

EXTRACT OF PROPOSED INTERNATIONAL STANDARD ON AUDITING 250 (REVISED)

CONSIDERATION OF LAWS AND REGULATIONS IN AN AUDIT OF FINANCIAL STATEMENTS

(Effective for audits of financial statements for periods
beginning on or after ~~[date]~~ December 15, 2017)

[MARKED FROM MARCH 2016 BOARD MEETING]

Introduction

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Effective Date

9. This ISA is effective for audits of financial statements for periods beginning on or after ~~[date]~~ December 15, 2017.

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Definition

11. For the purposes of this ISA, the following term has the meaning attributed below:

Non-compliance – Acts of omission or commission, intentional or unintentional, committed by the entity, or by those charged with governance, by management or by other individuals working for, or under the direction of the entity, which are contrary to the prevailing laws or regulations. Non-compliance does not include:

- (a) Personal misconduct unrelated to the business activities of the entity ~~by those charged with governance, by management, or by other individuals working for, or under the direction of the entity; or~~
- (b) Non-compliance by persons other than ~~the entity or~~ those charged with governance, ~~by~~ management or ~~by~~ other individuals working for, or under the direction of, the entity.

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Requirements

Reporting of Identified or Suspected Non-Compliance, Including Potential Implications for the Auditor's Report

Reporting Identified or Suspected Non-Compliance to an Appropriate Authority ~~o~~Outside the Entity

28. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has:— a responsibility under law, regulation or relevant ethical requirements in relation to reporting identified or suspected non-compliance to an appropriate authority outside the entity. Although such a responsibility may override the duty of confidentiality in some circumstances, the auditor's duty of confidentiality under law, regulation or relevant ethical requirements may, in other circumstances, preclude such reporting. (Ref: Para. A19–A20)

(a) ~~— A legal duty or right to report;~~

(b) ~~— An ethical requirement to report; or~~

(c) ~~— An ethical responsibility to determine whether to report, or may otherwise report;~~

~~the identified or suspected non-compliance to an appropriate authority outside the entity, without breaching the duty of confidentiality.~~

Application and Other Explanatory Material

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Definition

A6a. Acts of non-compliance include transactions entered into by, or in the name of, the entity, or on its behalf, by those charged with governance, management or other individuals working for or under the direction of the entity.

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Reporting of Identified or Suspected Non-Compliance, Including Potential Implications for the Auditor's Report

Reporting Identified or Suspected Non-Compliance to an Appropriate Authority ~~o~~Outside the Entity (Ref: Para. 28)

A19. Obtaining legal advice may assist in making the determination required by paragraph 28. The auditor may also consider consulting, on a confidential basis with others within the firm, a network firm or a professional body, unless doing so is prohibited by law or regulation or unless doing so would breach the duty of confidentiality.

A19a. In some circumstances, the reporting of identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity may be precluded by the auditor's duty of confidentiality under law, regulation or relevant ethical requirements.

~~A19b. In some jurisdiction cases, law or regulation may impose a legal duty on the auditor~~ may be required by law or regulation to report identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity. For example, in some jurisdictions, statutory requirements exist for 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 may ~~have a duty~~ be required to report misstatements that arise from non-compliance with laws or regulations to authorities in these cases where management or those charged with governance fail to take corrective action.

~~A19c. In other jurisdictions or circumstances cases, laws, and regulations or the relevant ethical requirements may give the auditor the right, but not the duty, to report identified or suspected non-compliance to an appropriate authority outside the entity, even if no legal or ethical requirement exists to do so.~~ For example, when dealing with financial institutions such as banks and insurers, the auditor may have the right under law or regulation to discuss matters, such as identified or suspected non-compliance, with a financial institution's supervisor. ~~However, in other cases the auditor's duty to maintain confidentiality under law or regulation may preclude the auditor from reporting identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity.~~

~~A19db. When not precluded from reporting to an appropriate authority outside the entity by law or regulation, under the~~ In other cases, the relevant ethical requirements may establish responsibilities for the auditor may have a duty to report, a responsibility to determine whether to report, or may otherwise report, in relation to reporting identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity, without breaching the duty of confidentiality. For example, the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA Code) requires the professional accountant ~~under some ethical requirements the auditor may have an obligation to take steps to address the matter and to determine whether if further action is needed in response to identified or suspected non-compliance, which may include reporting to an appropriate authority outside the entity. This further action could include reporting the matter to an appropriate authority outside the entity even when there is no legal or regulatory requirement to do so,¹ without~~ The IESBA Code explains that such reporting would not be considered a breaching of the duty of confidentiality under the IESBA Code.² ~~However, under other relevant ethical requirements, the auditor's ethical duty to maintain confidentiality may preclude reporting identified or suspected non-compliance with laws and regulations to an appropriate authority outside the entity.~~

¹ See, for example, Section 225.289 and Sections 225.33–2 to 225.365 of the IESBA Code.

² See, for example, Section 140.7 and Section 225.354 of the IESBA Code.