

**RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS****SECTION 100 (Clean Version)****Introduction and Fundamental Principles**

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*Fundamental Principles*

100.5 A professional accountant shall comply with the following fundamental principles:

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- (e) Professional Behavior – to comply with relevant laws and regulations and avoid any conduct that discredits the profession.

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**SECTION 140 (Clean Version)****Confidentiality**

140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:

- (a) Disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
- (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

140.2 A professional accountant shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.

140.3 A professional accountant shall maintain confidentiality of information disclosed by a prospective client or employer.

140.4 A professional accountant shall maintain confidentiality of information within the firm or employing organization.

140.5 A professional accountant shall take reasonable steps to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.

140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

*Circumstances Where Confidential Information May be Disclosed*

- 140.7 As a fundamental principle, confidentiality serves the public interest because it facilitates the free flow of information between a professional accountant and the professional accountant's client or employer. Nevertheless, there are circumstances where the professional accountant is or may be required to disclose confidential information, or where such disclosure may be appropriate.
- 140.8 A professional accountant may override the duty of confidentiality when:
- (a) Disclosure is required by law or regulation;
  - (b) There is a professional duty or right to disclose, when not prohibited by law or regulation; or
  - (c) Disclosure is permitted by law and is authorized by the client or the employer.
- 140.9 Circumstances where disclosure is required by law or regulation may include, for example:
- Production of documents or other evidence in the course of legal proceedings.
  - Disclosure to the appropriate public authorities of non-compliance with laws and regulations that comes to light.
- 140.10 Circumstances where a professional accountant may have a professional duty or right to disclose include, for example:
- (a) To comply with the quality review of a member body or professional body;
  - (b) To respond to an inquiry or investigation by a member body or regulatory body;
  - (c) To protect the professional interests of a professional accountant in legal proceedings; or
  - (d) To comply with technical and ethics standards, such as when disclosing identified or suspected non-compliance with laws and regulations to an appropriate authority in the circumstances described in Sections 225 and 360.
- 140.11 In deciding whether to disclose confidential information, relevant factors to consider include:
- Whether the interests of any parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant.
  - Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any.
  - The type of communication that is expected and to whom it is addressed.
  - Whether the parties to whom the communication is addressed are appropriate recipients.

## **SECTION 150 (Clean Version)**

### **Professional Behavior**

- 150.1 The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know may discredit the profession. This includes actions or other conduct that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession. Such conduct includes not responding to circumstances where the professional accountant has identified or suspects non-compliance with laws and regulations by a client or an employer.
- 150.2 In marketing and promoting themselves and their work, professional accountants shall not bring the profession into disrepute. Professional accountants shall be honest and truthful and not:
- (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
  - (b) Make disparaging references or unsubstantiated comparisons to the work of others.

## **SECTION 210 (Mark-Up from September 2013 IESBA Meeting)**

### **Professional Appointment**

#### *Client Acceptance and Continuance*

- 210.1 Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavior may be created from, for example, issues associated with the client (its owners, management or activities) that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, or questionable financial reporting practices or other unethical behavior.
- 210.2 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.
- Examples of such safeguards include:
- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
  - Securing the client's commitment to address the questionable issues, for example through improving corporate governance practices or internal controls.
- 210.3 Where it is not possible to reduce the threats to an acceptable level, the professional accountant in public practice shall decline to enter into the client relationship.
- 210.4 Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the professional accountant to decline the engagement had that information been available earlier. A professional accountant in public practice shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a threat to compliance with the fundamental principles may be created by a client's unethical behavior such as improper earnings management or balance sheet valuations. If a professional accountant in public practice identifies a threat to compliance with the fundamental principles, the accountant shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the professional accountant in public practice shall consider terminating the client relationship where termination is not prohibited by law or regulation.

#### *Engagement Acceptance*

- 210.5 The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

- 210.6 A professional accountant in public practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:
- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
  - Acquiring knowledge of relevant industries or subject matters.
  - Possessing or obtaining experience with relevant regulatory or reporting requirements.
  - Assigning sufficient staff with the necessary competencies.
  - Using experts where necessary.
  - Agreeing on a realistic time frame for the performance of the engagement.
  - Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.
- 210.7 When a professional accountant in public practice intends to rely on the advice or work of an expert, the professional accountant in public practice shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

*Changes in a Professional Appointment*

- 210.89 A professional accountant in public practice who is asked to replace another professional accountant in public practice, or who is considering tendering for an engagement currently held by another professional accountant in public practice, shall determine whether there are any reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an acceptable level by the application of safeguards. For example, there may be a threat to professional competence and due care if a professional accountant in public practice accepts the engagement before knowing all the pertinent facts.
- 210.940 A professional accountant in public practice shall evaluate the significance of any threats. ~~Depending on the nature of the engagement, this may require direct communication with the existing accountant to establish the facts and circumstances regarding the proposed change so that the professional accountant in public practice can decide whether it would be appropriate to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the existing accountant that may influence the decision to accept the appointment.~~
- 210.11 Safeguards shall be applied when necessary to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:
- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant will be requested so that inquiries

may be made as to whether there are any professional or other reasons why the appointment should not be accepted;

- Asking the existing accountant to provide known information on any facts or circumstances that, in the existing accountant's opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the existing accountant that may influence the decision to accept the appointment; or
- Obtaining necessary information from other sources.

210.10 When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

210.11<sup>13</sup> An existing accountant is bound by confidentiality. Whether that professional accountant is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

- (a) Whether the client's permission to do so has been obtained; or
- (b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

Circumstances where the professional accountant is or may be required to disclose confidential information or where such disclosure may otherwise be appropriate are set out in Section 140 of Part A of this Code.

210.12<sup>4</sup> A professional accountant in public practice will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing accountant. Once that permission is obtained, the existing accountant shall comply with relevant legal and other regulations governing such requests. Where the existing accountant provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing accountant, the proposed accountant shall take reasonable steps to obtain information about any possible threats by other means, such as through inquiries of third parties or background investigations of senior management or those charged with governance of the client.

210.13 In the case of an audit of financial statements, a professional accountant shall request the existing accountant to provide known information regarding any facts or circumstances that, in the existing accountant's opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement. If the client consents to the existing accountant disclosing any such facts or circumstances to the proposed accountant, the existing accountant shall provide the information honestly and unambiguously. If the client fails or refuses to grant the existing accountant permission to discuss the client's affairs with the proposed accountant, the existing accountant shall disclose this fact to the proposed accountant, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.

210.14<sup>2</sup> A professional accountant in public practice may be asked to undertake work that is complementary or additional to the work of the existing accountant. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or

incomplete information. The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

## **PROPOSED SECTION 225 (Clean Version)**

### **Responding to Non-Compliance with Laws and Regulations**

- 225.1 This section addresses the responsibilities of a professional accountant in public practice when the professional accountant identifies or suspects that non-compliance with laws and regulations by a client has occurred or may be about to occur.
- 225.2 For the purposes of this section, non-compliance comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, management or employees of a client which are contrary to the prevailing laws or regulations, for example, fraud. Personal misconduct unrelated to the business activities of the client is excluded. Whether an act constitutes non-compliance with laws and regulations is ultimately a matter for legal determination by a court of law.

#### *Responsibilities of the Client or Its Management*

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

#### *Responsibilities of Professional Accountants in Public Practice*

- 225.4 In some jurisdictions, there are legal or regulatory provisions governing how identified or suspected non-compliance with laws and regulations is to be addressed. If so, the professional accountant shall comply with those provisions, including with respect to any prohibitions on alerting ("tipping-off") the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

#### *Obtaining an Understanding of the Matter*

- 225.5 If a professional accountant performing a professional service becomes aware of information concerning non-compliance or suspected non-compliance with laws and regulations by the client and the matter is other than clearly inconsequential, the professional accountant shall seek to obtain an understanding of the matter, including:
- The application of the relevant laws and regulations to the circumstances;
  - The gravity of the matter; and
  - The potential consequences to the client or others, including the impact on the client's financial reporting.
- 225.6 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. Depending on the nature and gravity of the matter, the professional accountant may consult with others within the firm, a network firm, a relevant professional body, or legal counsel.
- 225.7 With respect to a professional accountant performing a non-audit service for a non-audit client, the professional accountant may have become aware of the matter during the course of the



engagement, but it may not necessarily be within the professional accountant's expertise. The closer the matter is to the professional accountant's expertise, the greater the duty for the professional accountant to pursue the matter with the client.

- 225.8 If the professional accountant is performing a non-audit service for an audit client of the firm or a network firm, the professional accountant shall discuss the matter with the engagement partner for the audit. This is to enable the audit engagement team to be made appropriately aware of the matter and for a determination to be made as to how the matter should be addressed in accordance with the provisions of this section.
- 225.9 If the professional accountant identifies or suspects non-compliance with laws and regulations, the professional accountant shall discuss the matter with the client to:
- (a) Confirm the professional accountant's understanding of the facts and circumstances relevant to the matter, and the potential consequences of the matter; and
  - (b) If the matter could have significant consequences for the client or others, understand what actions the client, its management or those charged with governance plan to take to address it, including whether they plan to disclose it to an appropriate authority.
- 225.10 The professional accountant shall undertake such discussions with the appropriate level of management and, where appropriate, those charged with governance. The determination of which level of management is the appropriate level with whom to discuss the identified or suspected non-compliance with laws and regulations is a question of professional judgment. Relevant factors to consider include:
- The nature of the matter.
  - The circumstances and individuals involved.
  - The likelihood of collusion.
  - The gravity of the matter.
  - Whether that level of management is able to take action to investigate the matter and take remedial action.
- 225.11 The appropriate level of management is generally at least one level above the person or persons who appear to be involved in the matter. In the context of an audit engagement, if the professional accountant suspects that management or those charged with governance are involved in the non-compliance, the professional accountant shall discuss the matter with the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. The professional accountant may also consider discussing the matter with internal auditors, where applicable. In the context of a group audit engagement, the appropriate level may be management at an entity that controls the client.
- 225.12 Where no higher level of authority exists or if the professional accountant is unsure as to the person to whom to report or insufficient information is obtained to satisfy the professional accountant that the client is in compliance with laws and regulations, the professional accountant is encouraged to obtain legal advice to understand what the possible or alternative courses of action might be.

- 225.13 The professional accountant shall assess whether the client, its management or those charged with governance understand their legal or regulatory responsibilities with respect to the matter and, if not, may recommend that they obtain legal advice.

#### Evaluating the Response of the Client

- 225.14 If the matter could have significant consequences for the client or others, the professional accountant shall evaluate whether the client, its management or those charged with governance have appropriately addressed it. In so doing, the professional accountant shall consider the nature and gravity of the matter and factors such as whether:

- The matter has been adequately investigated.
- Action has been taken to remediate the matter.
- Appropriate steps have been taken to reduce the risk of re-occurrence, for example, additional controls or training.
- The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

- 225.15 The degree to which the professional accountant is able to evaluate the response of the client, its management or those charged with governance may vary with the nature of the professional services provided to the client. In particular, if the client is an audit client, the professional accountant generally has greater access to information and management, by law or otherwise, than if the client is not an audit client.

- 225.16 If the client is an audit client and, in the professional accountant's judgment, the response of the client is not appropriate or the professional accountant is unable to assess whether the response is appropriate, the professional accountant shall:

- (a) Inform those charged with governance; and
- (b) Consider the professional accountant's reporting responsibilities under auditing standards.

The professional accountant may also consider consulting with a relevant professional body or seeking legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action.

- 225.17 If the client is not an audit client and, in the professional accountant's judgment, the response of the client is not appropriate or the professional accountant is unable to assess whether the response is appropriate, the professional accountant shall consider:

- (a) Informing those charged with governance;
- (b) Alerting the external auditor, if any, to the matter to enable the external auditor to determine whether specific action is needed in the context of the audit; or
- (c) Seeking advice from the professional accountant's professional body or seeking legal advice to understand the professional accountant's options and the professional or legal implications of taking any particular course of action.

- 225.18 If, in the professional accountant's opinion, the client has not appropriately addressed the matter or if the professional accountant is unable to assess whether the response is appropriate, the professional accountant shall determine whether to disclose the matter to an appropriate authority in accordance with paragraphs 225.19-225.24.

Disclosure of Non-Compliance with Laws and Regulations to an Appropriate Authority

- 225.19 Where there are legal or regulatory provisions governing the reporting of non-compliance to an appropriate authority, the professional accountant shall comply with such provisions.
- 225.20 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Accordingly, where there are no legal or regulatory provisions governing the reporting of non-compliance, the professional accountant shall consider the gravity of the matter and whether nevertheless to disclose the matter to an appropriate authority, provided that such disclosure would not be contrary to law or regulation. The gravity of the matter depends on the likely consequences to those potentially affected by the matter in both financial and non-financial terms, including the nature and extent of any damage to the wider public. For example, a professional accountant acting as an auditor of a listed entity would take into account the consequences to the investing public.
- 225.21 In considering whether to disclose, the professional accountant shall take into account the following:
- The degree to which the relevant information is known and substantiated.
  - Whether there is an appropriate authority to receive the information. An appropriate authority is one that has acknowledged that it can receive such information and cause the matter to be investigated. The appropriate authority to which to disclose the matter will depend on the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or tax authorities in the case of tax evasion.

The existence of protection from civil or criminal liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation, also may be a factor to consider.

- 225.22 The professional accountant is encouraged to seek legal advice to understand the legal implications of disclosure to an appropriate authority.
- 225.23 If the professional accountant decides to disclose the non-compliance to an appropriate authority in such a situation, this would not be considered a breach of the duty of confidentiality under this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before disclosing the matter.
- 225.24 The professional accountant may also consider withdrawing from the engagement and the professional relationship where permitted by law or regulation. Withdrawal, however, is not a substitute for complying with this section.

*Documentation*

- 225.25 The professional accountant is encouraged to document the nature and substance of the matter, the details of discussions held, and the decisions made concerning the matter, in particular if the matter could have significant consequences for the client or others. Documentation provides a number of benefits, including the following:
- It provides evidence of the professional accountant's judgments in forming conclusions.
  - It may serve to protect the professional accountant if challenged in legal or disciplinary proceedings to justify the professional accountant's actions in responding to the matter.
  - It may assist the professional accountant if required to appear before a court of law or tribunal to provide testimony regarding the matter.
- 225.26 When the matter is documented, it is important that the documentation is prepared in a careful and thoughtful manner and with appropriate diligence as it may be subject to legal discovery if the matter were to be dealt with in a court of law.

## **PROPOSED SECTION 360 (Clean Version)**

### **Responding to Non-Compliance with Laws and Regulations**

- 360.1 This section addresses the responsibilities of a professional accountant in business when the professional accountant identifies or suspects that non-compliance with laws or regulations by the professional accountant's employing organization has occurred or may be about to occur.
- 360.2 For the purposes of this section, non-compliance comprises acts of omission or commission, intentional or unintentional, committed by an employing organization, or by those charged with governance, management or employees of an employing organization which are contrary to the prevailing laws or regulations, for example, fraud. Personal misconduct unrelated to the business activities of the employing organization is excluded. Whether an act constitutes non-compliance with laws and regulations is ultimately a matter for legal determination by a court of law.

#### *Responsibilities of the Employing Organization and Its Management*

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

#### *Responsibilities of Professional Accountants in Business*

- 360.4 In some jurisdictions, there are legal or regulatory provisions governing how identified or suspected non-compliance with laws and regulations is to be addressed. If so, the professional accountant shall comply with those provisions.

#### *Obtaining an Understanding of the Matter*

- 360.5 If in the course of carrying out employment responsibilities a professional accountant becomes aware of information concerning non-compliance or suspected non-compliance with laws and regulations by the employing organization and the matter is other than clearly inconsequential, the professional accountant shall seek to obtain an understanding of the matter, including:
- The application of the relevant laws and regulations to the circumstances;
  - The gravity of the matter; and
  - The potential consequences to the employing organization or others.
- 360.6 The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional activity the professional accountant is undertaking. Depending on the nature and gravity of the matter, the professional accountant may consult with a relevant professional body or legal counsel. While the professional accountant may have become aware of the matter when carrying out the professional accountant's employment responsibilities, it may not necessarily be within the professional accountant's expertise. The closer the matter is

to the professional accountant's expertise, the greater the duty for the professional accountant to pursue the matter with the employer.

- 360.7 Many employing organizations have established protocols and procedures (for example, an ethics policy) regarding how potential non-compliance with laws and regulations by the employing organization should be addressed internally. If such protocols and procedures exist within the professional accountant's employing organization, the professional accountant may consider them in determining how to respond to the matter.
- 360.8 If the professional accountant identifies or suspects non-compliance with laws and regulations, the professional accountant shall, subject to paragraph 360.11, discuss the matter with an immediate superior or higher levels of management as deemed appropriate in the circumstances to:
- (a) Confirm the professional accountant's understanding of the facts and circumstances relevant to the matter, and the potential consequences of the matter; and
  - (b) If the matter could have significant consequences for the employing organization or others, understand what actions the immediate superior, management or those charged with governance plan to take to address it, including whether they plan to disclose it to an appropriate authority.
- 360.9 Professional accountants in business can be involved in a variety of roles involving the preparation and reporting of financial information as well as general management activities. Employing organizations rely on their expertise to help ensure that the business activities are undertaken in accordance with relevant laws and regulations. Accordingly, the professional accountant may consider whether management or those charged with governance understand their legal or regulatory responsibilities with respect to the matter and, if not, may recommend that the employing organization obtain legal advice.
- 360.10 If insufficient information is obtained to satisfy the professional accountant that the employing organization is in compliance with laws and regulations, the professional accountant may consider the need to consult with a relevant professional body or obtain legal advice regarding possible actions to take.
- 360.11 In certain circumstances, the professional accountant may deem it more appropriate to communicate the matter in accordance with the protocols established by the employing organization's ethics policy where such protocols allow for anonymity, rather than discussing the matter with an immediate superior or higher levels of management. This may be appropriate when the professional accountant is employed in a relatively junior position and believes that the non-compliance is deliberate and involves different layers of management. This will enable the matter to be rapidly escalated to those best able to address it.

#### Evaluating the Response of Management or Those Charged with Governance

- 360.12 If the matter could have significant consequences for the employing organization or others, the professional accountant shall evaluate whether the professional accountant's immediate superior, management or those charged with governance have taken appropriate remedial action. In so doing, the professional accountant shall consider the nature and gravity of the matter and factors such as whether:

- The matter has been adequately investigated;
  - Action has been taken to remediate the matter;
  - Appropriate steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training; and
  - The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- 360.13 The degree to which the professional accountant is able to evaluate the response of the professional accountant's immediate superior, management or those charged with governance may vary with the professional accountant's position within the employing organization. Generally, the higher the professional accountant's position within the employing organization, the greater the professional accountant's access to information and higher levels of management.
- 360.14 If, having evaluated the response to a matter that could have significant consequences for the employing organization or others, the professional accountant believes that the response is not appropriate, or the professional accountant suspects that the immediate superior or management is involved in the non-compliance, or the professional accountant is unable to assess whether the response is appropriate, the professional accountant shall:
- (a) Escalate the matter within the employing organization, for example with higher levels of management, internal audit, or those charged with governance;
  - (b) Disclose the matter in accordance with any established mechanism such as an ethics policy; or
  - (c) Consider disclosing the matter to the employing organization's external auditor, if any, to enable the auditor to determine appropriate actions in the context of the external audit.
- 360.15 If the professional accountant is unable to escalate the matter, or if the professional accountant has doubts about the integrity or honesty of management and those charged with governance and there is no established mechanism such as an ethics policy, the professional accountant may consider discussing the matter with a relevant professional body or legal counsel to understand the professional accountant's options and the professional or legal implications of taking any particular course of action.
- 360.16 If, in the professional accountant's opinion, management or those charged with governance have not taken the remedial action the professional accountant considers appropriate in the circumstances, the professional accountant shall consider whether to disclose the matter to an appropriate authority in accordance with paragraphs 360.17-360.22.

#### Disclosure of Non-Compliance with Laws and Regulations to an Appropriate Authority

- 360.17 Where there are legal or regulatory provisions governing the reporting of non-compliance to an appropriate authority, the professional accountant shall comply with such provisions.
- 360.18 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Accordingly, where there are no legal or regulatory provisions governing the reporting of non-compliance, the professional accountant shall consider the

gravity of the matter and whether nevertheless to disclose the matter to an appropriate authority, provided that such disclosure would not be contrary to law or regulation.

360.19 The gravity of the matter depends on the likely consequences to those potentially affected by the matter in both financial and non-financial terms, including the nature and extent of any damage to the wider public. In considering whether to disclose, the professional accountant may also take into account the following:

- The degree to which the relevant information is known and substantiated.
- Whether there is an appropriate authority to receive the information. An appropriate authority is one that has acknowledged that it can receive such information and cause the matter to be investigated. The appropriate authority to which to disclose the matter will depend upon the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or tax authorities in the case of tax evasion.

The existence of protection from civil or criminal liability or retaliation afforded by legislation or regulation, such as under whistle blowing legislation or regulation, may also be a factor to consider.

360.20 The professional accountant is encouraged to seek legal advice to understand the legal implications of disclosure to an appropriate authority.

360.21 If the professional accountant decides to disclose the non-compliance to an appropriate authority in such a situation, this would not be considered a breach of the duty of confidentiality under this Code. When making such disclosure, the professional accountant shall act in good faith and exercise caution when making statements and assertions.

360.22 The professional accountant may also consider resigning from the employing organization. Resignation, however, is not a substitute for complying with this section.

#### *Documentation*

360.23 The professional accountant is encouraged to document the nature and substance of the matter, the details of discussions held, and the decisions made concerning the matter, in particular if the matter could have significant consequences for the employing organization or others. Documentation provides a number of benefits, including the following:

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

360.24 When the matter is documented, it is important that the documentation is prepared in a careful and thoughtful manner and with appropriate diligence as it may be subject to legal discovery if the matter were to be dealt with in a court of law.