA Code, with increasingly divergent national requirements and other proposals being considered by the IESBA (for example long

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<sup>83</sup> *Regulators and Oversight Bodies:* IRBA; *Member Bodies and Other Professional Organizations:* SAICA

<sup>84</sup> ISA 210, *Agreeing the Terms of Audit Engagements*

<sup>85</sup> ISA 500, *Audit Evidence*

<sup>86</sup> *Regulators and Oversight Bodies:* UKFRC, IRBA; *National Auditing Standard Setters:* CAASB, CNCC, MAASB, NSA, NZAuASB; *Accounting Firms:* BDO, DTT, EYG, PWC; *Public Sector Organizations:* AGC, GAO; *Member Bodies and Other Professional Organizations:* ANAN, ASSIREVI, CPAA, FACOCE, FSR, ICAZ, ICPAK, KICPA, MICPA, SAICA

<sup>87</sup> *National Auditing Standard Setters:* IDW; *Member Bodies and Other Professional Organizations:* ICAG

<sup>88</sup> *National Auditing Standard Setters:* FEE; *Member Bodies and Other Professional Organizations:* ICAP, ICAS

<sup>89</sup> *National Auditing Standard Setters:* ASB

<sup>90</sup> *National Auditing Standard Setters:* IDW; *Member Bodies and Other Professional Organizations:* SMPC

association of senior personnel) adding to the incongruence between jurisdictional ethical requirements and the IESBA Code.

#### *Task Force Recommendations*

103. The Task Force considered these responses and recognizes that the particular circumstances of some jurisdictions are an important factor in this matter.
104. The Task Force recognized that there are different interpretations of paragraph 14 of ISA 200,<sup>91</sup> which states that “the auditor shall comply with relevant ethical requirements, including those pertaining to independence, relating to financial statement audit engagements,” and paragraph A14, which indicates that “relevant ethical requirements ordinarily comprise Parts A and B of the [IESBA Code] related to an audit of financial statements together with national requirements that are more restrictive.” Some interpret this to mean that the relevant ethical requirements must be at least as restrictive or demanding as the IESBA Code. However, there are some views that the meaning of ISA 200 is more flexible and allows the auditor to apply the ethical requirements which are relevant in the auditor’s jurisdiction that may, or may not, be aligned to the IESBA Code.
105. The Task Force believes that further consideration of the interpretation of paragraphs 14 and A14 of ISA 200, and similar requirements contained in other International Standards, is required, and will present a recommendation to the IAASB at the June 2016 meeting, in coordination with the IAASB Steering Committee and, as necessary, IESBA leadership and staff.

#### **Matter for IAASB Consideration**

12. Does the IAASB agree that the exploration of the meaning of paragraphs 14 and A14 of ISA 200 would be helpful and should be considered in the future project addressing the impact of the restructuring of the IESBA Code?

#### **N. More Fulsome Review of ISA 250**

##### *Background and Respondents’ Comments*

106. The scope of the IAASB’s project was to propose those amendments that the IAASB determined would be necessary to resolve actual or perceived inconsistencies of approach between the International Standards and the IESBA NOCLAR ED, or to clarify and emphasize key aspects of the IESBA NOCLAR ED, in its International Standards. However, the IAASB recognized that there may be merit in exploring other aspects of ISA 250 where further improvements may be considered in due course, and accordingly requested the views of the respondents in this regard. The intention of soliciting views on other aspects of ISA 250 where further improvements may be considered was for the purpose of consulting on future Work Plans, as the *Work Plan 2015–2016* does not contemplate further efforts in relation to ISA 250.

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<sup>91</sup> ISA 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing*

107. Ten respondents<sup>92</sup> supported a future project to revise ISA 250 or explore its improvement. Some respondents<sup>93</sup> indicated particular support for the IAASB's suggestions included in the IAASB NOCLAR ED of matters related to ISA 250, or NOCLAR, which may warrant consideration in the future. These respondents expressed support for consideration of the effect on other ISAs, such as when dealing with auditor's experts, group audits and going concern, as well as obtaining an understanding of how management identifies and addresses known or suspected NOCLAR as an essential component in obtaining an understanding of the entity and its environment. There was also some support for making inquiries of management or, when appropriate, those charged with governance, regarding NOCLAR that may occur and the investigation and possible revision of the existing distinction between the types of laws and regulations (see paragraph 6 of ISA 250) and the different levels of work effort applied to each under extant ISA 250.
108. Related to these comments were suggestions of matters the IAASB may consider in a future revision of ISA 250. These included:
- Adopting a risk-based approach to NOCLAR, as ISA 250 is more procedure-based, which is seen by a few respondents to result in auditors performing insufficient work or not sufficiently addressing the risk of material misstatement arising from NOCLAR.<sup>94</sup> Those in favor of this approach believe that it would also address the difficulties of differentiating in ISA 250 between the laws and regulations that fall within the scope of paragraph 6(a) or 6(b). Furthermore, it was recommended that additional guidance in ISA 250 should be provided to address matters such as the depth and breadth of understanding of relevant laws and regulations required by the auditor.
  - Increasing emphasis on considering the effects of NOCLAR, particularly qualitative considerations.<sup>95</sup>
  - Including a requirement that although the financial reporting framework may not require disclosure of NOCLAR, the auditor may determine that such disclosure is necessary to achieve fair presentation, similar to the provisions included in ISA 570 (Revised)<sup>96</sup> related to close calls.<sup>97</sup>
  - Including a requirement to make inquiries of internal audit regarding NOCLAR.<sup>98</sup>
109. There were also requests for additional guidance for small and medium sized practitioners due to the increased risk of non-compliance with laws or regulations in a small and

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<sup>92</sup> *Regulators and Oversight Bodies:* IFIAR, IRBA, UKFRC; *National Auditing Standard Setters:* CAASB, JICPA, MAASB; *Member Bodies and Other Professional Organizations:* ANAN, ICAG, SAICA; *Academics:* HC

<sup>93</sup> *Regulators and Oversight Bodies:* UKFRC; *National Auditing Standard Setters:* JICPA; *Accounting Firms:* EYG; *Member Bodies and Other Professional Organizations:* ICAG

<sup>94</sup> *Regulators and Oversight Bodies:* IRBA, UKFRC; *Member Bodies and Other Professional Organizations:* SAICA

<sup>95</sup> *Regulators and Oversight Bodies:* IRBA; *Member Bodies and Other Professional Organizations:* SAICA

<sup>96</sup> ISA 570 (Revised), *Going concern*

<sup>97</sup> *Regulators and Oversight Bodies:* IRBA; *Member Bodies and Other Professional Organizations:* SAICA

<sup>98</sup> *Regulators and Oversight Bodies:* IRBA; *Member Bodies and Other Professional Organizations:* SAICA

medium entity environment,<sup>99</sup> and guidance for group audits to address several challenges experienced in practice relating to the communication of NOCLAR between the group engagement team and auditors of components.<sup>100</sup>

110. However, six respondents<sup>101</sup> did not support a more fulsome review of ISA 250 for various reasons, including that there are other projects which require the focus of the IAASB, there have been no implementation issues experienced, the auditor is not responsible for preventing non-compliance with laws and regulations and an expansion of ISA 250 may increase the expectations of the auditor, thereby unreasonably increasing the cost of the audit. It was also argued that an increase in the auditor's responsibilities could impair the quality of the audit due to a restriction on the "free-flow of information" between the auditor and the client.<sup>102</sup>

#### *Task Force Recommendations*

111. As discussed in Item E of this Issues Paper, the Task Force has performed an analysis of the impact of NOCLAR on ISA 600.
112. In view of the balance of the responses received, the Task Force believes that an immediate revision of ISA 250 is not warranted, although the responses will be presented to the IAASB Steering Committee for consideration in setting future work plans of the IAASB.

#### **Matter for IAASB Consideration**

13. Does the IAASB agree that a more fulsome review of ISA 250 in the immediate work plan of the IAASB is not crucial?

### **O. Other matters**

#### *Considerations for Developing Nations*

##### Background and Respondents' Comments

113. In response to the request for specific comment from developing nations, a few respondents<sup>103</sup> believed that there would be no difficulties in applying the International Standards. However, two respondents<sup>104</sup> raised concerns with the practical application of the reporting of NOCLAR to appropriate authorities in developing nations, since there may be no appropriate authorities to whom to report. Such respondents requested more guidance for auditors in determining what action to take in such circumstances, particularly

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<sup>99</sup> *Regulators and Oversight Bodies: IRBA; Member Bodies and Other Professional Organizations: SAICA*

<sup>100</sup> *Member Bodies and Other Professional Organizations: ISCA*

<sup>101</sup> *National Auditing Standard Setters: NBA; Accounting Firms: BDO, DTT, EYG, PWC; Member Bodies and Other Professional Organizations: IBR-IRE*

<sup>102</sup> *Accounting Firms: DTT*

<sup>103</sup> *Member Bodies and Other Professional Organizations: ANAN; Academics: HC*

<sup>104</sup> *Member Bodies and Other Professional Organizations: ICAG, ICPAK*

since there may be a conflict between acting out of the duty of confidentiality and acting in the public interest.

**Task Force Recommendations**

114. The Task Force is of the view that additional guidance in the International Standards would not be appropriate in light of the fact that the International Standards have implicitly acknowledged such a circumstance, for example paragraph A19a and A19b of ISA 250.

*Translation issues*

**Background and Respondents' Comments**

115. In response to the request for specific comment on potential translation issues, one respondent<sup>105</sup> highlighted the importance of taking care in the translation of “legal or ethical duty or right” due to the importance of this phrase in the International Standards. (See Item A above)

**Effective Date**

*Background and Respondents' Comments*

116. Many respondents<sup>106</sup> supported the alignment of the effective date of the amendments to the International Standards with the IESBA NOCLAR ED.

**Appendix 1**

**Summary of Changes to the IESBA NOCLAR ED Since Exposure and Consideration of the Impact of These Changes on the International Standards**

<b>Change to the IESBA NOCLAR ED</b>	<b>Section reference in IESBA NOCLAR proposals (see Agenda Item 7-D)</b>	<b>Impact on the International Standards</b>
The inclusion of “other individuals working for or under the direction of a client” in the scope of non-compliance with laws and regulations, with conforming amendments throughout the IESBA NOCLAR proposals to accommodate this change.	225.2	Refer Item <a href="#">C</a>

<sup>105</sup> *Accounting Firms:* BDO

<sup>106</sup> *Regulators and Oversight Bodies:* IRBA; *National Auditing Standard Setters:* AUASB, CAASB, NBA, NZAuASB; *Accounting Firms:* EYG; *Member Bodies and Other Professional Organizations:* CPAA, FEE, ICAS, ICAZ, ICPAK, SAICA, WPK; *Academics:* HC

Stronger emphasis on the possibility that legal or regulatory requirements may govern how the professional accountant addresses non-compliance and on the professional accountant’s responsibility to obtain an understanding of such provisions, with the location of this material, as well as the tipping-off provisions, earlier in the IESBA NOCLAR proposals.	225.3	Refer Item <a href="#">A</a>
Removal of the “public interest” considerations in the introductory section of the IESBA NOCLAR proposals.	Previously 225.4	No impact
Clarity of circumstances of non-compliance that would not be addressed, for example non-compliance committed by an entity being subject to a due diligence review since in such a case the professional accountant would not be engaged by the entity subject to review.	225.9	No impact
The removal of the requirement that the professional accountant needs to obtain an understanding of the application of the relevant laws and regulations to the circumstances of the non-compliance.	225.11	No impact
The removal of the implication that the professional accountant and management or those charged with governance must agree that non-compliance has occurred or may occur before the professional accountant prompts them to take appropriate action.	225.17	No impact
New requirements addressing the two-way communication of NOCLAR in a group audit as follows: <ul style="list-style-type: none"> <li>○ The auditor of a component of the group must communicate NOCLAR to the group engagement partner. This relates to a component where an audit of the component’s financial information for group audit purposes is required and a component not scoped in for group audit purposes but where an audit of the component’s financial information is performed for another purpose, e.g. a statutory audit.</li> <li>○ The group engagement partner must communicate NOCLAR to each component in the group to which the matter is relevant.</li> </ul>	225.20 and 225.21	Refer Item <a href="#">E</a>
A change in focus that requires the assessment of the appropriateness of management or those charged with governance’s response in determining whether further action is needed.	225.22 and 225.24	No impact
The inclusion of a requirement, that when withdrawing from the professional relationship, the auditor shall provide to the	225.30	Refer Item <a href="#">J</a>

successor auditor all such facts and other information concerning NOCLAR that, in the existing auditor's opinion, the successor auditor needs to be aware of before deciding whether to accept the audit appointment, even if client permission has not been obtained, and unless prohibited by laws or regulations. There is also an obligation for the successor auditor to take additional steps when the successor auditor is unable to communicate with the existing auditor.		
Emphasis on the possibility that law or regulation may preclude disclosure of non-compliance to an appropriate authority.	225.32	Refer Item <a href="#">A</a>
The inclusion of a requirement that an imminent breach of laws or regulation that comes to the attention of the professional accountant which would cause substantial harm may be disclosed to an appropriate authority immediately.	225.35 and 225.50	No impact
Clarification of the circumstances where a professional accountant performing a non-audit service for an audit client should consider communicating NOCLAR within the firm or network firm, or to the external auditor, including factors to consider before communicating. The previous requirement to communicate within the firm has been softened to only require the professional accountant to consider this communication.	225.43 and 225.44	No impact
Provisions addressing communication to the group engagement partner in respect of professional accountants performing non-audit services for components within a group, such as a review of the component's financial information, or an audit of, or specific procedures relating to, elements, accounts or items of a component's financial information.	225.45	Refer Item <a href="#">E</a>
Linking the further action with the public interest test, in the case of a professional accountant performing non-audit services.	225.46	No impact
Inclusion of withdrawal from the engagement as a further action for a professional accountant performing non-audit services.	225.48	No impact

## Appendix 2

### List of Respondents to the IAASB's ED on Responding to NOCLAR

Note: Members of the Monitoring Group are shown in bold below

#	Abbrev.	Respondent (43)	Region
<b>Regulators and Oversight Authorities (3)</b>			
1.	<b>IFIAR</b>	<b>International Forum of Independent Audit Regulators</b>	<b>GLOBAL</b>
2.	IRBA	Independent Regulatory Board for Auditors (South Africa)	MEA
3.	UKFRC	Financial Reporting Council (UK)	EU
<b>National Auditing Standard Setters (10)</b>			
4.	ASB	American Institute of Certified Public Accountants' Auditing Standards Board	NA
5.	AUASB	Australian Auditing and Assurance Standards Board	AP
6.	CAASB	Canadian Auditing and Assurance Standards Board	NA
7.	CNCC	Compagnie Nationale des Commissaires aux Comptes	EU
8.	HKICPA	Hong Kong Institute of Certified Public Accountants	AP
9.	IDW	Institut der Wirtschaftspruefer in Deutschland e.V.	EU
10.	JICPA	Japanese Institute of Certified Public Accountants	AP
11.	MAASB	Malaysian Institute of Accountants	AP
12.	NBA	Nederlandse Beroepsorganisatie van Accountants	EU
13.	NZAUASB	New Zealand Auditing and Assurance Standards Board	AP
<b>Accounting Firms (5)<sup>107</sup></b>			
14.	<b>BDO*</b>	<b>BDO International Limited</b>	<b>GLOBAL</b>
15.	<b>DTT*</b>	<b>Deloitte Touche Tohmatsu Limited</b>	<b>GLOBAL</b>
16.	<b>EYG*</b>	<b>Ernst &amp; Young Global Limited</b>	<b>GLOBAL</b>
17.	<b>MAZARS*</b>	<b>MAZARS</b>	<b>GLOBAL</b>
18.	<b>PWC*</b>	<b>PricewaterhouseCoopers International Limited</b>	<b>GLOBAL</b>

<sup>107</sup> Forum of Firms members are indicated with a \*. The Forum of Firms is an association of international networks of accounting firms that perform transnational audits. Members of the Forum have committed to adhere to and promote the consistent application of high-quality audit practices worldwide, and use the ISAs as the basis for their audit methodologies.

<b>Public Sector Organizations (3)</b>			
19.	AGC	Auditor General Canada	NA
20.	CIPFA	Chartered Institute of Public Finance and Accountancy	GLOBAL
21.	GAO	United States Government Accountability Office	NA
<b>Member Bodies and Other Professional Organizations (20)</b>			
22.	ANAN	Association of National Accountants of Nigeria	MEA
23.	ASSIREVI	Associazione Italiana Revisori Contabili (Association of the Italian Auditors)	EU
24.	CAANZ	Chartered Accountants Australia and New Zealand	AP
25.	CAI	Chartered Accountants Ireland	EU
26.	CPAA	CPA Australia	AP
27.	FACPCE	Federacion Argentina de Consejos Profesionales de Ciencias	SA
28.	FEE	Fédération des Experts comptables Européens - Federation of European Accountants	EU
29.	FSR	Foreningen af Statsautoriserede Revisorer (Danish Institute of Accountants)	EU
30.	IBR-IRE	Institut des Réviseurs d'Entreprises/Instituut van de Bedrijfsrevisoren	EU
31.	ICAG	Institute of Chartered Accountants in Ghana	MEA
32.	ICAP	Institute of Chartered Accountants of Pakistan	AP
33.	ICAS	Institute of Chartered Accountants of Scotland	EU
34.	ICAZ	Institute of Chartered Accountants of Zimbabwe	MEA
35.	ICPAK	Institute of Chartered Accountants of Kenya	MEA
36.	ISCA	Institute of Singapore Chartered Accountants	AP
37.	KICPA	Korean Institute of CPAs	AP
38.	MICPA	Malaysian Institute of CPAs	AP
39.	SAICA	South African Institute of Chartered Accountants	MEA
40.	SMPC	IFAC Small and Medium Practices Committee	GLOBAL
41.	WPK	Wirtschaftsprüferkammer (German Public Accountants)	EU
<b>Academics (1)</b>			
42.	HC	Hunter College Graduate Program	NA
<b>Individuals and Others (1)</b>			

43.	CBarnard	Chris Barnard	EU
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