

NOCLAR—Draft Rationale for Proposed Framework

A. RECAP OF ORIGINAL OBJECTIVE OF THE PROJECT

1. In providing a professional service to a client or carrying out professional activities for an employer, a professional accountant (PA) may come across an instance of non-compliance or suspected non-compliance with laws and regulations (NOCLAR). Such non-compliance may have been committed or may be about to be committed by the client or the employer, or by those charged with governance, management or employees of the client or employer. The Board noted that the PA has a prima facie ethical responsibility not to turn a blind eye to the matter. At the same time, the Board recognized that such a situation can often be a difficult and stressful one for the PA. The Board therefore initiated this project in 2010 to develop enhancements to the Code to help guide the PA in dealing with the situation and in deciding how best to act in the public interest in these circumstances.¹
2. Whether NOCLAR or suspected NOCLAR should be disclosed to an appropriate authority was one, although not the only, consideration in the project. Other matters that the project sought to address included:
 - The process for responding to NOCLAR or suspected NOCLAR, including involving those charged with governance (TCWG) in addressing the matter and disassociation from the client or employer;
 - The threshold for taking action; and
 - Documentation.
3. The Board held extensive deliberations on the project and consultations with stakeholders, including discussions with the IESBA Consultative Advisory Group (CAG) and three global roundtables in 2014.² The proposed response framework outlined in Agenda Item B-2 reflects the outcome of these deliberations and consultations. Section B below outlines why the Board believes this framework represents a rigorous approach for PAs to respond to NOCLAR or suspected NOCLAR, and why the Board believes it will result in better public interest outcomes compared with the original [exposure draft](#) (ED). Section C addresses the key issue of disclosure to an appropriate authority and sets out the Board's rationale for not proposing that such disclosure be mandated under the Code. Section D sets out some broader considerations on the topic.

B. STRENGTHS OF THE PROPOSED FRAMEWORK

A More Holistic and Balanced Model

4. Through establishing overarching objectives, the proposed framework represents a more holistic, balanced and principles-based approach to guiding PAs in responding to NOCLAR or suspected NOCLAR. It is more holistic as it focuses on the desired *outcomes* in the public interest, i.e., that:
 - (a) PAs comply with the fundamental principles of integrity and professional behavior, and therefore do not turn a blind eye to an instance of NOCLAR or suspected NOCLAR;

¹ The original project proposal can be accessed [here](#).

² The three global roundtables were held in Hong Kong (May), Brussels (June) and Washington DC (July).

- (b) Through bringing the matter to the attention of management/TCWG, PAs seek to have them rectify, remediate or mitigate the consequences of the identified or suspected non-compliance, or deter the commission of the non-compliance; and
 - (c) PAs take further action as may be needed in the public interest.
5. The proposed framework is also more balanced as it better recognizes the roles and capacities of the relevant parties in addressing the matter. These encompass the roles and capacities of management and, where appropriate, TCWG in preventing, detecting and appropriately responding to NOCLAR, including addressing its consequences or potential consequences to stakeholders. They also encompass the responsibilities of PAs in responding to the matter in the public interest.
6. Overall, therefore, the proposed framework represents a more effective solution in the public interest compared with the ED, which specified no objectives. The ED's narrow focus for all categories of PA was on disclosure of NOCLAR or suspected NOCLAR to an appropriate authority.

Clearer Scoping and Threshold for Action

7. The proposed framework sets out a clearer and simpler scope for the types of laws and regulations that are covered, rather than distinguishing among the different types of non-compliance that are applicable for the different categories of PAs as in the ED.
8. In addition, it specifies a clearer threshold for action in terms of "substantial harm" to stakeholders, thereby facilitating more consistent application. By contrast, the ED linked the threshold to the concept of "public interest," which will depend on the circumstances.

A More Proportionate Approach

9. The proposed framework sets out a more proportionate approach for responding to NOCLAR or suspected NOCLAR for the different categories of PAs, recognizing their different spheres of influence and what they are able to do in their different capacities. In particular, it distinguishes auditors more clearly from PAs in public practice providing non-audit services, and scales the responsibilities accordingly, recognizing the higher public expectations for the former given their roles. It does the same for senior professional accountants in business (PAIBs) relative to other PAIBs, recognizing the fiduciary nature of the roles and the levels of influence and decision-making of the former within the entity.
10. By contrast, while there was some distinction in responsibilities between PAs in public practice and PAIBs in the ED, there was much less scaling and differentiation in those responsibilities between auditors and other PAs in public practice, and between senior PAIBs and other PAIBs.

A New Emphasis on the Tone at the Top within the Entity

11. Through proposed changes to Section 300³ of Part C of the Code,⁴ the proposed framework emphasizes the importance of the tone at the top, particularly with respect to the promotion of a culture of compliance with laws and regulations and prevention of non-compliance within the entity. This includes, to the extent the PAIB is in a position to do so, taking reasonable steps to establish policies and procedures to that effect.

³ Section 300, *Introduction* (Part C)

⁴ The proposed changes have been issued for comment as part of the Part C Phase I [exposure draft](#).

Stimulating Increased Reporting Under Law or Regulation

12. Anecdotal evidence in some jurisdictions suggests that even where reporting requirements exist under law or regulation, PAs are not reporting instances of NOCLAR or suspected NOCLAR to appropriate authorities. For example, available data for 2009 indicate that the number of reports that PAs filed with authorities in EU member states under the EU's Third Money Laundering Directive varied significantly,⁵ notwithstanding that member states have some leeway in how they implement the Directive at the national level.
13. The proposed framework aims to promote greater compliance by PAs with existing legal or regulatory reporting requirements, and thus stimulate a greater incidence of actual reporting. It will do so by requiring all categories of PAs to *understand* what those provisions are when they face non-compliance, and not merely to comply with them. In this way, the Code would support existing laws and regulations governing the reporting of NOCLAR or suspected NOCLAR by PAs to achieve the desired outcome of increasing reporting of such matters to appropriate authorities.

Expanding Auditors' "Toolkit"

14. For auditors, the proposed framework expands their "toolkit" for dealing with issues of non-compliance. Aside from the option of disclosure in, or modification of, the auditor's report and the threat of withdrawal from the audit engagement and client relationship, the framework would permit auditors to disclose, under the appropriate circumstances, instances of NOCLAR or suspected NOCLAR to an appropriate authority without being in breach of the duty of confidentiality under the Code.
15. It would also require communication between an existing auditor and a proposed auditor regarding reasons when there is a change in appointment. This would increase the likelihood that issues of non-compliance are appropriately flagged and addressed.

A Rigorous Consideration of Further Action Needed in the Public Interest

16. For auditors and senior PAIBs, the proposed framework calls for serious reflection on what more they should do in the public interest. Through the mandatory third party test, it would require them to objectively assess the facts and circumstances at the time to determine the nature and extent of any such further action that may be needed in the public interest.
17. Although the proposed framework does not presume that disclosure to an appropriate authority is the only answer, it will provide a pathway for disclosure of NOCLAR or suspected NOCLAR to an appropriate authority in the appropriate circumstances.

A Greater Emphasis on Guidance to Assist PAs in Responding Appropriately in the Public Interest

18. The proposed framework better addresses the need for helpful guidance to PAs in dealing with what will, as noted above, often be difficult and stressful situations when they have identified or suspect NOCLAR, consistent with the original objective of the project. There is less prescription in

⁵ The available statistics for the number of suspicious activity reports filed by PAs in 2009 under the Third Money Laundering Directive include, for example, UK: over 6300 PAs; Germany: 1 auditor and 3 other PAs; France: 22 auditors and 55 other PAs; Bulgaria, Latvia, Lithuania, Poland and Slovenia: 0.

the escalation process, recognizing the need for judgment and the fact that in practice the situation may be complex and fluid, and often may require legal interpretation.

C. RATIONALE FOR NOT MANDATING DISCLOSURE TO AN APPROPRIATE AUTHORITY UNDER THE CODE

19. The Board believes that there are a number of reasons why a disclosure requirement would not be operable in the Code.

Potential for Unintended Consequences for the Public Interest

20. Independent legal advice the Board has received indicates the potential for significant unintended consequences for the public interest if the Code were to mandate disclosure. In particular, this could adversely impact the relationship between the client and PA, with the PA becoming a quasi-investigator or prosecutor in relation to NOCLAR. One consequence could be an adverse effect on the free flow of information between the client and the PA, which could be damaging to audit quality in particular.
21. Compelling PAs to make a disclosure to an appropriate authority could also have the unintended consequence of discouraging them to take senior roles in business, for instance as CFOs and Finance Directors, given the potential for negligence actions and the fear of being exposed to retaliation. There would also be a real risk that PAs choose to leave the profession. Such unintended consequences would not be in the public interest.

Protection is Generally Linked to a Legal or Regulatory Reporting Requirement

22. The Board does not believe that it would be workable for the Code to establish a disclosure requirement preconditioned on there being legal protection for the PA. The legal advice the Board has received indicates that where protection is available:
- It is generally tied to a pre-existing specific legal or regulatory reporting obligation, with a specific reporting threshold that may not be aligned with that in the Code;
 - It is very unlikely to be sufficiently broad to cover the scope of NOCLAR envisaged to be addressed in the Code; and
 - The nature of the protection is often limited.
23. In addition, while protection is likely to be provided in relation to discrimination against employees, it may not protect firms against actions for breach of confidentiality, negligence or defamation.
24. For a disclosure requirement in the Code to be enforceable, the meaning of the protection would need to be clear. The Board does not believe that it would be feasible to define on a global basis the nature and extent of the protection that would be necessary for the various types of NOCLAR covered under the Code. Effectively, only law or regulation can define such protection, having regard to the specific type of NOCLAR addressed.
25. Further, whether a disclosure requirement in the Code can be effective would depend on the existence of an established, robust and trusted legal process, including one where there is effective enforcement and where protection is afforded for the accused. The Board does not believe that it would be practicable to specify these as preconditions in the Code.

Potentially Severe Practical Consequences

26. Even if preconditions could be precisely defined for a disclosure requirement in the Code, it is likely that this would not be operable because of potentially severe practical consequences for PAs and others. In particular, the Code is, or forms the basis for, law or regulation in a number of jurisdictions.⁶ In extreme cases, individuals convicted of certain types of NOCLAR can face capital punishment. The Board does not believe that it would be reasonable for compliance with a disclosure requirement in the Code to result in such an outcome. Only lawmakers in the particular jurisdictions should determine what they would intend or accept as consequences for a reporting requirement.
27. Legal advice the Board has received also indicates that with a disclosure requirement in the Code, there would be significant scope for negligence actions both where the PA reports NOCLAR or suspected NOCLAR to an appropriate authority and where the PA fails to report. In the former case, this would be for foreseeable losses suffered by the client (for example, costs of investigation), most likely if the report proves to be incorrect. In the latter case, this would be for foreseeable losses suffered by the victim, with failure to comply with the Code used to support the negligence argument.
28. In addition, the legal advice indicates that in some jurisdictions there would be a possibility of retaliatory action against the PA. It would not be feasible for the Code to anticipate all possible retaliatory actions against the PA for complying with a disclosure obligation in the Code, and therefore articulate the specific protections that would be needed to enable the PA to make the disclosure (as noted above). It would therefore be unreasonable for the Code to expose the PA to the possibility of severe personal consequences. In practice, it may be more likely that the PA would opt out of complying with the disclosure requirement, thus rendering the requirement ineffective.

D. CONCLUSION AND BROADER CONSIDERATIONS

29. For the reasons outlined above, the Board believes that the proposed framework represents a better and more effective approach for ensuring that PAs appropriately respond to NOCLAR or suspected NOCLAR in the public interest. The Board also recognizes that many countries, including most in the G20, already have established requirements under law or regulation for auditors in particular to report NOCLAR or suspected NOCLAR to appropriate authorities (see Appendix). In addition, many jurisdictions⁷ have signed up to the Financial Action Task Force (FATF) recommendations on anti-money laundering.⁸

⁶ For example, Albania, the Bahamas, Ivory Coast, Jordan, Kenya, Lesotho, Macedonia and Zambia

⁷ Over 180 jurisdictions around the world have committed to the FATF recommendations: <http://www.fatf-gafi.org/countries/>. The FATF recommendations can be accessed at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

⁸ Under FATF Recommendation 23 for Designated Non-Financial Businesses and Professions (DNFBPs), accountants are required to report suspicious transactions to appropriate authorities when, on behalf of or for a client, they engage in a financial transaction in relation to the following activities: buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling of business entities. In addition, countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.

30. The Board believes that the Code must operate as part of a wider framework, including strong corporate governance systems and a robust, trusted and effective legal and regulatory framework, to enable the issue of NOCLAR to be addressed holistically. While PAs should do their part in responding to NOCLAR or suspected NOCLAR within the context of their responsibility to act in the public interest, other stakeholders should equally play their parts. In particular:
- Management and those charged with governance should fulfill their fiduciary and other legal and professional responsibilities in addressing issues of non-compliance.
 - Governments, legislators and regulators should fulfill their roles in (a) introducing or strengthening legislation or regulation governing the reporting of NOCLAR, appropriately tailored to their national circumstances; (b) enforcing such legislation or regulation; and (c) appropriately acting on reports of non-compliance or suspected non-compliance.
 - Other stakeholders such as regional and international organizations with an interest or a role in ensuring that issues of NOCLAR are appropriately or better addressed should further consider what more they could do to stimulate dialogue, coordination and progress on the topic. Such organizations include international regulators and other policy-making bodies. In this regard, the Board notes the success of organizations such as the Organization for Economic Cooperation and Development (OECD) in leading international efforts to tackle issues such as money laundering and bribery. In addition, the Board notes the recent efforts of the G20 in developing its Anti-Corruption Action Plan, including identifying protection of whistle-blowers as one of the high priority areas in the global anti-corruption agenda.
31. Notwithstanding the practical realities whistle-blowers often face, the Board also agrees with the observations of some on the IESBA CAG that there is a broader mindset and educational issue among PAs that needs to be addressed in dealing with NOCLAR. The Board believes that legislators, regulators, firms, IFAC member bodies and other stakeholders should take action to ensure that PAs are better aware of and understand their legal and regulatory responsibilities regarding responding to matters of non-compliance. Effectively addressing this mindset and educational issue may contribute to a significantly improved outcome in terms of increased reporting by PAs of NOCLAR or suspected NOCLAR to appropriate authorities.

APPENDIX

Reporting of Irregularities – Comparison of Reporting Requirements in Select Jurisdictions⁹

A. European Union

EU Regulation No. 537/2014 on Specific Requirements Regarding Statutory Audit of Public-Interest Entities (April 16, 2014; effective June 2016)

Article 7 Irregularities

Without prejudice to Article 12 of this Regulation and Directive 2005/60/EC, when a statutory auditor or an audit firm carrying out the statutory audit of a public-interest entity suspects or has reasonable grounds to suspect that irregularities, including fraud with regard to the financial statements of the audited entity, may occur or have occurred, he, she or it shall inform the audited entity and invite it to investigate the matter and take appropriate measures to deal with such irregularities and to prevent any recurrence of such irregularities in the future.

Where the audited entity does not investigate the matter, the statutory auditor or the audit firm shall inform the authorities as designated by the Member States responsible for investigating such irregularities.

The disclosure in good faith to those authorities, by the statutory auditor or the audit firm, of any irregularities referred to in the first subparagraph shall not constitute a breach of any contractual or legal restriction on disclosure of information.

Article 12 Report to supervisors of public-interest entities

1. Without prejudice to Article 55 of Directive 2004/39/EC, Article 63 of Directive 2013/36/EU of the European Parliament and of the Council (1), Article 15(4) of Directive 2007/64/EC, Article 106 of Directive 2009/65/EC, Article 3(1) of Directive 2009/110/EC and Article 72 of Directive 2009/138/EC of the European Parliament and of the Council (2), the statutory auditor or the audit firm carrying out the statutory audit of a public-interest entity shall have a duty to report promptly to the competent authorities supervising that public-interest entity or, where so determined by the Member State concerned, to the competent authority responsible for the oversight of the statutory auditor or audit firm, any information concerning that public-interest entity of which he, she or it has become aware while carrying out that statutory audit and which may bring about any of the following:

⁹ Sources:

- *A Critical Comparison Between Section 45 of the Auditing Profession Act and the Reporting of Financial Irregularities Internationally*, Elzabi Naomi de Wet, November 5, 2007
- Accounting firm research and NOCLAR Task Force members

- (a) a material breach of the laws, regulations or administrative provisions which lay down, where appropriate, the conditions governing authorisation or which specifically govern pursuit of the activities of such public-interest entity;

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B. India

Companies Act 2013, Section 143(12)

Reporting of Frauds by Auditor

- (1) For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge and after following the procedure indicated herein below:
 - (i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within forty-five days;
 - (ii) on receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days of receipt of such reply or observations;
 - (iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.
- (2) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same.
- (3) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number.
- (4) The report shall be in the form of a statement as specified in Form ADT-4.
- (5) The provision of this rule shall also apply, mutatis mutandis, to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively.

C. Australia, France and Germany

| Australia | France | Germany |
|---|---|---|
| Applicable Law or Regulation | | |
| Australian Corporations Act | French Companies Act | <ul style="list-style-type: none"> Banking Act Commercial Code (applicable to insurance companies and pension funds only) |
| External Reporting Requirement | | |
| Yes | Yes | Yes |
| Terminology | | |
| “Contravention” [of the Corporations Act] | <ol style="list-style-type: none"> “Criminal acts” (Non-compliance with law if considered as criminal by law) Money Laundering | “Severe breaches or infringements” |
| Scope of Duty to Report | | |
| Audit of the financial statements and interim reviews pursuant to the Act | <ol style="list-style-type: none"> Any engagement in capacity as statutory auditor Statutory auditors (commissaires aux comptes) and certified accountant (experts comptables). | <p>Banks:</p> <ul style="list-style-type: none"> Severe breaches or infringements of laws provisions dealing with license of the institution Severe breaches of the law, by-laws of the institution by management <p>Insurance companies and pension funds:</p> <ul style="list-style-type: none"> Severe breaches that threaten stability of the entity or its future development Severe breaches of the law, by-laws of the institution by management |

| Australia | France | Germany |
|---|--|---|
| Reporting Threshold | | |
| "Reasonable grounds to suspect" | <ol style="list-style-type: none"> 1. "Have had knowledge of" (no disclosure of the suspected illegal acts) 2. Known, suspected or reasonable ground to suspect to disclose to TRACFIN | "Uncovered" |
| Definition of an Irregularity | | |
| <ul style="list-style-type: none"> • Contravention of the Corporations Act; • Attempt to mislead the auditor; or • Attempt to interfere with the proper conduct of the audit | <ol style="list-style-type: none"> 1. Non-compliance identified in the course of the engagement: <ul style="list-style-type: none"> • Contravention of basic legislation applicable to the enterprise; or • A contravention of other legislation that has an impact on the accounts 2. Defined by AML legislation | <ul style="list-style-type: none"> • Irregularity – intentional contravention of laws (in AFS) • Error – unintentional contravention (in AFS) |
| Entity Level at Which it Must be Committed | | |
| All levels | <ol style="list-style-type: none"> 1. The entity on which the statutory auditor will express an opinion (does not include subsidiary and parent company) 2. Entity with which the accountant has a business relationship (or will enter into a business relationship) | All levels |
| Notion of Materiality | | |
| All levels | <ol style="list-style-type: none"> 1. No threshold in the law: any non-compliance should be disclosed to the prosecutor provided that it is considered as a criminal offense by the law. A previous professional standard had mentioned the non-compliance should be | See above |

| Australia | France | Germany |
|---|--|---|
| | <p>significant and deliberate. This standard is under revision and no final agreement has been reached.</p> <p>2. Threshold defined by law (depend on where the money comes from and the gravity of the matter based on the legal punishment)</p> | |
| The Reporting Process | | |
| <ul style="list-style-type: none"> Significant contraventions: report to ASIC (within 28 days) Insignificant contraventions: comment in audit report or inform directors. If not resolved, report to the ASIC | <p>1. (a) Discuss the irregularity with management</p> <p>(b) Report to Prosecutor (immediately, or within the shortest delay possible). Disclosure to the prosecutor is compulsory even if management has disclosed the non-compliance.</p> <p>2. No tipping off. Disclosure to TRACFIN and to the prosecutor for known non-compliance.</p> | <p>Matters relating to banks are reported to the Federal Banking Supervisory Office and the Deutsche Bundesbank</p> |
| Protection from Civil or Criminal Liability | | |
| [TBC] | Yes | [TBC] |
| Auditor Liability for Non-Compliance | | |
| <ul style="list-style-type: none"> 50 penalty units (1 penalty unit = A\$107 in 2006/07) Prison sentence of 1 year | <ul style="list-style-type: none"> €75 000 Prison sentence of 5 years | <ul style="list-style-type: none"> Possible fine Prison sentence ≤ 3 years |

D. Ireland, Norway and Russia

| Ireland | Norway | Russia |
|--|--|--|
| Applicable Law or Regulation | | |
| Ireland Companies Acts | Norwegian Act On Auditing (RRL) Anti-Money Laundering Act (AML) | Russian Legislation |
| External Reporting Requirement | | |
| Yes | RRL: right, but not requirement AML: Yes | No |
| Terminology | | |
| "Indictable offence" | RRL: "Criminal offence" AML: "transaction is associated with proceeds of crime" and terrorist financing | Non bona fide actions, errors and non-observance of regulatory legal acts |
| Scope of Duty to Report | | |
| Audit of the financial statements | "Audit engagements or other services" | Audit of the financial statements |
| Reporting Threshold | | |
| "Reasonable grounds for believing" | "Matters [...] giving grounds for suspicion" | High level of certainty: "revealed" and "discovered" |
| Definition of an Irregularity | | |
| <ul style="list-style-type: none"> Offences tried in a District Court and Circuit Court; More serious in nature Not all offences under Companies Act – list provided by the National Parliament | Not specified, but AML has a low threshold | <ul style="list-style-type: none"> Non bona fide actions Errors Non-observance of regulatory acts |
| Entity Level at Which it Must be Committed | | |
| Company, officer or agent of it, i.e. not all | All levels | Not specified |

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| Ireland | Norway | Russia |
|---|---|------------------------------|
| employees | | |
| Notion of Materiality | | |
| Indictable offences are reportable by nature, not in terms of their materiality | No | “Significant” non-observance |
| The Reporting Process | | |
| Send report to: <ul style="list-style-type: none"> Director of Corporate Enforcement (immediately) Management may compile a statement to accompany the report submitted by the auditor (immediately, within 2 days or at a later stage) | RRL: “Inform police” AML: Report to FIU on prescribed format | Not specified |
| Protection from Civil or Criminal Liability | | |
| [TBC] | [TBC] | [TBC] |
| Auditor Liability for Non-Compliance | | |
| <ul style="list-style-type: none"> “Guilty of an offence” Auditors have not faced prosecution for failure to report | AML: Fines and or imprisonment of up to 1 year | None |

E. Singapore, South Africa and Spain

| Singapore | South Africa | Spain |
|---|---|--|
| Applicable Law or Regulation | | |
| Singapore Companies Act | Auditing Profession Act | Article 262 of the Criminal Procedure Act |
| External Reporting Requirement | | |
| Yes | Yes | Yes |
| Terminology | | |
| Contravention of the Companies Act or fraud in a public company | "Reportable irregularity" | "Public crimes" |
| Scope of Duty to Report | | |
| Audit of the financial statements | Audit of "financial and other information" | Acts subject to criminal prosecution The requirement is incumbent on anyone who by reason of their public office, profession or job had knowledge of a public crime |
| Reporting Threshold | | |
| <ul style="list-style-type: none"> • Contravention of the Act: "satisfied" • Fraud: "reason to believe" | "Satisfied or has reason to believe" | None |
| Definition of an Irregularity | | |
| <ul style="list-style-type: none"> • Contravention of any provisions of the Companies Act not adequately dealt with • Fraud: <ul style="list-style-type: none"> ○ Punishable by prison sentence of at least 2 years ○ Involves at least \$20,000 | <p>"Unlawful act or omission:"</p> <ul style="list-style-type: none"> • Material financial loss to entity or any partner, member, shareholder, creditor or investor; or • Fraud/theft (any extent); or • Material breach of fiduciary duty | Criminal acts subject to public prosecution |

| Singapore | South Africa | Spain |
|--|---|--|
| Entity Level at Which it Must be Committed | | |
| All levels | Management level | All levels |
| Notion of Materiality | | |
| “Serious” fraud | Not applicable to fraud or theft | None |
| The Reporting Process | | |
| <p>Contravention of Companies Act:</p> <ul style="list-style-type: none"> • Inform management • If not resolved, report to Registrar (immediately) <p>Fraud in public company:</p> <ul style="list-style-type: none"> • Report to Registrar (immediately) | <p>Send report to:</p> <ul style="list-style-type: none"> • IRBA (immediately) • Management (< 3 days) <p>Wait maximum 30 days, thereafter:</p> <ul style="list-style-type: none"> • Discuss report with management • Report outcome to IRBA | <p>Inform public prosecutor, competent court or judge and, failing that, the nearest local or state police station.</p> <p>There is no obligation to disclose the matter to the client before reporting. Although AML legislation prohibits “tipping-off”.</p> |
| Protection from Civil or Criminal Liability | | |
| [TBC] | No | Yes |
| Auditor Liability for Non-Compliance | | |
| None | <ul style="list-style-type: none"> • Unlimited liability to any partner, member, shareholder, creditor or investor • Prison sentence ≤ 10 years | Fine ranging from Euro 0.15 to 1.50 (sic). The law dates from 1882 and certain parts have not been updated since then. |

F. Sweden, UK and US

| Sweden | UK | US |
|--|--|--|
| Applicable Law or Regulation | | |
| <ul style="list-style-type: none"> Swedish Companies Act (ABL) Anti-Money Laundering Act (AML) | <ul style="list-style-type: none"> UK Anti-Money Laundering Legislation UK ISA 250 Section A deals with reporting on instances of NOCLAR where there is no statutory reporting duty UK ISA 250 Section B deals with reporting on instances of NOCLAR in the financial sector where there is a statutory duty to report and where there is no statutory duty to report | Securities Exchange Act |
| External Reporting Requirement | | |
| Yes | Yes | Yes |
| Terminology | | |
| <ul style="list-style-type: none"> ABL: Criminal offence (ABL) AML: Money laundering, terrorist funding | <ul style="list-style-type: none"> Money laundering, terrorist funding, etc. Non-compliance with laws and regulations | "Illegal act" |
| <ul style="list-style-type: none"> ABL: Audit of the financial statements AML: Audit, accountancy or tax services – i.e. wider scope | <ul style="list-style-type: none"> For AML - Audit or accountancy services – i.e. wider scope For ISA 250 – Auditors | Audit of the financial statements of public companies |
| Reporting Threshold | | |
| <ul style="list-style-type: none"> ABL: "It may be suspected" AML: "Suspects or has reasonable grounds to suspect" | <ul style="list-style-type: none"> AML – "Knows or suspects or has reasonable grounds for knowing or suspecting" ISA 250 A – Matters where the auditor has concluded that reporting would be in the public interest | "Believes that an illegal act either has or may have occurred" |

| Sweden | UK | US |
|--|---|--|
| | <ul style="list-style-type: none"> ISA 250 B – Matters where there is statutory duty to report or matters that nevertheless may be relevant to the regulator's exercise of its functions | |
| Definition of an Irregularity | | |
| <ul style="list-style-type: none"> ABL: References to certain criminal law provisions, such as: fraud, swindling, money laundering, embezzlement, breach of trust, crimes against creditors, bribery or corruption, and tax crimes AML: Money laundering offences and terrorist funding activities | AML <ul style="list-style-type: none"> Money laundering offences Terrorist funding activities ISA 250 – Instances of non-compliance with laws and regulations | “Act or omission that violates any law, or any rule or regulation having the force of law” |
| Entity Level at Which it Must be Committed | | |
| <ul style="list-style-type: none"> ABL: Management level. Exceptions apply, however, in cases of bribery where the suspicion can include any person within the scope of the company's operations. AML: All levels | All levels | All levels |
| Notion of Materiality | | |
| <ul style="list-style-type: none"> ABL: Economic crimes of “minor significance” are not reportable AML: Not applicable | <ul style="list-style-type: none"> AML - Not applicable at all ISA 250 – As per ISA 250 (IAASB version) | Same as ‘materiality’ for audit purposes |
| The Reporting Process | | |
| <ul style="list-style-type: none"> ABL: Inform board and wait 4 weeks. If: <ul style="list-style-type: none"> Board rectifies or reports crime, do nothing Board does not rectify or does not | AML - Send report to: <ul style="list-style-type: none"> MLRO (as soon as practicable) Guard against “tipping off” anyone involved | <ul style="list-style-type: none"> Inform management and audit committee/BOD (as soon as practicable) If not rectified, directly report findings to board of directors |

| Sweden | UK | US |
|---|--|---|
| <p>report crime, report to Public Prosecutor and consider whether resignation should be submitted.</p> <p>Report to Prosecutor is seen as a last resort</p> <ul style="list-style-type: none"> AML: Report to police | <ul style="list-style-type: none"> Consider any other duties to report in regulated sectors <p>ISA 250 B (statutory duty) – Auditor shall inform client unless has doubts about integrity</p> <p>ISA 250 A and B (without statutory duty) shall inform the client</p> | <ul style="list-style-type: none"> The board of directors should inform the SEC such a report within 1 day of receipt. The company must provide the audit firm with a copy of such communication with the SEC. <p>If the audit firm does not receive a copy of the communication to the SEC, the firm must either (1) resign from the engagement and provide a copy of its report directly to the SEC, or (2) report its findings directly to the SEC.</p> |
| Protection from Civil or Criminal Liability | | |
| [TBC] | Yes | Yes |
| Auditor Liability for Non-Compliance | | |
| <ul style="list-style-type: none"> ABL: Failure to report to Prosecutor: disciplinary sanctions by Swedish Supervisory Board of Public Accountants AML: Fines | <p>AML</p> <ul style="list-style-type: none"> Unlimited fine Prison sentence ≤ 5 years <p>ISA 250 B (statutory duty) see relevant legislation</p> | <ul style="list-style-type: none"> SEC civil monetary penalties or censure Prison sentence ≤ 20 years <p>Auditors have not faced criminal prosecution for failure to report</p> |

G. Japan

| Japan | | |
|---|--|--|
| Applicable Law or Regulation | | |
| Financial Instruments and Exchange Act | | |
| External Reporting Requirement | | |
| Yes | | |
| Terminology | | |
| "Fact of Violation of Laws and Regulations and Other Facts" | | |
| Audit of financial statements of the specified issuer (The "specified issuer" refers to any issuer of securities listed on a financial instrument exchange or any other entity subject to the audit attestation of certified public accountants or the like.) | | |
| Reporting Threshold | | |
| <ul style="list-style-type: none"> The "determination of materiality" is not clearly addressed. The materiality of impact is thought to depend on a "fact in violation of laws and regulations and the likelihood that fact may have adverse impact on the fairness of financial statements." | | |

| Japan | | |
|--|--|--|
| Definition of an Irregularity | | |
| “Fact in violation of the laws and regulations or any other fact which may have an impact on the assurance of adequacy of the Documents on Financial Calculation, in connection with the Specified Issuer” | | |
| Entity Level at Which it Must be Committed | | |
| Not specified. | | |
| Notion of Materiality | | |
| <ul style="list-style-type: none"> The “determination of materiality” is not clearly addressed. The materiality of impact is thought to depend on a “fact in violation of laws and regulations and the likelihood that fact may have adverse impact on the fairness of financial statements.” | | |
| The Reporting Process | | |
| <ol style="list-style-type: none"> Report to the specified issuer the contents of the fact and that it is required to rectify the violation of laws and regulations and other relevant measures in writing without delay Notwithstanding these steps, if the auditor determines that the fact in violation of laws and regulations is likely to have a material adverse impact on the fairness of financial statements of the specified issuer and the | | |

| Japan | | |
|---|--|--|
| specified issuer is likely to fail to take relevant measures, and when it is deemed necessary to prevent the material adverse impact, the auditor must offer an opinion on the matter to the competent authority by giving a written notice to the specified issuer in advance to the effect that the auditor will file the notification of the fact with Financial Services Agency (FSA) | | |
| Protection from Civil or Criminal Liability | | |
| No | | |
| Auditor Liability for Non-Compliance | | |
| Non-penal fine of not more than 300 thousand yen | | |