

New code extends accountants' ethical obligations

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A professional accountant's obligation to report non-compliance with laws and regulations has become more stringent, thanks to a new section to the International Ethics Standards Board for Accountants' code.



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Non-compliance goes far beyond reportable irregularities, and includes non-actual or suspected non-compliance with data protection, securities trading, terrorist financing and environmental protection.

Section 360 in the code of ethics guides accountants to act in the public's interest when they become aware, or suspect a Noclar (non-compliance with laws and regulations).

Roles and responsibilities

The code states that a distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest (section 100.1 of the IESBA).

When responding to a Noclar, the professional accountant is required to comply with the fundamental principles of integrity, objectivity, professional competence and due care and professional behaviour.

Once they become aware non-compliance, they have to report it to their direct superior, and if they are the most senior person they have to consult with the board of directors or anybody who is involved in corporate governance in the organisation.

The responsible people must be allowed time to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance, provided there is no urgency in the matter.

South African Institute of Professional Accountants (Saipa) advises accountants to follow the internal route first. If they feel there is insufficient action to rectify the non-compliance, they can approach the regional forums and their professional bodies. If they are still dissatisfied with the recourse taken, they should consult legal counsel.

The code acknowledges that a senior professional accountant is expected to apply knowledge, professional judgment and expertise. However, he is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional accountant's role within the employing organisation.

The new section provides accountants with an override to the principle of confidentiality when reporting the non-compliance is in the best interest of the public. Once they have taken appropriate action, they must feel comfortable that the non-compliance has been fully dealt with and remember to document everything.

Dealing with threats and intimidation

Professional accountants need to maintain their independence and objectivity, and not succumb to intimidation or threats when they encounter and report non-compliance.

South African legislation supports this professional duty in the form of the Protected Disclosures Act.

The code states that where it is not possible to reduce the threat to an acceptable level, a professional accountant shall refuse to remain associated with information that is considered misleading or may cancel their mandate to ensure that the code is upheld.

The letter of engagement should reflect clearly that the client's information will be held confidential, but if there is a legal or professional duty to disclose non-compliance the professional accountant will not hesitate to do so. This sets the ground rules for the client to understand that the professional accountant will not tolerate non-compliance if it impacts on the public's best interest. The accountant has a trained eye, and can determine if something seems untoward.

Meticulous record-keeping

It is critical for the professional accountant to meticulously document what he has done to address the non-compliance. This will act as proof that he adhered to the requirements and responsibilities set out in the new section of the code.

It is advisable to document the nature of the matter, the results of discussions with a superior or, and where applicable, those charged with governance.

It is important to document the response of the accountant's superior, the courses of action taken by the professional accountant and the judgments made and the decisions that were taken.

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