

Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations (NOCLAR)—Proposed Amendments to International Standards

INTERNATIONAL STANDARD ON AUDITING 250 CONSIDERATION OF LAWS AND REGULATIONS IN AN AUDIT OF FINANCIAL STATEMENTS

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International Standard on Auditing (ISA) 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*, should be read in conjunction with ISA 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing*.

Introduction

Scope of this ISA

1. This International Standard on Auditing (ISA) deals with the auditor's responsibility to consider laws and regulations in an audit of financial statements. This ISA does not apply to other assurance engagements in which the auditor is specifically engaged to test and report separately on compliance with specific laws or regulations.

Effect of Laws and Regulations

2. The effect on financial statements of laws and regulations varies considerably. Those laws and regulations to which an entity is subject constitute the legal and regulatory framework. The provisions of some laws or regulations have a direct effect on the financial statements in that they determine the reported amounts and disclosures in an entity's financial statements. Other laws or regulations are to be complied with by management or set the provisions under which the entity is allowed to conduct its business but do not have a direct effect on an entity's financial statements. Some entities operate in heavily regulated industries (such as banks and chemical companies). Others are subject only to the many laws and regulations that relate generally to the operating aspects of the business (such as those related to occupational safety and health, and equal employment opportunity). Non-compliance with laws and regulations may result in fines, litigation or other consequences for the entity that may have a material effect on the financial statements.

Responsibility for Compliance with Laws and Regulations (Ref: Para. A1–A6)

3. It is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with the provisions of laws and regulations, including compliance with the provisions of laws and regulations that determine the reported amounts and disclosures in an entity's financial statements.

Responsibility of the Auditor

4. The requirements in this ISA are designed to assist the auditor in identifying material misstatement of the financial statements due to non-compliance with laws and regulations. However, the auditor is not responsible for preventing non-compliance and cannot be expected to detect non-compliance with all laws and regulations.
5. The auditor is responsible for obtaining reasonable assurance that the financial statements, taken as a whole, are free from material misstatement, whether caused by fraud or error.¹ In conducting an audit of financial statements, the auditor takes into account the applicable legal and regulatory framework. Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements in the financial statements may not be detected, even though the audit is properly planned and performed in accordance with the ISAs.² In the context of laws and regulations, the

¹ ISA 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing*, paragraph 5

² ISA 200, paragraphs A51-A52

potential effects of inherent limitations on the auditor's ability to detect material misstatements are greater for such reasons as the following:

- There are many laws and regulations, relating principally to the operating aspects of an entity, that typically do not affect the financial statements and are not captured by the entity's information systems relevant to financial reporting.
- Non-compliance may involve conduct designed to conceal it, such as collusion, forgery, deliberate failure to record transactions, management override of controls or intentional misrepresentations being made to the auditor.
- Whether an act constitutes non-compliance is ultimately a matter for legal determination by an appropriate legal or adjudicative body ~~court of law~~.

Ordinarily, the further removed non-compliance is from the events and transactions reflected in the financial statements, the less likely the auditor is to become aware of it or to recognize the non-compliance.

6. This ISA distinguishes the auditor's responsibilities in relation to compliance with two different categories of laws and regulations as follows:
 - (a) The provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements such as tax and pension laws and regulations (see paragraph 13); and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, but compliance with which may be fundamental to the operating aspects of the business, to an entity's ability to continue its business, or to avoid material penalties (for example, compliance with the terms of an operating license, compliance with regulatory solvency requirements, or compliance with environmental regulations); non-compliance with such laws and regulations may therefore have a material effect on the financial statements (see paragraph 14).
7. In this ISA, differing requirements are specified for each of the above categories of laws and regulations. For the category referred to in paragraph 6(a), the auditor's responsibility is to obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations. For the category referred to in paragraph 6(b), the auditor's responsibility is limited to undertaking specified audit procedures to help identify non-compliance with those laws and regulations that may have a material effect on the financial statements.
8. The auditor is required by this ISA to remain alert to the possibility that other audit procedures applied for the purpose of forming an opinion on financial statements may bring instances of identified or suspected non-compliance to the auditor's attention. Maintaining professional skepticism throughout the audit, as required by ISA 200,³ is important in this context, given the extent of laws and regulations that affect the entity.
- 8a. The auditor may have additional responsibilities under relevant ethical requirements regarding an entity's non-compliance with laws and regulations, including laws and regulations other than those

³ ISA 200, paragraph 15

described in paragraph 6. Complying with those additional responsibilities may provide further information relating to the entity's compliance with laws and regulations (for example, regarding the integrity of management or, where appropriate, those charged with governance), which is relevant to the auditor's work in accordance with this and other ISAs.

Effective Date

9. This ISA is effective for audits of financial statements for periods beginning on or after December 15, 2009.

Objectives

10. The objectives of the auditor are:
- (a) To obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements;
 - (b) To perform specified audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements; and
 - (c) To respond appropriately to non-compliance or suspected non-compliance with laws and regulations identified during the audit.

Definition

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

Non-compliance – Acts of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations. Such acts include transactions entered into by, or in the name of, the entity, or on its behalf, by those charged with governance, management or employees. Non-compliance does not include personal misconduct (unrelated to the business activities of the entity) by those charged with governance, management or employees of the entity.

Requirements

The Auditor's Consideration of Compliance with Laws and Regulations

12. As part of obtaining an understanding of the entity and its environment in accordance with ISA 315 (Revised),⁴ the auditor shall obtain a general understanding of:
- (a) The legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates; and
 - (b) How the entity is complying with that framework. (Ref: Para. A7–~~A7a~~)

⁴ ISA 315, *Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment*, paragraph 11

13. The auditor shall obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements. (Ref: Para. A8)
14. The auditor shall perform the following audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements: (Ref: Para. A9–A10)
 - (a) Inquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations; and
 - (b) Inspecting correspondence, if any, with the relevant licensing or regulatory authorities.
15. During the audit, the auditor shall remain alert to the possibility that other audit procedures applied may bring instances of non-compliance or suspected non-compliance with laws and regulations to the auditor's attention. (Ref: Para. A11)
16. The auditor shall request management and, where appropriate, those charged with governance, to provide written representations that all known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing financial statements have been disclosed to the auditor. (Ref: Para. A12)
17. In the absence of identified or suspected non-compliance, the auditor is not required to perform audit procedures regarding the entity's compliance with laws and regulations, other than those set out in paragraphs 12–16. (Ref: Para. A12a)

Audit Procedures When Non-Compliance Is Identified or Suspected

18. If the auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the auditor shall obtain: (Ref: Para. A13)
 - (a) An understanding of the nature of the act and the circumstances in which it has occurred; and
 - (b) Further information to evaluate the possible effect on the financial statements. (Ref: Para. A14)
19. If the auditor suspects there may be non-compliance, the auditor shall discuss the matter with management and, where appropriate, those charged with governance. If management or, as appropriate, those charged with governance do not provide sufficient information that supports that the entity is in compliance with laws and regulations and, in the auditor's judgment, the effect of the suspected non-compliance may be material to the financial statements, the auditor shall consider the need to obtain legal advice. (Ref: Para. A15–A16)
20. If sufficient information about suspected non-compliance cannot be obtained, the auditor shall evaluate the effect of the lack of sufficient appropriate audit evidence on the auditor's opinion.
21. The auditor shall evaluate the implications of non-compliance in relation to other aspects of the audit, including the auditor's risk assessment and the reliability of written representations, and take appropriate action. (Ref: Para. A17–A18a)

Reporting of Identified or Suspected Non-Compliance

Reporting Non-Compliance to Those Charged with Governance

22. Unless all of those charged with governance are involved in management of the entity, and therefore are aware of matters involving identified or suspected non-compliance already communicated by the auditor,⁵ the auditor shall communicate with those charged with governance matters involving non-compliance with laws and regulations that come to the auditor's attention during the course of the audit, other than when the matters are clearly inconsequential.
23. If, in the auditor's judgment, the non-compliance referred to in paragraph 22 is believed to be intentional and material, the auditor shall communicate the matter to those charged with governance as soon as practicable.
24. If the auditor suspects that management or those charged with governance are involved in non-compliance, the auditor shall communicate the matter to the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. Where no higher authority exists, or if the auditor believes that the communication may not be acted upon or is unsure as to the person to whom to report, the auditor shall consider the need to obtain legal advice.

Reporting Non-Compliance in the Auditor's Report on the Financial Statements

25. If the auditor concludes that the non-compliance has a material effect on the financial statements, and has not been adequately reflected in the financial statements, the auditor shall, in accordance with ISA 705, express a qualified opinion or an adverse opinion on the financial statements.⁶
26. If the auditor is precluded by management or those charged with governance from obtaining sufficient appropriate audit evidence to evaluate whether non-compliance that may be material to the financial statements has, or is likely to have, occurred, the auditor shall express a qualified opinion or disclaim an opinion on the financial statements on the basis of a limitation on the scope of the audit in accordance with ISA 705.
27. If the auditor is unable to determine whether non-compliance has occurred because of limitations imposed by the circumstances rather than by management or those charged with governance, the auditor shall evaluate the effect on the auditor's opinion in accordance with ISA 705.

Reporting Non-Compliance to Regulatory and Enforcement Authorities

28. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a responsibility to report the identified or suspected non-compliance to parties outside the entity. (Ref: Para. A19–A20)

⁵ ISA 260, *Communication with Those Charged with Governance*, paragraph 13

⁶ ISA 705, *Modifications to the Opinion in the Independent Auditor's Report*, paragraphs 7–8

Documentation

29. The auditor shall include in the audit documentation identified or suspected non-compliance with laws and regulations and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.⁷ (Ref: Para. A21)

Application and Other Explanatory Material

Responsibility for Compliance with Laws and Regulations (Ref: Para. 3–8)

- A1. It is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with laws and regulations. Laws and regulations may affect an entity's financial statements in different ways: for example, most directly, they may affect specific disclosures required of the entity in the financial statements or they may prescribe the applicable financial reporting framework. They may also establish certain legal rights and obligations of the entity, some of which will be recognized in the entity's financial statements. In addition, laws and regulations may impose penalties in cases of non-compliance.

A1a. In some jurisdictions, management and those charged with governance may also have a responsibility to identify and address non-compliance with laws and regulations by the entity or by those charged with governance, management or employees of the entity.

- A2. The following are examples of the types of policies and procedures an entity may implement to assist in the prevention and detection of non-compliance with laws and regulations:

- Monitoring legal requirements and ensuring that operating procedures are designed to meet these requirements.
- Instituting and operating appropriate systems of internal control.
- Developing, publicizing and following a code of conduct.
- Ensuring employees are properly trained and understand the code of conduct.
- Monitoring compliance with the code of conduct and acting appropriately to discipline employees who fail to comply with it.
- Engaging legal advisors to assist in monitoring legal requirements.
- Maintaining a register of significant laws and regulations with which the entity has to comply within its particular industry and a record of complaints.

In larger entities, these policies and procedures may be supplemented by assigning appropriate responsibilities to the following:

- An internal audit function.
- An audit committee.
- A compliance function.

⁷ ISA 230, *Audit Documentation*, paragraphs 8–11, and A6

Responsibility of the Auditor

- A3. Non-compliance by the entity with laws and regulations may result in a material misstatement of the financial statements. Detection of non-compliance, regardless of materiality, may affect other aspects of the audit including, for example, the auditor's consideration of the integrity of management or employees.
- A4. Whether an act constitutes non-compliance with laws and regulations is a matter for legal determination, which is ordinarily beyond the auditor's professional competence to determine. Nevertheless, the auditor's training, experience and understanding of the entity and its industry or sector may provide a basis to recognize that some acts, coming to the auditor's attention, may constitute non-compliance with laws and regulations.
- A5. In accordance with specific statutory requirements, the auditor may be specifically required to report, as part of the audit of the financial statements, on whether the entity complies with certain provisions of laws or regulations. In these circumstances, ISA 700⁸ or ISA 800⁹ deal with how these audit responsibilities are addressed in the auditor's report. Furthermore, where there are specific statutory reporting requirements, it may be necessary for the audit plan to include appropriate tests for compliance with these provisions of the laws and regulations.

Considerations Specific to Public Sector Entities

- A6. In the public sector, there may be additional audit responsibilities with respect to the consideration of laws and regulations which may relate to the audit of financial statements or may extend to other aspects of the entity's operations.

The Auditor's Consideration of Compliance with Laws and Regulations

Obtaining an Understanding of the Legal and Regulatory Framework (Ref: Para. 12)

- A7. To obtain a general understanding of the legal and regulatory framework, and how the entity complies with that framework, the auditor may, for example:
- Use the auditor's existing understanding of the entity's industry, regulatory and other external factors;
 - Update the understanding of those laws and regulations that directly determine the reported amounts and disclosures in the financial statements;
 - Inquire of management as to other laws or regulations that may be expected to have a fundamental effect on the operations of the entity;
 - Inquire of management concerning the entity's policies and procedures regarding compliance with laws and regulations; and
 - Inquire of management regarding the policies or procedures adopted for identifying,

⁸ ISA 700, *Forming an Opinion and Reporting on Financial Statements*, paragraph 38

⁹ ISA 800 *Special Considerations—Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks*, paragraph 11

evaluating and accounting for litigation claims.

Categories of Laws and Regulations [Note: subsequent heading drops down a level]

A7a. Examples of laws and regulations that may be included in the categories described in paragraph 6 include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

Laws and Regulations Generally Recognized to Have a Direct Effect on the Determination of Material Amounts and Disclosures in the Financial Statements (Ref: Para. 13)

A8. Certain laws and regulations are well-established, known to the entity and within the entity's industry or sector, and relevant to the entity's financial statements (as described in paragraph 6(a)). They could include those that relate to, for example:

- The form and content of financial statements;
- Industry-specific financial reporting issues;
- Accounting for transactions under government contracts; or
- The accrual or recognition of expenses for income tax or pension costs.

Some provisions in those laws and regulations may be directly relevant to specific assertions in the financial statements (for example, the completeness of income tax provisions), while others may be directly relevant to the financial statements as a whole (for example, the required statements constituting a complete set of financial statements). The aim of the requirement in paragraph 13 is for the auditor to obtain sufficient appropriate audit evidence regarding the determination of amounts and disclosures in the financial statements in compliance with the relevant provisions of those laws and regulations.

Non-compliance with other provisions of such laws and regulations and other laws and regulations may result in fines, litigation or other consequences for the entity, the costs of which may need to be provided for in the financial statements, but are not considered to have a direct effect on the financial statements as described in paragraph 6(a).

Procedures to Identify Instances of Non-Compliance—Other Laws and Regulations (Ref: Para. 14)

A9. Certain other laws and regulations may need particular attention by the auditor because they have a fundamental effect on the operations of the entity (as described in paragraph 6(b)). Non-compliance with laws and regulations that have a fundamental effect on the operations of the entity may cause

the entity to cease operations, or call into question the entity's continuance as a going concern. For example, non-compliance with the requirements of the entity's license or other entitlement to perform its operations could have such an impact (for example, for a bank, non-compliance with capital or investment requirements). There are also many laws and regulations relating principally to the operating aspects of the entity that typically do not affect the financial statements and are not captured by the entity's information systems relevant to financial reporting.

- A10. As the financial reporting consequences of other laws and regulations can vary depending on the entity's operations, the audit procedures required by paragraph 14 are directed to bringing to the auditor's attention instances of non-compliance with laws and regulations that may have a material effect on the financial statements.

Non-Compliance Brought to the Auditor's Attention by Other Audit Procedures (Ref: Para. 15)

- A11. Audit procedures applied to form an opinion on the financial statements may bring instances of non-compliance or suspected non-compliance with laws and regulations to the auditor's attention. For example, such audit procedures may include:

- Reading minutes;
- Inquiring of the entity's management and in-house legal counsel or external legal counsel concerning litigation, claims and assessments; and
- Performing substantive tests of details of classes of transactions, account balances or disclosures.

Written Representations (Ref: Para. 16)

- A12. Because the effect on financial statements of laws and regulations can vary considerably, written representations provide necessary audit evidence about management's knowledge of identified or suspected non-compliance with laws and regulations, whose effects may have a material effect on the financial statements. However, written representations do not provide sufficient appropriate audit evidence on their own and, accordingly, do not affect the nature and extent of other audit evidence that is to be obtained by the auditor.¹⁰

Absence of Identified or Suspected Non-Compliance (Ref: Para. 17)

- A12a. If the auditor is otherwise aware of non-compliance with laws or regulations (for example, matters that the auditor is required to address under relevant ethical requirements, including those related to laws and regulations not described in paragraph 6), such non-compliance is relevant to the auditor's responsibilities in accordance with paragraphs 18–21. For example, such non-compliance may cause the auditor to evaluate the integrity of management and, where appropriate, those charged with governance, even if the non-compliance does not have a material effect on the financial statements.

¹⁰ ISA 580, *Written Representations*, paragraph 4

Audit Procedures When Non-Compliance is Identified or Suspected

Indications of Non-Compliance with Laws and Regulations (Ref: Para. 18)

A13. If the auditor becomes aware of the existence of, or information about, the following matters, it may be an indication of non-compliance with laws and regulations:

- Investigations by regulatory organizations and government departments or payment of fines or penalties.
- Payments for unspecified services or loans to consultants, related parties, employees or government employees.
- Sales commissions or agent's fees that appear excessive in relation to those ordinarily paid by the entity or in its industry or to the services actually received.
- Purchasing at prices significantly above or below market price.
- Unusual payments in cash, purchases in the form of cashiers' checks payable to bearer or transfers to numbered bank accounts.
- Unusual transactions with companies registered in tax havens.
- Payments for goods or services made other than to the country from which the goods or services originated.
- Payments without proper exchange control documentation.
- Existence of an information system which fails, whether by design or by accident, to provide an adequate audit trail or sufficient evidence.
- Unauthorized transactions or improperly recorded transactions.
- Adverse media comment.

Matters Relevant to the Auditor's Evaluation (Ref: Para. 18(b))

A14. Matters relevant to the auditor's evaluation of the possible effect on the financial statements include:

- The potential financial consequences of non-compliance with laws and regulations on the financial statements including, for example, the imposition of fines, penalties, damages, threat of expropriation of assets, enforced discontinuation of operations, and litigation.
- Whether the potential financial consequences require disclosure.
- Whether the potential financial consequences are so serious as to call into question the fair presentation of the financial statements, or otherwise make the financial statements misleading.

Audit Procedures (Ref: Para. 19)

A15. The auditor may discuss the findings with those charged with governance where they may be able to provide additional audit evidence. For example, the auditor may confirm that those charged with governance have the same understanding of the facts and circumstances relevant to transactions or events that have led to the possibility of non-compliance with laws and regulations.

A16. If management or, as appropriate, those charged with governance do not provide sufficient information to the auditor that the entity is in fact in compliance with laws and regulations, the auditor

may consider it appropriate to consult with the entity's in-house legal counsel or external legal counsel about the application of the laws and regulations to the circumstances, including the possibility of fraud, and the possible effects on the financial statements. If it is not considered appropriate to consult with the entity's legal counsel or if the auditor is not satisfied with the legal counsel's opinion, the auditor may consider it appropriate to consult the auditor's own legal counsel as to whether a contravention of a law or regulation is involved, the possible legal consequences, including the possibility of fraud, and what further action, if any, the auditor would take.

Evaluating the Implications of Non-Compliance (Ref: Para. 21)

- A17. As required by paragraph 21, the auditor evaluates the implications of non-compliance in relation to other aspects of the audit, including the auditor's risk assessment and the reliability of written representations. The implications of particular instances of non-compliance identified by the auditor will depend on the relationship of the perpetration and concealment, if any, of the act to specific control activities and the level of management or employees involved, especially implications arising from the involvement of the highest authority within the entity. As noted in paragraph 8a, the auditor's compliance with relevant ethical requirements may provide further information that is relevant to the auditor's responsibilities in accordance with paragraph 21.
- A18. In exceptional cases, the auditor may consider whether withdrawal from the engagement, where withdrawal is possible under applicable law or regulation, is necessary when management or those charged with governance do not take the remedial action that the auditor considers appropriate in the circumstances, even when the non-compliance is not material to the financial statements. When deciding whether withdrawal from the engagement is necessary, the auditor may consider seeking legal advice. If withdrawal from the engagement is not possible, the auditor may consider alternative actions, including describing the non-compliance in an Other Matter paragraph in the auditor's report.¹¹
- A18a. Examples of circumstances that may cause the auditor to evaluate the reliability of written representations received from management and, where applicable, those charged with governance include when:
- The auditor suspects or has evidence of their involvement or intended involvement in any non-compliance.
 - The auditor is aware that they have knowledge of such non-compliance and, contrary to legal or regulatory requirements, have not reported, or authorized reporting of, the matter to an appropriate authority within a reasonable period.

Reporting of Identified or Suspected Non-Compliance

Reporting Non-Compliance to Regulatory and Enforcement Authorities (Ref: Para. 28)

- A19. ~~The auditor's professional duty to maintain the confidentiality of client information may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity. However, in determining whether the auditor has a responsibility to report the identified or~~

¹¹ ISA 706, *Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report*, paragraph 8

suspected non-compliance to parties outside the entity, the auditor may consider it appropriate to obtain legal advice to determine the appropriate course of action, since:

- The auditor's legal responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may not apply or may be overridden by statute, the law or courts of law law or regulation. In some jurisdictions, the auditor of a financial institution has a statutory duty to report the occurrence, or suspected occurrence, of non-compliance with laws and regulations to supervisory authorities. Also, in some jurisdictions, the auditor has a duty to report misstatements to authorities in those cases where management and, where applicable, those charged with governance fail to take corrective action. The auditor may consider whether withdrawal from the engagement is necessary, when withdrawal is possible under applicable law or regulation. The auditor may consider it appropriate to obtain legal advice to determine the appropriate course of action. In some jurisdictions, law or regulation may prohibit alerting ("tipping-off") the entity when, for example, the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation.
- Under some relevant ethical requirements, the auditor may have the right, in certain circumstances, to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality.¹² Under other relevant ethical requirements, the auditor's professional duty to maintain the confidentiality of client information may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.

Considerations Specific to Public Sector Entities

A20. A public sector auditor may be obliged to report on instances of non-compliance to the legislature or other governing body or to report them in the auditor's report.

Documentation (Ref: Para. 29)

A21. The auditor's documentation of findings regarding identified or suspected non-compliance with laws and regulations may include, for example:

- Copies of records or documents.
- Minutes of discussions held with management, those charged with governance or parties outside the entity.

¹² See, for example, Section 225.30 of the International Ethics Standards Board for Accountants' *Code of Ethics for Professional Accountants* (IESBA Code).

Other International Standards

[Note to IAASB: In this section, only extracts from the International Standards and the proposed amendments are shown. Other paragraphs remain unchanged, other than renumbering as appropriate.]

ISQC 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements* Requirements

[Note: This paragraph is unchanged.]

Confidentiality, safe custody, integrity, accessibility and retrievability of engagement documentation

46. The firm shall establish policies and procedures designed to maintain the confidentiality, safe custody, integrity, accessibility and retrievability of engagement documentation. (Ref: Para. A56–A59)

Application and Other Explanatory Material

A56. Relevant ethical requirements establish an obligation for the firm's personnel to observe at all times the confidentiality of information contained in engagement documentation, unless specific client authority has been given to disclose information, or there is a legal or professional right or duty to do so. Under some relevant ethical requirements, the firm's personnel may have the right, in certain circumstances, to disclose identified or suspected non-compliance with law or regulation to an appropriate authority without breaching the duty of confidentiality.¹³ Specific laws or regulations may impose additional obligations on the firm's personnel to maintain client confidentiality, particularly where data of a personal nature are concerned.

ISA 220, *Quality Control for an Audit of Financial Statements* Requirements

[Note: This paragraph is unchanged.]

Acceptance and Continuance of Client Relationships and Audit Engagements

12. The engagement partner shall be satisfied that appropriate procedures regarding the acceptance and continuance of client relationships and audit engagements have been followed, and shall determine that conclusions reached in this regard are appropriate. (Ref: Para. A8–A9)

Application and Other Explanatory Material

A8a. Law, regulation, or relevant ethical requirements may require the proposed auditor to communicate, prior to accepting the engagement, with the predecessor auditor regarding any facts or circumstances that, in the predecessor auditor's judgment, the auditor needs to be aware of before deciding whether to accept the engagement.

¹³ See, for example, Section 225.30 of the IESBA Code.

ISA 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements*

Introduction

Responsibility for the Prevention and Detection of Fraud

Responsibilities of the Auditor

8a. The auditor may have responsibilities under relevant ethical requirements regarding an entity's non-compliance with laws and regulations, including fraud. Complying with those additional responsibilities may provide further information relating to the entity's compliance with laws and regulations, which is relevant to the auditor's work in accordance with this and other ISAs (for example, regarding management's integrity).

Requirements

Communications to Regulatory and Enforcement Authorities

43. If the auditor has identified or suspects a fraud, the auditor shall determine whether there is a responsibility to report the occurrence or suspicion to a party outside the entity. Although the ~~auditor's professional duty~~ relevant ethical requirements regarding ~~to maintaining~~ the confidentiality of client information may preclude such reporting, the auditor's legal or professional responsibilities may override the duty of confidentiality or may include a right or duty to report to an appropriate authority in some circumstances. (Ref: Para. A65–A67)

Application and Other Explanatory Material

Communications to Regulatory and Enforcement Authorities (Ref: Para. 43)

A65. The auditor's professional duty to maintain the confidentiality of client information may preclude reporting fraud to a party outside the client entity. However, the auditor's legal responsibilities vary by country and, in certain circumstances, the duty of confidentiality may be overridden by ~~statute, the law or courts of law~~ law or regulation. In some countries, the auditor of a financial institution has a statutory duty to report the occurrence of fraud to supervisory authorities. Also, in some countries the auditor has a duty to report misstatements to authorities in those cases where management and those charged with governance fail to take corrective action. In some jurisdictions, law or regulation may prohibit alerting ("tipping-off") the entity when, for example, the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation. Under some relevant ethical requirements, the auditor may have the right, in certain circumstances, to disclose identified or suspected non-compliance with law or regulation to an appropriate authority without breaching the duty of confidentiality.¹⁴

¹⁴ See, for example, Section 225.30 of the International Ethics Standards Board for Accountants' *Code of Ethics for Professional Accountants* (IESBA Code)

ISA 260 (Revised), *Communication with Those Charged with Governance*

Introduction

The Role of Communication

7. Law or regulation may restrict the auditor's communication of certain matters with those charged with governance. For example, laws or regulations may specifically prohibit a communication, or other action, that might prejudice an investigation by an appropriate authority into an actual, or suspected, illegal act, including alerting ("tipping-off") the entity when, for example, the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation. In some circumstances, potential conflicts between the auditor's obligations of confidentiality and obligations to communicate may be complex. In such cases, the auditor may consider obtaining legal advice.

ISA 450, *Evaluation of Misstatements Identified During the Audit*

Requirements

[Note: This paragraph is unchanged.]

Communication and Correction of Misstatements

8. The auditor shall communicate on a timely basis all misstatements accumulated during the audit with the appropriate level of management, unless prohibited by law or regulation.³ The auditor shall request management to correct those misstatements. (Ref: Para. A7–A9)

Application and Other Explanatory Material

Communication and Correction of Misstatements (Ref: Para. 8–9)

- A8. Law or regulation may restrict the auditor's communication of certain misstatements to management, or others, within the entity. For example, laws or regulations may specifically prohibit a communication, or other action, that might prejudice an investigation by an appropriate authority into an actual, or suspected, illegal act, including alerting ("tipping-off") the entity when, for example, the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation. In some circumstances, potential conflicts between the auditor's obligations of confidentiality and obligations to communicate may be complex. In such cases, the auditor may consider seeking legal advice.

ISRE 2400 (Revised), *Engagements to Review Historical Financial Statements Requirements*

[Note: This paragraph is unchanged.]

Performing the Engagement

Designing and Performing Procedures

Fraud and non-compliance with laws or regulations

52. When there is an indication that fraud or non-compliance with laws or regulations, or suspected fraud or non-compliance with laws or regulations, has occurred in the entity, the practitioner shall:
- (a) Communicate that matter to the appropriate level of senior management or those charged with governance as appropriate;
 - (b) Request management's assessment of the effect(s), if any, on the financial statements;
 - (c) Consider the effect, if any, of management's assessment of the effects of fraud or non-compliance with laws or regulations communicated to the practitioner on the practitioner's conclusion on the financial statements and on the practitioner's report; and
 - (d) Determine whether there is a responsibility to report the occurrence or suspicion of fraud or illegal acts to a party outside the entity. (Ref: Para. A92)

Application and Other Explanatory Material

Performing the Engagement

Designing and Performing Procedures (Ref: Para. 47, 55)

Procedures to Address Specific Circumstances

Fraud and non-compliance with laws or regulations (Ref: Para. 52(d))

A92. Under this ISRE, if the practitioner has identified or suspects fraud or illegal acts, the practitioner is required to determine whether there is a responsibility to report the occurrence or suspicion to a party outside the entity. The auditor's ethical, legal, and regulatory responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may be overridden by law or regulation. Under some relevant ethical requirements, the auditor may have the right, in certain circumstances, to disclose identified or suspected non-compliance with law or regulation to an appropriate authority without breaching the duty of confidentiality.¹⁵ Under other relevant ethical requirements, the auditor's professional duty to maintain the confidentiality of client information may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity. Although the practitioner's professional duty to maintain the confidentiality of client information may preclude such reporting, the practitioner's legal responsibilities may override the duty of confidentiality in some circumstances.

¹⁵ See, for example, Section 225.30 of the International Ethics Standards Board for Accountants' *Code of Ethics for Professional Accountants* (IESBA Code)

ISAE 3402, Assurance Reports on Controls at a Service Organization

Requirements

[Note: This paragraph is unchanged.]

Other Communication Responsibilities

56. If the service auditor becomes aware of non-compliance with laws and regulations, fraud, or uncorrected errors attributable to the service organization that are not clearly trivial and may affect one or more user entities, the service auditor shall determine whether the matter has been communicated appropriately to affected user entities. If the matter has not been so communicated and the service organization is unwilling to do so, the service auditor shall take appropriate action. (Ref: Para. A53)

Application and Other Explanatory Material

Other Communication Responsibilities (Ref: Para. 56)

A53. Appropriate actions to respond to the circumstances identified in paragraph 56 may include:

- Obtaining legal advice about the consequences of different courses of action.
- Communicating with those charged with governance of the service organization.
- Communicating with third parties (for example, a regulator) when required or permitted to do so.
- Modifying the service auditor's opinion, or adding an Other Matter paragraph.
- Withdrawing from the engagement.