

## **Responsibility**

### **Responding to a Suspected Illegal Act**

- 225.1 This section provides guidance to a professional accountant in public practice on how to respond when encountering a suspected illegal act in the course of performing a professional service for a client. Illegal acts comprise acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations. This section refers to suspected illegal acts because whether a matter constitutes an illegal act is ultimately a matter for legal determination by a court of law.
- 225.2 If a professional accountant in public practice identifies a suspected illegal act, the accountant shall consider whether there are any applicable legal or regulatory requirements governing how the suspected illegal act is to be addressed and, if so, the accountant shall comply with those requirements. When required by law or regulation to disclose a suspected illegal act, for example as a result of anti-money laundering legislation, a professional accountant in public practice shall make the disclosure in compliance with the relevant legal or regulatory requirements and comply with any prohibitions on alerting (“tipping-off”) the client to the pending disclosure.
- 225.3 When there is no applicable law or regulation, this section describes the circumstances where a professional accountant in public practice shall override the fundamental principle of confidentiality and disclose a suspected illegal act to an appropriate authority.

#### *Professional Accountant Providing Professional Services to an Audit Client*

- 225.4 If a professional accountant in public practice during an audit engagement or while performing another professional service for an audit client of the firm or a network firm acquires, or receives, information that leads the accountant to suspect that an illegal act has been committed, the accountant shall take reasonable steps to confirm or dispel that suspicion. In doing so, the professional accountant is expected to apply knowledge, judgment and expertise when considering the matter, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. In taking reasonable steps to confirm or dispel the suspicion, the professional accountant may wish to consult with others within the firm. If the professional accountant is performing a non-assurance service for an audit client of the firm or a network firm, the professional accountant shall consult with the engagement partner for the audit.
- 225.5 If the professional accountant is unable to dispel the suspicion, the accountant shall discuss the matter with the appropriate level of management. The determination of which level of management is the appropriate one is a matter of professional judgment and is affected by factors such as the nature of the act, the circumstances and individuals involved, the likelihood of collusion and the magnitude of the matter. The appropriate

level of management is generally at least one level above the person or persons who appear to be involved in the matter.

- 225.6 If, in the accountant's professional judgment, the response to the matter is not appropriate, the professional accountant shall escalate the matter to higher levels of management, within the entity or the group, as appropriate. If the highest level of management has not appropriately addressed the matter, the professional accountant shall discuss the matter with those charged with governance of the entity or the group, as appropriate.
- 225.7 If the professional accountant has doubts about the integrity or honesty of management or suspects that management is involved in the suspected illegal act, the accountant shall discuss the matter directly with those charged with governance. If the professional accountant has doubts about the integrity or honesty of those charged with governance or suspects that those charged with governance are implicated in the suspected illegal act, the accountant may consider it appropriate to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege to assist in determining the appropriate course of action.
- 225.8 If, in the professional accountant's judgment, the response to the matter is not appropriate, the accountant shall determine the appropriate course of action, including whether to terminate all professional relationships with the client.
- 225.9 When determining if the response to the matter is appropriate the professional accountant shall consider factors such as whether:
- The matter has been adequately investigated;
  - Remedial action has been taken to address the matter;
  - Steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training; and
  - The entity has disclosed the matter to an appropriate authority, if any, or intends to do so within a reasonable period of time.
- 225.10 If the entity has not disclosed the matter and the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest, and there is an appropriate authority to receive the disclosure, the accountant shall advise the entity that the matter should be disclosed to the appropriate authority. If the entity has not made an adequate disclosure within a reasonable period of time, the professional accountant shall disclose the following to the appropriate authority:
- Suspected illegal acts that directly or indirectly affect the client's financial reporting.
  - Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant, such as fraud, bribery or insider trading.
- 225.11 The determination of whether disclosure would be in the public interest will require professional judgment. In making the determination, the professional accountant shall take into account whether a reasonable and informed third party, weighing all the

specific facts and circumstances, would be likely to conclude that the suspected illegal act is of such consequence that disclosure would be in the public interest.

- 225.12 The appropriate authority to which to disclose the matter will depend on the nature of the suspected illegal act; for example a tax authority in the case of suspected tax evasion, and a securities regulator in the case of suspected fraudulent financial reporting in a listed entity.
- 225.13 In exceptional circumstances a professional accountant in public practice is not required, under this section, to disclose the suspected illegal act if a reasonable and informed third party would conclude that the probable threats, harassment or reprisals to the professional accountant are sufficiently severe to outweigh the public interest in disclosure. In such cases, if the professional accountant determines not to disclose the suspected illegal act, the accountant shall document the rationale for not disclosing.
- 225.14 In determining how to comply with the requirements of this section, including whether the suspected illegal act should be disclosed to an appropriate authority, and if so, to which authority, the professional accountant may wish to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of professional privilege.
- 225.15 When making a disclosure to an appropriate authority, and thus overriding the fundamental principle of confidentiality, the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions.

*Professional Accountant Providing Professional Services to a non Audit Client*

- 225.16 If a professional accountant in public practice in the course of performing a professional service for a client that is not an audit client of the firm or a network firm acquires or receives information that leads the accountant to suspect that an illegal act has been committed, the professional accountant shall take reasonable steps as outlined in paragraph 225.4 to confirm or dispel that suspicion.
- 225.17 If the professional accountant is unable to dispel the suspicion, and if the client is an entity, the accountant shall discuss the matter with the appropriate level of management. If, in the accountant's professional judgment, the response to the matter is not appropriate, the professional accountant shall escalate the matter within the entity, for example with higher levels of management, internal audit or those charged with governance. If the professional accountant is unable to escalate the matter, the professional accountant shall disclose the matter to the external auditor to enable the external auditor to escalate the matter.
- 225.18 If in the professional accountant's judgment, the response to the matter is not appropriate, the accountant shall determine the appropriate course of action, including whether to terminate all professional relationships with the client.
- 225.19 When determining if the response to the matter is appropriate the professional accountant shall consider factors such as whether:

- The matter has been adequately investigated;
- Remedial action has been taken to address the matter;
- Steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training; and
- The entity has disclosed the matter to an appropriate authority, if any, or intends to do so within a reasonable period of time.

225.20 If, the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest, there is an appropriate authority to receive the disclosure, and the matter has not been disclosed, the accountant shall advise the entity that the matter should be disclosed to the appropriate authority. If the entity has not made an adequate disclosure within a reasonable period of time and the suspected illegal act relates to the subject matter of the professional services being provided by the professional accountant, the accountant shall disclose the matter to the appropriate authority, when not prohibited by law.

225.21 If the client is an individual and the professional accountant is unable to dispel the suspicion, the accountant shall discuss the matter with the individual. If the client admits to the illegal act the professional accountant shall advise the client to disclose the matter to an appropriate authority, if there is an appropriate authority to receive the disclosure. If the client refuses to disclose the matter, or does not admit to the illegal act, the professional accountant shall determine the appropriate course of action, including whether to terminate the professional relationship with the individual. If the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest and the subject matter of the illegal act falls within the expertise of the professional accountant, the accountant shall disclose the matter to an appropriate authority, when not prohibited by law.

225.22 In exceptional circumstances a professional accountant in public practice is not required, under this section, to disclose the suspected illegal act if a reasonable and informed third party would conclude that the probable threats, harassment or reprisals to the professional accountant are sufficiently severe to outweigh the public interest in disclosure. In such cases, if the professional accountant determines not to disclose the suspected illegal act, the accountant shall document the rationale for not disclosing.

#### *Protection under Legislation*

225.23 The professional accountant may wish to seek legal advice to obtain an understanding of any protection afforded by legislation, such as that afforded in some jurisdictions under whistle-blowing legislation, if the accountant discloses the matter to a party outside of the client.

#### *Documentation*

225.24 The professional accountant shall document the steps the accountant took to respond to the suspected illegal act. The documentation shall include the persons consulted,

responses received, the disclosure, if any, made to an appropriate authority and if the professional accountant determined not to disclose the suspected illegal act, the accountant shall document the rationale for not disclosing.

## **Responding to a Suspected Illegal Act**

- 360.1 This section provides guidance to a professional accountant in business on how to respond when encountering a suspected illegal act in the course of undertaking a professional activity<sup>1</sup>. Illegal acts comprise acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations. This section refers to suspected illegal acts because whether a matter constitutes an illegal act is ultimately a matter for legal determination by a court of law.
- 360.2 If a professional accountant in business identifies a suspected illegal act, the accountant shall consider whether there are any applicable legal or regulatory requirements governing how the suspected illegal act is to be addressed and, if so, the accountant shall comply with those requirements. When required by law or regulation to disclose a suspected illegal act a professional accountant in business shall make the disclosure in compliance with the relevant legal or regulatory requirements and comply with any prohibitions on alerting (“tipping off”) the employing organization to the pending disclosure.
- 360.3 When there is no applicable law or regulation, this section describes the circumstances where a professional accountant in business shall override the fundamental principle of confidentiality and disclose a suspected illegal act to an appropriate authority.
- 360.4 If a professional accountant in business in the course of performing a professional activity acquires, or receives, information that leads the accountant to suspect that an illegal act has been committed, the accountant shall take reasonable steps to confirm or dispel that suspicion. In doing so, the professional accountant is expected to apply knowledge, judgment and expertise when considering the matter, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional activity the accountant is undertaking. In taking reasonable steps to confirm or dispel the suspicion, the professional accountant may wish to consult with others within the organization.
- 360.5 If the professional accountant is unable to dispel the suspicion, the accountant shall determine the appropriate course of action, taking into account whether the organization has an established mechanism, such as an ethics policy, for addressing such matters.
- 360.6 The professional accountant shall generally first disclose a suspected illegal act within the reporting lines of the employing organization by reporting the matter to a superior. If, in the professional accountant’s judgment, the response to the matter is not appropriate or the professional accountant suspects that the superior or management is involved in the suspected illegal act, the accountant shall:
- Escalate the matter within the entity, for example with higher levels of management, internal audit or those charged with governance;

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<sup>1</sup> A professional activity is defined as “Activities requiring accountancy or related skills undertaken by a professional accountant including accounting, auditing, taxation, management consulting and financial management.”

- Disclose the matter in accordance with any established mechanism such as an ethics policy; or
  - Disclose the matter to the external auditor.
- 360.7 If, in the professional accountant's judgment, the response to the matter is not appropriate, the accountant shall determine the appropriate course of action, including whether to resign from the employing organization.
- 360.8 When determining if the response to the matter is appropriate, the professional accountant shall consider factors such as whether:
- The matter has been adequately investigated;
  - Remedial action has been taken to address the matter;
  - Steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training; and
  - The employing organization has disclosed the matter to an appropriate authority, if any, or intends to do so within a reasonable period of time.
- 360.9 If the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest, there is an appropriate authority to receive the disclosure, and the matter has not been disclosed, the accountant shall advise the employing organization that the matter should be disclosed to an appropriate authority. If the employing organization has not made an adequate disclosure within a reasonable period of time, when not prohibited by law the professional accountant shall disclose the following:
- Suspected illegal acts that directly or indirectly affect the employing organization's financial reporting.
  - Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant.
- 360.10 The determination of whether reporting would be in the public interest will require professional judgment. In making the determination, the professional accountant shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances would be likely to conclude that the suspected illegal act is of such consequence that disclosure would be in the public interest.
- 360.11 If the professional accountant concludes that disclosure is appropriate, the professional accountant shall determine whether there is an appropriate authority to receive the disclosure and, if so disclose the matter to the authority.
- 360.12 In exceptional circumstances a professional accountant in business is not required, under this section, to disclose the suspected illegal act if a reasonable and informed third party would conclude that the probable threats, harassment or reprisals to the professional accountant are sufficiently severe to outweigh the public interest in disclosure. In such cases, if the professional accountant determines not to disclose the suspected illegal act, the accountant shall document the rationale for not disclosing.

- 360.13 The appropriate authority to which to disclose the matter will depend upon the nature of the suspected illegal act; for example a tax authority in the case of suspected tax evasion and a securities regulator in the case of suspected fraudulent financial reporting in a listed entity.
- 360.14 In determining how to comply with the requirements of this section, the professional accountant may wish to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of professional privilege. In addition the professional accountant may wish to seek legal advice to obtain an understanding of any protection afforded by legislation, such as that afforded in some jurisdictions under whistle-blowing legislation, if the accountant decides to disclose the matter to a party outside of the employing organization..
- 360.15 When making a disclosure to an appropriate authority, and thus overriding the fundamental principle of confidentiality, the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions.
- 360.16 The professional accountant may wish to seek legal advice to obtain an understanding of any protection afforded by legislation, such as that afforded in some jurisdictions under whistle-blowing legislation, if the accountant discloses the matter to a party outside of the employing organization,.
- 360.17 The professional accountant shall document the steps the accountant took to respond to the suspected illegal act. The documentation shall include the persons consulted, responses received and the disclosure, if any, made to an appropriate authority and, if the professional accountant determined not to disclose the suspected illegal act, the accountant shall document the rationale for doing so.