

Supplement E to Agenda Item 7

Note: This supplement has been prepared for information only. A comprehensive summary of the significant comments received on the July 2015 Exposure Draft (ED), *Responding to Non-Compliance with Laws and Regulations*, and the Task Force’s related analysis of significant issues are presented at the [March 2016 IAASB meeting](#). All comment letters on the ED can be accessed [here](#).

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COMMENTS RECEIVED ON IAASB NOCLAR EXPOSURE DRAFT

Paragraphs

ISA 250

Paragraph Number	Source	Comment
5	ANAN	The Change from "Court of law" to "an appropriate adjudicative body" is in order REASON FOR COMMENT: The decision of adjudicative body does not give rise to litigation.
5	HC	As stated in the exposure draft, audit procedures are designed to “identify material misstatements of the financial statements due to non-compliance with all laws and regulations.” The auditors are not responsible for preventing non-compliance and the audit procedures cannot be expected to detect non-compliance with all laws and regulations. We agree with the proposed modification stating that an act that constitutes non-compliance is ultimately determined legally by <u>an appropriate legal or adjudicative body</u> in place of “ <u>a court of law</u> ”. This proposed change will further emphasize the widening scope of the inherent limitations faced by the auditors when addressing the issues of defining and identifying the actual existence of an act of non-compliance, which are strongly rooted in the crux of the exposure draft.
5	CPAA	The third bullet refers to ‘legal determination by an appropriate legal or adjudicative body’. A legal body in many jurisdictions may refer to a law firm or society. For example in Australia the Australian Law Council is described as Australia’s peak legal body. Alternative terms could be considered or the deletion of the words ‘legal or’, if ‘adjudicative body’ is considered to be a broad enough term.
6	ANAN	The examples, though not exhaustive, have covered substantially the categories of law and regulations referred to in Para. 6(a) and (b)
8	ANAN	The Auditor may have additional responsibilities under relevant ethical requirements (for example in IESBA Code) regarding.....governance)

Paragraph Number	Source	Comment
8a	CPAA	The purpose and meaning of paragraph 8a is unclear. It is not clearly articulated how compliance with relevant ethical requirements, which ordinarily comprise the IESBA Code together with national requirements that are more restrictive, provide ‘further information that is relevant to the auditor’s work’. The connection between the ‘additional responsibilities’ and how they would provide ‘further information’ is not apparent. We recommend either deleting this paragraph or amending it to identify examples of additional responsibilities which would provide further information, to help clarify the paragraph’s purpose and meaning.
8a	EYG	We agree with the addition of this proposed paragraph to highlight the fact that additional responsibilities for NOCLAR may exist under relevant ethical requirements. We believe that it would be beneficial to include application material to this new paragraph with a brief explanation of the nature of those additional responsibilities under the IESBA Code (as an example). In particular, it would be helpful to highlight that the IESBA Code requires evaluation of identified or suspected instances of NOCLAR using more extensive criteria than materiality to the financial statements and the effect on the audit, which may result in the auditor taking further or different actions to respond to NOCLAR under the IESBA Code than what may be required under the ISAs.
8a	IRBA	<p>The paragraph highlights the fact that the auditor may have additional obligations under relevant ethical requirements regarding NoCLAR. It links the auditor’s additional responsibilities under relevant ethical requirements to the possibility of obtaining further information that may be relevant to his/her work. We believe that this paragraph should be split and further enhanced to emphasize the fact that the auditor simultaneously has to comply with relevant ethical requirements and the auditing standards. We recommend that this paragraph be amended as follows:</p> <ul style="list-style-type: none"> • 8a. “The auditor may have additional responsibilities under relevant ethical requirements regarding an entity’s non-compliance with laws and regulations. <u>The auditor ensures compliance with relevant ethical requirements at the engagement level; including the engagement partner remaining alert for evidence of non-compliance with relevant ethical requirements by members of the engagement team as required by ISA 220¹. [Include footnote that refers to ISA 220, par. 9-10]</u> • 8b. “Complying with any additional responsibilities under relevant ethical requirements regarding an entity’s non-compliance with laws and regulations may provide further information that is relevant to the auditor’s work in accordance with this and other ISAs (for example, regarding the integrity of management or, where appropriate, those charged with governance)”
8a	JICPA	We believe that the wording “additional responsibilities” should be reconsidered. This wording does not correctly express the relationship between the auditor’s responsibilities under the ISAs and the ethical responsibilities under the IESBA Code. The ethical responsibilities under the IESBA Code are not necessarily “additional” to the responsibilities under the ISAs. We also propose a new footnote referring section 225 of the IESBA Code to clarify the context covered in paragraph 8a. We recommend the following changes:

¹ ISA 220, Quality Control for an Audit of Financial Statements

Paragraph Number	Source	Comment
		<p>“8a. The auditor may have additional responsibilities under r Relevant ethical requirements <u>may deal with the auditor’s ethical responsibility in responding to</u> regarding an entity’s non-compliance with laws and regulations.^{3a} Complying with those additional responsibilities may provide further information that is relevant to the auditor’s work in accordance with this and other ISAs (for example, regarding the integrity of management or, where appropriate, those charged with governance).</p> <p><u>Footnote 3a : See, for example, Section 225 of the International Ethics Standards Board for Accountants’ Code of Ethics for Professional Accountants (IESBA Code)”</u></p>
8a	SMPC	<p>The proposals for ISA 250.8a and ISA 240.8a both use the term “may”, which, in practice following the NOCLAR ethical requirements would mean either the auditor does, or does not, have additional ethical responsibilities. We believe that the IAASB should consider whether in the absence of “additional responsibilities” the auditor currently does sufficient work under the ISAs regarding the evaluation of the integrity of management or TCWG. It could be helpful to look into whether there have been cases where inspection findings indicate deficiencies in this area and also consider how this links in with the project on professional skepticism.</p>
9	ANAN	<p>This ISA will be effective after a date to be determined in due course by IAASB in collaboration with IESBA.</p> <p>REASON FOR COMMENT: This suggestion is informed by the fact that the IESBA aims to improve it’s restructured Code by Q4 2016 and to determine it’s date in due course. (See Para 3 lines 6 and 7 at page 6 of the ED)</p>
11	EYG	<p>We suggest explicitly stating that non-compliance includes personal misconduct related to the business activities of the entity as follows: <u>“..Non-compliance includes personal misconduct that is related to the business activities of the entity by those charged with governance, management or employees of the entity, but does not include personal misconduct by those persons that is</u>(unrelated to the business activities of the entity) by those charged with governance, management or employees of the entity.</p>
11	ICAS	<p>As we stated in our response to IESBA, the definition does not appear to capture the behaviour of individuals who may be working on a contractual basis on behalf of the organisation but whom are sub-contracted rather than actual employees of the entity. Whilst this may be outside of the proposed scope of the IAASB’s review of the standard, it does relate to our response to IESBA, therefore, we believe should be considered as part of this exercise.</p>
16	ICAS	<p>Whilst we understand the reference to financial statements, we question whether the scope needs to be wider i.e. “annual report” as opposed to “financial statements”.</p>
18	IRBA	<p>We recommend that the reference to the application guidance should include paragraph A13 and <u>paragraph A12a.</u></p>
18	PWC	<p>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)</p>

Paragraph Number	Source	Comment
		<p>(a) An understanding of the nature of the act and the circumstances in which it has occurred; and</p> <p>(b) <u>An understanding of the application of the relevant laws and regulations to the circumstances; and</u>²</p> <p>(c) Further information to evaluate the possible effect on the financial statements. (Ref: Para. A14)</p>
19	EYG	<p>This paragraph (which has remained unchanged from extant) requires that the auditor consider obtaining legal advice related to suspected NOCLAR only if the effect of such NOCLAR may be material to the financial statements. Section 225.14 of the IESBA Code suggests that legal advice may be necessary as part of understanding whether an act constitutes non-compliance. Further, the evaluation of NOCLAR under the IESBA Code is not restricted to consideration of materiality to the financial statements. We believe it would be useful to clarify in the guidance to ISA 250.19 that it also may be necessary for the auditor to consider legal advice when there may be other implications for the audit (such as those highlighted in paragraph 21) or when further actions may be required under relevant ethical requirements.</p> <p>We suggest inserting “unless prohibited by law or regulation” as follows: “...the auditor shall discuss the matter, <u>unless prohibited by law or regulation</u>, with management....”</p>
19	ICAS	<p>We would suggest that there should be some guidance that refers the auditor to consider the legal and regulatory framework that applies and which serves as a reminder of possible ‘tipping off’ provisions.</p>
19	MAASB	<p>ISA 250 paragraph 19 states that “If the auditor suspects there may be non-compliance, the auditor shall discuss the matter with management and, where appropriate, those charged with governance. Paragraph 225.12 of the IESBA Re-ED provides similar guidance but makes reference to ‘appropriate level of management’ rather than ‘management’. The IESBA Re-ED further provides guidance to determine the ‘appropriate level of management’.</p> <p>We propose the guidance on management is aligned in both ISA 250 and the IESBA Code to ensure consistent application.</p>
19	PWC	<p>19. If the auditor suspects there may be non-compliance, the auditor shall, <u>unless law or regulation precludes such action</u>³, discuss the matter with <u>the appropriate level of</u>⁴ management and, where appropriate, those charged with governance. [MOVED TO 19b] If management or, as appropriate, those charged with governance do not provide sufficient information that supports that</p>

² From IESBA Code ED 225.11

³ We believe that the proposed amendment to paragraph A15 raises an important point. The potential preclusion by law or regulation of “tipping-off” the entity applies equally to both management and those charged with governance. Therefore, we believe it is necessary to reflect this in the requirement. We have also suggested separating the amendment to paragraph A15 into its own paragraph as a consequence.

⁴ From IESBA Code ED 225.12

Paragraph Number	Source	Comment
		<p>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. A14a-A14b, A15a5-A16)</p> <p>19a. <u>If management and, where appropriate, those charged with governance agree that non-compliance has occurred or may occur, the auditor shall prompt them to take appropriate and timely actions, if they have not already done so, including obtaining an understanding of their legal or regulatory responsibilities with respect to the matter⁵. (Ref: Para. A15b)</u></p> <p>19b. <u>[MOVED FROM 19] 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)</u></p>
19	UKFRC	<p>Tipping off</p> <p>As illustrated below, the requirement may be expressed as being conditional on applicable law or regulation and the proposed application material would remain as it explains why the requirement is conditional.</p> <p>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, <u>unless prohibited by law or regulation</u>. 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)</p> <p>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. However, in some jurisdictions, laws or regulations 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.</p>

⁵ Based on IESBA Code ED 225.17 and 225.18

Paragraph Number	Source	Comment
21	PWC	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, <u>and the need to communicate with the group engagement team in the case of a group audit⁶</u> , and take appropriate action. (Ref: Para. A17–A18a)
22	EYG	<p>We suggest adding a similar caveat as follows: “, other than when the matters are clearly inconsequential <u>or such communication is prohibited by law or regulation</u>”.</p> <p><i>New guidance regarding “tipping-off” prohibitions on communication with the entity.</i> We agree with the addition of guidance to highlight that laws or regulations may prohibit alerting (“tipping-off”) the entity regarding identified or suspected NOCLAR. We have two observations in regard to the consistency with which this guidance has been included in the ISAs:</p> <ul style="list-style-type: none"> • In ISA 260.7, this guidance is placed in the context of an action that prejudices an investigation by an appropriate authority. However, this context is not used in the new guidance in ISA 250.A15 and ISA 240.A59A. • The requirement in ISA 250.22 would appear to be subject to the same restriction regarding “tipping-off”, but the new guidance is not included here.
22	ICAS	<p>Paragraphs 22 - 24</p> <p><i>“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, the auditor shall communicate with those charged with governance matters involving noncompliance 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.</i></p> <p><i>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.</i></p> <p><i>If the auditor suspects that management or those charged with governance are involved in noncompliance, 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.”</i></p>

⁶ From IESBA Code ED 225.19

Paragraph Number	Source	Comment
		As per our comments in relation to paragraph 19, there would appear to be a need to include wording referring the auditor to consider the legal and regulatory framework that applies and which serves as a reminder of possible ‘tipping off’ provisions.
28	DTT	<p>DTTL identified in the amendments to ISA 240 and ISA 250 of the Proposal that there are references to reporting non-compliance to “regulatory and enforcement authorities” or in some instances “authorities,” while the IESBA Re-ED refers to an “appropriate authority.” DTTL recommends that the phrase used in the IESBA Re-ED be used, so as to ensure consistency between the two exposure drafts. The wording in the following paragraphs (including the headings immediately preceding the paragraphs referred to below) should be amended accordingly:</p> <p style="padding-left: 40px;">ISA 240: Paragraphs 43 and A65</p> <p style="padding-left: 40px;">ISA 250: Paragraphs 28 and A19</p> <p>It was noted in the Proposal, that the phrase “party[ies] outside the entity” has been used. DTTL understands that this refers to regulatory or enforcement authorities outside the entity as described elsewhere in the exposure draft. However, in an effort to ensure consistency of terminology used both in the Proposal and in the IESBA Re-ED, DTTL recommends that the phrase be amended to “appropriate authority[ies] outside the entity.” The wording in the following paragraphs should be amended:</p> <p style="padding-left: 40px;">ISA 240: Paragraphs 43 and A65 (see edits below)</p> <p style="padding-left: 40px;">ISA 250: Paragraphs 28, 29, A19 and A21</p> <p style="padding-left: 40px;">ISRE 2400: Paragraph 52 and A92</p>
28	EYG	<p>28. If the auditor has identified or suspects non-compliance with laws and or regulations, the auditor shall determine whether the auditor has a legal or ethical duty <u>to report</u>, or right <u>ethical responsibility to determine whether</u> to report, the identified or suspected non-compliance to parties outside the entity.</p> <p>A19. If the auditor has identified or suspects non-compliance with laws or regulations, the auditor may consider obtaining legal advice to determine whether the auditor has a legal or ethical duty or right to report, to parties outside the entity and, when applicable, the appropriate course of action <u>light of such duty or right or an ethical responsibility to determine whether to report, the matter to parties outside the entity</u>. For example:</p> <ul style="list-style-type: none"> ○ The duty of confidentiality may not apply or may be overridden by laws or regulations. 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.

Paragraph Number	Source	Comment
		<ul style="list-style-type: none"> ○ <u>The duty of confidentiality may be overridden by provisions within the ethical requirements relevant to the audit that address responding to non-compliance with laws and regulations. Under relevant ethical requirements, the auditor may have the right an ethical responsibility to determine whether to report disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality notwithstanding that there is no legal or regulatory requirement to do so. Further, under such relevant ethical requirements, it is not considered a breach of the duty of confidentiality if the auditor determines that such reporting is an appropriate course of action in the circumstances.</u>⁷ ○ <u>Laws or regulations or the auditor's legal or the ethical duties requirements to maintain confidentiality relevant to the audit may preclude the auditor from reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.</u> <p>The above suggestions are based on our views as follows:</p> <ul style="list-style-type: none"> • The phrase “ethical right” has been replaced with “ethical responsibility to determine whether to report” to provide a clearer explanation of the obligation imposed by the IESBA Code. • The duty of confidentiality always applies to an audit; however, it may be overridden in certain circumstances by either laws or regulations, or explicit provisions within the relevant ethical requirements. • The example in the second bullet should more closely align to the wording in the IESBA Code, as it is intended to represent the requirements under the IESBA Code. We have suggested alignments based on Section 225.24 and 225.29. • Use of the phrase “ethical requirements relevant to the audit” is suggested for consistency with other ISAs. “Relevant ethical requirements” would also be a suitable alternative. <p>Based on the revised wording for ISA 250.28 and A19, and accompanying rationale presented above, we have the following editorial suggestions for other paragraphs included in the ED:</p> <p>ISQC 1.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 <u>the firm’s personnel have determined</u> there is a legal <u>duty</u> or ethical duty or right <u>responsibility</u> to do so. In certain circumstances, the firm’s personnel may have the legal <u>duty to disclose</u>, or ethical right <u>responsibility</u> to <u>determine whether to</u> disclose, identified or suspected non-compliance with laws or regulations to an appropriate authority <u>and such disclosure without is not considered a breaching of</u> the duty of confidentiality...”</p>

⁷ See, for example, Section 225.24 - 225.29 of the International Ethics Standards Board for Accountants’ *Code of Ethics for Professional Accountants* (IESBA Code).

Paragraph Number	Source	Comment
		<p>ISA 240.43 - As written, the paragraph implies that the duty of confidentiality may include a duty or right to report to an appropriate authority, whereas it is the laws or regulations or relevant ethical requirements that may impose these duties or responsibilities. We suggest this paragraph be aligned to the wording in ISA 250.28, including our editorial suggestion to ISA 250.28 above, as follows: “If the auditor has identified or suspects a fraud, the auditor shall determine whether <u>the auditor has a legal duty to report, or ethical there is a responsibility to determine whether to</u> report, the occurrence or suspicion to a party outside the entity.”</p> <p>We would suggest deleting the second sentence of ISA 240.43, and including this guidance in ISA 240.A65 (see further comments on ISA 240.A65 below).</p> <p>ISA 240.A65 - We suggest that this paragraph be structured consistent with ISA 250.A19 (as we have revised above), other than making reference to fraud instead of non-compliance with laws or regulations. Further, we note that ISA 250.A19 provides guidance in context of the consideration of obtaining legal advice to make the determination of the auditor’s duties and responsibilities, whereas ISA 240.A65 does not.</p> <p>ISRE 2400.52 - We suggest wording for (d) as follows: “Determine whether there is a <u>the auditor has a legal duty to report, or ethical responsibility to determine whether</u> to report, the occurrence or suspicion of fraud or illegal acts to a party outside the entity.”</p> <p>ISRE 2400.A92 - We suggest aligning this paragraph to the revisions suggested for ISA 250.A19 and, as mentioned above, ISA 240.A65. We note that, similar to ISA 240.A65, this guidance is not in context of the consideration of obtaining legal advice.</p> <p>ISAE 3402.A53 - “...Communicating with third parties (for example, a regulator) when the auditor has a <u>legal</u> duty, or <u>ethical responsibility to determine whether, right</u> to do so.”</p>
28	HC	<p>We recommend that the amendment of “legal or ethical duty or right” be further expanded to include a definition or basic explanation of ethical duty or ethical right of the auditor. Legal duties are comparatively self-explanatory; while ethical obligations can be perceived or defined differently by parties in different contexts. Including a standard definition provides uniformity for the jurisdictions adhering to the IAASB international standards. Moreover, including a standard definition can serve as an initial foundation in identifying ethical issues if the auditor needs guidance. Likewise, the term “ethical right” should be expanded upon to provide more clarity on IAASB’s belief on ethical right.</p> <p>The addition of the terms “legal or ethical duty or right” would not have a major impact in jurisdictions that have not adopted, or do not plan to adopt the IESBA Code. This particular change merely functions to acknowledge and emphasize the specific types of responsibilities (legal and ethical) of the auditor when reporting non-compliance of their clients to regulatory and enforcement authorities.</p>
28	ICAG	<p>a. Paragraph 28 of ISA 250, which replaces a generic term (“responsibility”) with a more specific phrase (“legal or ethical duty or right”) to give appropriate emphasis to the proposed change in the IESBA Code.</p>

Paragraph Number	Source	Comment
		<p>Answer: In our view, it makes sense to replace “responsibility” with “legal and ethical duty or right”. This makes the scope of the definition very specific, clear and concise.</p> <p>b. The term “predecessor auditor” is used instead of “existing accountant” to be consistent with extant terminology in the ISAs.</p> <p>Answer: Existing accountant is generally broad and could be interpreted to mean something different from predecessor auditor. It is much clearer to use predecessor auditor as it communicates precisely who is being referred to.</p>
28	ICAS	<p>We do question whether replacing the word ‘responsibilities’ with the term ‘legal or ethical duty or right’ is appropriate. The absence of a clear definition of a ‘legal or ethical duty or right’ risks creating some uncertainty or ambiguity in the application of the standard and as such we would prefer to retain the more commonly understood term ‘responsibilities’.</p>
28	IOSCO ⁸	<p><i>Right or Duty to Report</i></p> <p>We note that with respect to ISA 250, <i>Consideration of Laws and Regulations in an Audit of Financial Statements</i>, paragraph 28 of the Paper states that:</p> <p>“If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a responsibility <u>legal or ethical duty or right</u> to report the identified or suspected non-compliance to parties outside the entity.”</p> <p>As noted above, auditors who must comply with the IESBA’s Code may be subject to additional provisions beyond the requirements within the ISAs/ISQC 1. As such, we believe paragraph 28 would be an appropriate place to insert a footnote reference pointing those auditors who are subject to compliance with the IESBA’s Ethics Code to the additional requirements in it.</p>
28	PWC	<p>28. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a legal or ethical duty or right <u>responsibility</u> to report the identified or suspected non-compliance to parties outside the entity. (Ref: Para. A19–A20)</p>
28	SMPC	<p>Proposal to change the auditors existing responsibilities within the requirements of ISA 250</p> <p>We believe that the proposal to replace “responsibility” with “legal or ethical duty or right” in ISA 250.28 could introduce a significant degree of uncertainty, which may have unintended consequences impacting the trust in the relationship between the client and the auditor, ultimately to the detriment of audit quality. In the SMPC comment letter in response to the IESBA ED, we raised the concern</p>

⁸ Comments from IOSCO have not yet been discussed by the Task Force or incorporated into the issues paper.

Paragraph Number	Source	Comment
		<p>that the uncertainty over if, when, and how, an auditor might break client confidentiality could have the unintended result that management may cease to be as forthcoming to the auditor’s inquiries.</p> <p>We only foresee auditors breaking client confidentiality where this is already provided for within the applicable laws and regulations of their jurisdiction. In our opinion, the IAASB proposal does not provide a balanced view since it emphasizes a “duty or right” to report, when in many jurisdictions there may be legal prohibitions on reporting. These should be equally prominent.</p> <p>The IESBA proposals for the Code include potentially mitigating factors, which are not addressed in the IAASB’s ED. This includes external factors such as whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation or where there are actual or potential threats to physical safety (see IESBA ED para. 225.27). The paragraphs in the IAASB standards where there is potentially a lack of balance between “duty or right” on one hand and “prohibition or other risks” on the other are ISA 250.28, A15, A19; ISA 240.A65; ISQC 1 A56; and ISAE 3402.A53.</p> <p>In our response to the IESBA ED, we raised significant concerns with the proposals that go beyond the scope of the extant ISA 250 in respect to reporting non-compliance to an external authority. We therefore do not support the proposed changes to paragraphs ISA 250.28 and A19 to align ISA 250 to this aspect of the proposed Code, changes to ISQC 1.A56, ISA 240.43 and A65, ISRE 2400.A92⁹ and ISAE 3402.A53.</p>
28	WPK	<p>In accordance with ISA 250.28 “the auditor <u>shall determine</u> whether the auditor has a legal or ethical <u>duty or right</u> to report the identified or suspected non-compliance to parties outside the entity”. We welcome that the IAASB explains in ISA 250.A19 that „the auditor may consider obtaining legal advice to determine whether the auditor has a legal or ethical duty or right to report to parties outside the entity and, when applicable, the appropriate course of action in light of such duty or right“ and provides examples of three ways how jurisdictions can be configured. In order to alert the auditors directly that the requirement in ISA 250.28 might be precluded by legal provisions in some jurisdictions, we would suggest moving the explanation in 250.A19 directly into the requirement of ISA 250.28 to give this provision more prominence.</p>
29	IOSCO	<p>We note that the documentation requirements in the ISAs remain unchanged even though the IESBA’s NOCLAR proposal contains some documentation requirements that go beyond those contained in the ISAs with respect to significant NOCLAR matters. For example, while the IESBA’s proposal requires the auditor to document “how management and, where applicable, those charged with governance have responded to the matter” this is not reflected in the ISAs. Should ISA 250 reflect the additional documentation requirements proposed by the IESBA or, at a minimum, alert the auditor to the fact that additional documentation is required for those auditors subject to the IESBA’s Code?</p>

⁹ ISRE 2400 (Revised), *Engagements to Review Historical Financial Statements*

Paragraph Number	Source	Comment
29	IRBA	We believe that the documentation requirements in ISA 250 do not sufficiently reflect the auditor’s work effort as envisaged in the proposed amendments to the Code, when forming a conclusion as to whether there is a non-compliance or not. For example, in terms of Section 225.32 of the proposed NoCLAR amendments pertaining to significant matters, the auditor is required to document how management and, where applicable, those charged with governance have responded to the matter and the courses of action the auditor considered, the judgements made and the decisions that were taken, having regard of the reasonable and informed third-party perspective. There is no similar requirement in ISA 250.
29	NZAUASB	The NZAuASB notes that section 225.32 of the IESBA Code requires the auditor to document the judgements made in determining the appropriate actions where NOCLAR is identified. We consider that documentation of the judgements made by the auditor in determining what action to take would improve the quality of the audit documentation required by ISA 250. Paragraph 29 of ISA 250 only requires documentation of identified or suspected NOCLAR and the results of discussions with management, those charged with governance and other parties outside the entity.
29	PWC	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, <u>including</u> ¹⁰ : <ul style="list-style-type: none"> • <u>How management and, where applicable, those charged with governance have responded to the matter.</u> • <u>The courses of action the auditor considered, the judgments made and the decisions that were taken.</u>
A5a	CPAA	We suggest that the examples of laws and regulations could be extended to those that deal with the entities which may be audited such as: company or corporate law.
A5a	EYG	We do not believe that proposed paragraph A5a, which presents high-level categories of laws and regulations, is helpful because it does not (and we understand that it cannot) distinguish between laws and regulations that have a direct effect on the audit and those that do not. We believe that the existing examples included within paragraph 6 are more helpful because they are presented in context of the definitions.
A5a	GAO	In addition to the comments above, we are proposing that the IAASB add an example in the Categories of Laws and Regulations list, paragraph A5a, for “Expenditures of grants and other public funds.” This example would incorporate government considerations not already included in the list.

¹⁰ From IESBA Code ED 225.32

Paragraph Number	Source	Comment
A5a	HC	<p>We agree with the categories of laws and regulations provided in paragraph A5a of the “Application and Other Explanatory Material” section. The list of categories shows the generally recognized areas of laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements. In addition, we agree with the statement that appropriate test steps should be included in the audit plan to obtain reasonable assurance in regards to the compliance with these laws and regulations.</p> <p>However, we believe that the list should be more inclusive in nature and include industry specific laws and regulations (i.e., casino, lottery, utilities).</p>
A5a	ICAS	<p>It is not immediately clear why the category of ‘Securities, markets and trading’ is included. This may be viewed as an artificial means of seeking to bring ‘insider trading’ within the locus of ISA 250. We believe that this artificial construction is not appropriate and have informed IESBA accordingly. Additionally, in the context of the audit profession, this reference may just serve to create unrealistic expectations in this context.</p>
A5a	IDW	<p>When ISA 250 was clarified in the clarity project, the IAASB was exceedingly careful when it chose to address specific types of laws (see paragraph 2, paragraph 6 (a) and (b), and paragraphs A 8 and A9) that relate to the two categories of laws described in paragraph 6. In adding a list of laws and regulations in paragraph A5a, the IAASB is adding a list from the IESBA without consideration of how that list will be interpreted. The laws listed can be categorized, in whole or in part, into laws under 6 (a) or 6 (b) or both. Furthermore, the inclusion of this list will raise expectations about what auditors do with respect to those laws as part of the audit. This is particularly the case with laws relating to securities markets and trading (added by the IESBA in reaction to a comment received from IOSCO concerning insider trading) even though the IESBA noted that this is difficult to detect, it would very unlikely be detected as part of an audit of financial statements. This applies even more so to anti-trust legislation. We therefore strongly recommend that this list be deleted. Failing this, the introductory sentence should include the words “one or the other, or both” in between the words “included in” and “categories” after deleting “the”, to clarify that it is unclear how these laws might be categorized in particular circumstances. Furthermore, in this case a sentence should be added that in many cases the likelihood that an auditor would become aware of noncompliance or suspected noncompliance with these laws as part of an audit would generally be very low.</p>
A5a	IRBA	<p>The first sentence in paragraph A5a indicates that the bullets form part of a category but then doesn’t go on to reference to which category they relate. We recommend that this paragraph be amended as follows:</p> <ul style="list-style-type: none"> • Split the examples, include a list of typical examples for category (a) legislation (those that have a direct effect), and category (b) legislation (those that have an indirect effect). • Include the following additional examples in the list of laws and regulations that may often be relevant to the audit: <ul style="list-style-type: none"> ○ Breach of fiduciary duty;

Paragraph Number	Source	Comment
		<ul style="list-style-type: none"> ○ Data protection; ○ Labour laws; ○ Tender process legislation; and ○ Protection of personal information. <ul style="list-style-type: none"> ● Include a disclaimer after the bullet points to clarify that this is not an exhaustive list and that the auditor will have to consider what represents relevant laws and regulations in the context of the particular engagement, the entity's industry, regulatory framework, and so on.
A5a	JICPA	<p>We believe that paragraph A5a, which is drawn from Section 225.6 of IESBA Re-ED, should be deleted. As we state in (1) and (2) below, paragraph A5a will cause confusion in the implementation of ISA 250. The IESBA Code and ISAs have different purposes, as we state in (1) below. We are therefore believe the removal of paragraph A5a would not create actual or perceived inconsistencies between the IESBA Code and ISAs.</p> <p>Alternatively, if the IAASB believes that the examples based on Section 225.6 should be included in ISA 250, then we recommend that the examples be categorized into (a) and (b) as in paragraph 6, included in paragraphs A8 (for category (a)) and A9 (for category (b)), and removed paragraph A5a. We also think that paragraph A9 should include more guidance regarding category (b), in order to assist the auditor in determining which laws and regulations the auditor is required to consider in a specific circumstance of an audit engagement.</p> <p>(1) Categories of Laws and Regulations</p> <p>Paragraph 6 of ISA 250 establishes two different categories of laws and regulations (i.e. (a) and (b)), and distinguishes the auditor's responsibilities respectively. Paragraph 6 also already includes examples for each category (i.e., (a), "...such as tax and pension laws and regulations..." and (b), "...compliance with the terms of an operating license, compliance with regulatory solvency requirements, or compliance with environmental regulations..."). However, paragraph A5a introduces examples of laws and regulations again, and the examples are not divided into two categories.</p> <p>For the purpose of the ISAs that deal with the auditor's responsibility to obtain reasonable assurance and express an opinion on whether the financial statements are free from material misstatements, a clear distinction between the two categories is essential. We believe this is why ISA 250 provides clear guidance for distinction between the two categories in paragraphs A8 and A9 and specifies different requirements for each category. On the other hand, the IESBA Code deals with <i>ethical</i> requirements for <i>all</i> professional accountants, not only for auditors. The IESBA Re-ED therefore covers a broad range of laws and regulations without specifying different requirements for each category. The IESBA Re-ED also specifies requirements <i>only after</i> the professional accountants become aware of information concerning instances of known or suspected NOCLAR. Those differences are valid in the context of the different purposes of the IESBA Code and ISAs.</p>

Paragraph Number	Source	Comment
		<p>We believe that repeating the examples of the IESBA Re-ED in ISA 250 would fail to account for the above differences and would cause confusion in the following ways:</p> <ul style="list-style-type: none"> ➤ The examples in paragraph A5a are not distinguished by two categories. This could cause an expectation gap such that the auditor’s responsibility regarding category (a) was also expanded by the NOCLAR project, which is not what the IESBA intends (please see paragraph 29 of Explanatory Memorandum of the IESBA Re-ED). ➤ We understand that in most situations, the examples in paragraph A5a would be categorized as (b), except for the example on “tax and pension liabilities and payments,” which is already categorized as (a) in the extant paragraph 6 of ISA 250. Paragraph 14 of ISA 250 requires the auditor to perform specific procedures to help identify instances of non-compliance with laws and regulations for category (b), and the procedures include the inquiry of management and those charged with governance. We think it would be difficult, however, for management and those charged with governance to respond the auditor as to whether the entity is in compliance with all laws and regulations that deal with matters included in paragraph A5a. This is because paragraph A5a is described in general terms, and the extent of the laws and regulations covered by the inquiry is unclear. <p>(2) The definition of “fraud”</p> <p>The first bullet of paragraph A5a, which uses the term “fraud” in a different sense from the definition of “fraud” in ISA 240, is confusing. We assume that the IESBA Re-ED uses the term “fraud” in a general sense. Paragraph 11(a) of ISA 240, however, specifically defines “fraud” as “an intentional act by one or more individuals among management, those charged with governance, employees, <u>or third party</u>.” Therefore, the first bullet of paragraph A5a seems to indicate that the non-compliance with laws and regulations <u>committed by a third party</u> would also be covered by ISA 250 and the IESBA Re-ED, which is not what the IESBA intends.</p>
A5a	NZAUASB	<p>The IAASB has proposed to add paragraph A5a to include examples of laws and regulations to be considered by paragraph 6. The NZAuASB recommends:</p> <ul style="list-style-type: none"> i. The examples in paragraph A5a should be categorised between the two categories of laws and regulations described in paragraph 6 of ISA 250 because the work effort differs accordingly; ii. The examples in paragraph 6 should be deleted if these and further examples are to be included in paragraph A5a. <p>Our recommendation is to amend paragraph 6 and proposed A5a as follows:</p> <p>6. This ISA distinguishes the auditor’s responsibilities in relation to compliance with two different categories of laws and regulations as follows:</p>

Paragraph Number	Source	Comment
		<p>(a) the provisions of those laws and regulations generally recognised 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</p> <p>(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 in its business, or to avoid material penalties (for example, compliance with terms of the 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 of the financial statements.</p> <p>A5a. <u>Examples of laws and regulations that may have a direct effect on the determination of material amounts and disclosures in the financial statements be included in the categories as described in paragraph 6(a) include those that deal with:</u></p> <ul style="list-style-type: none"> • Tax and pension liabilities and payments • Securities markets and trading. • Banking and other financial products and services. • Fraud, corruption and bribery. • Money laundering, terrorist financing and proceeds of crime. <p><u>Examples of laws and regulations that may be fundamental to the operating aspects of the business, to an entity's ability to continue in its business, or to avoid material penalties and therefore may have a material effect on the financial statements be included in the categories as described in paragraph 6(b) include those that deal with:</u></p> <ul style="list-style-type: none"> • <u>Terms of an operating license</u> • <u>Solvency requirements</u> • Environmental protection • Public health and safety.
A5a	SMPC	<p>We are concerned that the IAASB is proposing to add the same examples of laws and regulations (ISA 250.A5a) as proposed by IESBA, without fully considering all the possible implications. In our opinion, there is a risk that public expectations will be increased beyond what auditors are able to do. We also note that the example of securities markets and trading was added by the IESBA in response to regulatory stakeholders, despite the IESBA ED Explanatory Memorandum acknowledging that insider trading is generally extremely difficult to prove in practice. In addition, paragraph 6 (b) already includes examples, which seem to duplicate the new list in paragraph A5a. We recommend just including the examples in the explanatory material.</p>

Paragraph Number	Source	Comment
		In ISA 250.A5a the words “one or the other, or both” could be inserted between the words “in” and “categories” (after deleting the word “the” prior to categories), since it is not clear that these laws and regulations cannot be categorized between the two categories on an exclusive basis.
A12	ANAN	The Auditor...requirements such as those contained in IESBA Code....
A12a	DTT	<p>While DTTL understands that the intent of paragraph A12a of ISA 250 is to provide further guidance in situations where the auditor has become aware of NOCLAR outside of the audit procedures performed, DTTL believes that the example provided does not provide the clarity needed in order for the auditor to understand a situation in which this may occur. It was also noted that paragraph 18 of ISA 250 does not contain a cross-reference to proposed paragraph A12a. See the following suggested edits to the application material:</p> <p style="padding-left: 40px;">A12a. The auditor may become aware of information about non-compliance with laws or regulations (for example, in responding to matters that the auditor is required to address under relevant ethical requirements) other than as a result of performing the audit procedures in paragraphs 12-16.</p>
A12a	EYG	<p>ISA 250.A12a and ISA 250.A17: We find the new guidance in these paragraphs to be somewhat overlapping and unclear. It may be clearer to have a single paragraph that applies equally to paragraphs 18-21 that explains that compliance with relevant ethical requirements may result in either or both:</p> <ul style="list-style-type: none"> • The identification of NOCLAR or suspected NOCLAR beyond that identified in the required procedures in paragraphs 12-16 of ISA 250. • Further information about instances of identified or suspected NOCLAR that is relevant to the auditor’s responsibilities under paragraphs 18-21.
A12a	HC	We agree with the additional paragraph of A12a, in regards to an auditor's ability to become aware of information about NOCLAR. This statement also refers procedures that were previously mentioned in paragraph 12-16, which in our opinion can cause some confusion due to the fact that a reader would have to glance back a several paragraphs in order to understand the comparison that the opening statement quotes. Creating a footnote in order to remind the reader of that specific reference would alleviate any potential confusion, and allow for better transition of topics as it informs readers of additional indicators that auditors may become aware while conducting audits.

Paragraph Number	Source	Comment
		<p>The auditor may become aware of information about non-compliance with laws or regulations (for example, in responding to matters that the auditor is required to address under relevant ethical requirements) other than as a result of performing the procedures in paragraph 12-16¹¹</p> <ul style="list-style-type: none"> • <i>Comments on proposed changes: We agree with further clarification on their references by adding footnote notes that references paragraph 12-16. Although these paragraphs are lengthy, we believe summarizing all three requirements gives sufficient clarity for readers to fully understand and allows better transition. Overall the bold section should be included.</i> <p>Furthermore, this opening statement was informative as it introduces several indicators of non-compliance with the laws and regulations that are common in current economy. Overall, additional affirmation in regards to these indicators alleviates any potential confusion and allows for a better comprehension of the causes and effects that businesses and shareholders experience through unethical transitions.</p>
A12a	ICAG	<p>Answer: The introduction of paragraph A12a is critical to the matters discussed under the headings “audit procedures when non-compliance is identified or suspected”.</p> <p>The previous statement was rather generic and the expansion provides more clarity. It is particularly important because we consider the responsibility of the auditor under this section a more passive one than an active one.</p>
A12a	WPK	<p>The supplement in ISA 250.A12a seems dispensable, as the existing ISA 250.A13 already has left open, by which audit procedures information about non-compliance with laws or regulations can be obtained. The wording in ISA 250.A12a "... other than as a result of performing the procedures in Paragraphs 12-16 ..." only raises more questions.</p>
A13	ANAN	<p>remove "an"</p> <p>REASON FOR COMMENT: redundant</p>
A13	EYG	<p>We suggest inserting an “are” to supplement “may be” in the lead-in sentence because the first bullet is indisputably an indication of NOCLAR: “The following matters <u>are or</u> may be an indication of...”</p>

¹¹ Procedures in paragraph 12-16: The auditor shall obtain a general understanding and sufficient appropriate audit evidence regarding the legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates, compliance with the provisions of those laws and regulation generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statement.

Paragraph Number	Source	Comment
A14	PWC	<p>A14a. <u>The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include¹²:</u></p> <ul style="list-style-type: none"> • <u>The nature and circumstances of the matter.</u> • <u>The individuals actually or potentially involved.</u> • <u>The likelihood of collusion.</u> • <u>The potential consequences of the matter.</u> • <u>Whether that level of management is able to investigate the matter and take appropriate action.</u> <p>A14b. <u>The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. The auditor may also consider discussing the matter with internal auditors, where applicable. In the context of a group, the appropriate level may be management at an entity that controls the entity¹³.</u></p>
A15	ANAN	<p>The Association does not envisage any foreseeable difficulty in applying this proposed amendment in Nigeria. REASON FOR COMMENT: In Nigeria, Anti money laundering Act contains provisions that are in tandem with additional provision in Para A15 of the ED.</p>
A15	DTT	<p>The proposed wording in paragraph A15 of ISA 250 does not appear to address instances where the “tipping-off” extends to legislation other than anti-money laundering. DTTL recommends that the following edits be made to the paragraph:</p> <p>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. However, in some jurisdictions, laws or regulations in some jurisdictions may prohibit alerting (“tipping-off”) the entity when, for example, the auditor is required to report the non-compliance to an appropriate authority, for example, pursuant to anti-money laundering legislation.</p> <p>DTTL has similar recommendations for paragraph A59a of ISA 240, paragraph 7 of ISA 260, and paragraph A8 of ISA 450.</p>
A15	HC	<p>We agree with the amendment to the audit procedures section which recognizes that discussing suspicion or evidence of non-compliance with top executives is not permitted by law in some jurisdictions. The given example of anti-money laundering laws reflects an extreme situation and in such a circumstance, the public interest must be protected above all. This change is sufficient</p>

¹² From IESBA Code ED 225.15

¹³ From IESBA Code ED 225.16

Paragraph Number	Source	Comment
		<p>since the auditors need to be aware of regulations in their jurisdiction that overrule the customary professional duty that the auditors owe to their client. Unless barred by laws or regulations, the legal and ethical duty to maintain client confidentiality should take priority. As we understand, no further revision is necessary since the amendment acknowledges exceptions to the general rule that exist in other jurisdictions.</p>
A15	ICAS	<p>We believe that the ‘tipping off’ reference should come first in this paragraph as the ‘tipping off’ consideration is overarching. The same comment applies to paragraph A17.</p> <p>We note that that the scope of paragraph A17 also stops at employees. We would suggest that, where sub-contractors are performing employee tasks, then they should also be captured within the scope of the ISA.</p>
A15	PWC	<p>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. [MOVED TO A15a BELOW] However, in some jurisdictions, laws or regulations 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.</p> <p><u>A15a. [MOVED AND AMENDED FROM A15 ABOVE] However, In some jurisdictions, laws or regulations may prohibit alerting (“tipping-off”) the entity when, for example, when the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation.</u></p> <p><u>A15b. Relevant factors to consider in judging the appropriateness of the response of management and those charged with governance include whether¹⁴:</u></p> <ul style="list-style-type: none"> • <u>The non-compliance or suspected non-compliance has been adequately investigated.</u> • <u>Action has been, or is being, taken to rectify, remediate or mitigate the consequences of any non-compliance.</u> • <u>Action has been, or is being, taken to deter the commission of any non-compliance where it has not yet occurred.</u> • <u>Appropriate steps have been, or are being, taken to reduce the risk of re-occurrence, for example, additional controls or training.</u> • <u>The non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.</u>

¹⁴ From IESBA Code ED 225.22

Paragraph Number	Source	Comment
A16	ANAN	insert " in- house" after "entity's" and before "legal counsel's opinion"
A16	DTT	<p>Paragraph A16 of ISA 250 appears to indicate that the possibility of fraud is a possible legal consequence. DTTL believes that is not the intent of the guidance paragraph as currently drafted. DTTL acknowledges that the proposed edits to extant ISA 250, are not necessarily the subject of the changes as contemplated by the Board when conforming and aligning the language between the Proposal and the IESBA Re-ED, however the proposed edits would further clarify the intent and meaning of paragraph A16.</p> <p>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 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 on a confidential basis with others within the firm, a network firm, a relevant professional body, or with the auditor's legal counsel as to whether a contravention of a law or regulation is involved, including the possibility of fraud, the possible legal consequences, including the possibility of fraud, and what further action, if any, the auditor would take.</p>
A16	HC	<p>We consider this amendment to audit procedures to be sufficient in resolving actual or perceived inconsistencies of approach. Most significantly, the proposed change adds that the auditor is consulting on a confidential basis. Also, we find this proposed amendment to be sufficient as it specifically states the source of legal counsel for auditors.</p> <p>We do suggest including a legal specialist on an audit committee, if one exists on the auditor's case, to broaden the goal of this amendment. The board of directors or those charged with governance should consider appointing a legal specialist in the committee. This addition, as illustrated below, will provide another option to the auditor for seeking legal guidance.</p> <p>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 on a confidential basis with others within the firm, a network firm, a relevant professional body, <u>a legal specialist on the audit committee</u>, or with the auditor's 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.</p>
A17	ANAN	insert "(for example IESBA Code)" after requirements

Paragraph Number	Source	Comment
A17	CPAA	This paragraph states that ‘the auditor may consider it appropriate to consult on a confidential basis with others within the firm, a network firm, a relevant professional body’. We are of the view that the auditor should consult with ‘the’ network firm and ‘the’ relevant professional body rather than ‘a’ network or ‘a’ professional body, which could be interpreted as any network or professional body.
A17	EYG	ISA 250.A12a and ISA 250.A17: We find the new guidance in these paragraphs to be somewhat overlapping and unclear. It may be clearer to have a single paragraph that applies equally to paragraphs 18-21 that explains that compliance with relevant ethical requirements may result in either or both: <ul style="list-style-type: none"> • The identification of NOCLAR or suspected NOCLAR beyond that identified in the required procedures in paragraphs 12-16 of ISA 250. • Further information about instances of identified or suspected NOCLAR that is relevant to the auditor’s responsibilities under paragraphs 18-21.
A17	HC	The amendment to Paragraph A17 creates a conceptual connection and organizational consistency between the requirements set forth in paragraph 21 and the amendment of paragraph 8a. Thus, further revisions to this paragraph are not necessary.
A18	ANAN	The Association agrees with the provisions. REASON FOR COMMENT: The provisions are in agreement with Nigeria's anti money laundering Acts
A18	EYG	This paragraph (which has remained unchanged from extant) deals with the auditor’s consideration of whether to withdraw from the engagement when management or those charged with governance do not take appropriate remedial action for NOCLAR. Section 225.30 of the IESBA Code states that withdrawing from the engagement would not be a substitute for taking other actions that may be needed to achieve the objectives of this section of the Code. It may be useful to indicate in paragraph A18 that legal advice may also be needed to determine whether further actions may be required (regardless of the intent to withdraw) as a result of legal duties or ethical responsibilities, including in regard to reporting NOCLAR to parties outside the entity.
A18	HC	We agree that withdrawal from engagement should be an option for the auditor, even when noncompliance is not material to financial statements. If the auditor is not fully convinced that management is taking appropriate measures to comply, then the auditor should have the option to withdraw from providing services/opinion or reach out to appropriate authorities to address these issues.
A18	IRBA	Footnote 15 – update reference to the appropriate paragraph in ISA 706 (Revised) ¹⁵ .

¹⁵ ISA 706 (Revised), Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report

Paragraph Number	Source	Comment
A18	MAASB	Paragraph 225.24 of the IESBA Re-ED includes withdrawing from the engagement when the professional accountant no longer has confidence in the integrity of management and where applicable, those charged with governance. We believe this should be aligned with the requirements in ISA 250.
A18a	EYG	We suggest replacing “intended” with “possible” in the first bullet, as “intended” implies that the auditor makes a judgment about whether management may be involved in NOCLAR in the future, where we believe the auditor’s judgment is related to whether management was involved or possibly involved in NOCLAR that has occurred: “The auditor suspects or has evidence of the involvement or intended <u>possible</u> involvement of management....”
A18a	MAASB	We propose paragraph A18a to be moved to A17a as it relates to the reliability of written representations which is discussed in paragraph A17.
A19	CPAA	A19, ISA 240 Paragraph 43 & ISRE 2400 Paragraph A92: ISA 250 states that ‘The duty of confidentiality may not apply or may be overridden’. Similarly, ISA 240 and ISRE 2400 state ‘in some/certain circumstances the duty of confidentiality may not apply, be overridden by laws or regulations’. We cannot envisage a circumstance in which the duty of confidentiality does not apply except where it is overridden. Therefore we consider that the phrase ‘may not apply’ will cause confusion and should be removed
A19	DTT	DTTL observed that the word “country[ies]” is also used in paragraphs A19 and A56 of ISA 240. These should be amended to use the word “jurisdiction[s]”, so as to ensure the consistent use of terminology throughout the ISA.
A19	HC	<p>We agree with IAASB’s new ruling which allows the auditor to obtain legal advice in a situation where he/she determines that there has been noncompliance. However, to fully assess the auditor ethical duties, a legal opinion would be helpful to all the parties involved. It would allow the auditor to be forming an opinion independently, without breaching any legal boundaries and staying clear of ethical dilemma.</p> <p>We agree with Paragraph A19, but we recommend that the phrase “the auditor shall consider the need to obtain legal advice” be expanded to “obtain legal and other professional advice.”</p> <p style="padding-left: 40px;">If the auditor has identified or suspects non-compliance with laws or regulations, the auditor may consider obtaining legal <u>and other professional advice</u> to determine whether the auditor has a legal or ethical duty or right to report to parties outside the entity and, when applicable, the appropriate course of action in light of such duty or right.</p> <p>It would also empower the auditor to consult with other regulatory bodies relevant to each jurisdiction, such as The Institute of Chartered Accountants in England and Wales (ICAEW), International Standards on Auditing (UK and Ireland), American Institute of Certified Public Accountants (AICPA) or other professionals, pension experts, actuaries, etc.</p>

Paragraph Number	Source	Comment
A19	ICAS	As mentioned earlier, we question whether replacing the word ‘responsibilities’ with the term ‘legal or ethical duty or right’ is appropriate. The absence of a clear definition of a ‘legal or ethical duty or right’ risks creating some uncertainty or ambiguity in the application of the standard and as such we would prefer to retain the more commonly understood term ‘responsibilities’.
A19	IRBA	<p>Currently the emphasis is that the auditor could consider obtaining legal advice. However, the focus must rather be on determining the nature and scope of the auditor’s legal or ethical duty or right and the appropriate course of action in light of such duty or right; and then indicate that the auditor may consider obtaining legal advice in this regard. We recommend that this paragraph be amended as follows:</p> <ul style="list-style-type: none"> • “If the auditor has identified or suspects non-compliance with laws or regulations, the auditor may consider obtaining legal advice <u>to should determine the nature and scope, if any, of whether the auditor’s has a legal or ethical duty or right to report to parties outside the entity and, when applicable, the appropriate course of action in light of such duty or right. For example ...</u>” • The second and third bullet points should be combined and reworded in the same manner as proposed in paragraph A92 of ISRE 2400¹⁶. • Add the following sentence after the bullet points: “When making this determination, the auditor may consult on a confidential basis with others within the firm, a network firm, a relevant professional body, or may consider obtaining legal advice.”
A19	NZAUASB	<p>The NZAuASB considers that paragraph A19 of ISA 250 could be clarified further. The NZAuASB recommends that the bullets should separately deal with:</p> <ol style="list-style-type: none"> 1) a duty to disclose; 2) a right to disclose; and 3) a duty or right to maintain confidentiality. <p>The NZAuASB considers that the duty of confidentiality always applies but is not considered to be breached where disclosure is made to appropriate parties in certain circumstances. The NZAuASB therefore considers that the first bullet point should be reworded to be more consistent with the IESBA code. We have the following suggestion for rewording:</p> <ul style="list-style-type: none"> • <u>The auditor may have a legal duty to disclose identified or suspected non-compliance with laws and regulations to an appropriate authority without breaching the duty of confidentiality. The duty of confidentiality may not apply or may be overridden by laws or regulations. For example, 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.</u>

¹⁶ ISRE 2400 (Revised), Engagements to Review Historical Financial Statements

Paragraph Number	Source	Comment
		<p>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.</p> <p>As drafted, the last two bullet point seem to contradict each other, as one allows for reporting and the second implies that the duty of confidentiality prohibits reporting NOCLAR outside the entity. We recommend the last bullet point needs further clarification as to when it would apply in the context of the IESBA’s proposals (or if it is intended to apply where other legal or ethical requirements apply) and also recommend the following changes to these bullet points:</p> <ul style="list-style-type: none"> • The auditor may have the <u>a legal or ethical</u> right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality. • <u>In other circumstances</u>, the auditor’s legal or ethical duties to maintain confidentiality may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.
A19	PWC	<p>A19. If the auditor has identified or suspects non-compliance with laws or regulations, the auditor may consider obtaining legal advice to determine whether the auditor has a legal or ethical duty or right <u>responsibility</u> to report to parties outside the entity and, when applicable, the appropriate course of action in light of such <u>responsibility</u> duty or right. For example:</p> <ul style="list-style-type: none"> • <u>[MOVED FROM BELOW] The auditor’s legal or ethical duties to maintain confidentiality may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.</u> • <u>[MOVED FROM BELOW AND AMENDED] The auditor may have the right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality. Under some ethical requirements, when the auditor determines that reporting identified or suspected non-compliance with laws or regulations to an appropriate authority is an appropriate course of action, this would not be considered a breach of the auditor’s duty of confidentiality.</u> • The duty of confidentiality may not apply or may be overridden by laws or regulations. 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 have the right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality. • The auditor’s legal or ethical duties to maintain confidentiality may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.

Paragraph Number	Source	Comment
		<u>A19a. In some jurisdictions, laws or regulations may prohibit alerting (“tipping off”) the entity, for example, when the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation.</u>
A19	SMPC	<p>As noted above, we are particularly concerned with the proposal in ISA 250.28 to amend “responsibility” to “legal or ethical duty or right” as this is a major change to the extant ISA, which only deals with legal responsibilities. The proposed change implies that an ethical duty must be followed and a right may, or may not, be exercised. The proposed accompanying guidance in ISA 250.A19-A20 does not expand on this aspect (it repeats “the auditor may have the right to disclose...”). The change may lead to considerable uncertainty, especially when read in conjunction with the relevant provisions of the proposed IESBA Code. The result also has the potential to cause unintended consequences and impact audit quality. Our letter to the IESBA discussed this issue in more detail and we refer to that letter in this context also.</p> <p>In addition, the proposal that obtaining legal advice in the context of disclosure to an external party (ISA 250.A19) could be helpful in making the required determination, does not seem logical. Legal advice can identify the relevant provisions in law, but not the ethical issues extending beyond the law. It will also likely add to the costs of an audit, as auditors seek to ensure they have considered all the relevant legal aspects.</p>

Conforming Amendments

Paragraph Number	Source	Comment
ISQC 1, paragraph A56	ANAN	insert "with the knowledge of the engagement partner" after personnel REASON FOR COMMENT: This is necessary to guide against disclosure of information by lower audit personnel such as audit clerk without the engagement partner's knowledge and thus cause avoidable embarrassment to the firm.
ISQC 1, paragraph A56	CPAA	ISQC 1 Paragraph A56, ISA 240 Paragraph A65 & ISRE 2400 Paragraph A92: These paragraphs state that the firm's personnel/the auditor/the practitioner may have the legal or ethical right to disclose identified or suspected NOCLAR to an appropriate authority 'without breaching the duty of confidentiality'. We would argue that it would remain a breach of confidentiality, however it would be one which would be considered appropriate under the IESBA Code. Consequently, we suggest either deleting 'without breaching the duty of confidentiality' from each paragraph or revising the wording to state '...disclose identified or suspected NOCLAR to an appropriate authority, which would be considered an appropriate breach of the duty of confidentiality'. In addition, ISA 240 paragraph A65 refers to 'countries', however this is both inconsistent with other standards, which all use the term jurisdiction, and does not reflect the circumstances where different legal requirements apply in difference jurisdictions within one country. Note that ISA 240 paragraphs A19 and A56 also use the term 'country'. We suggest changing the word 'country/ies' to 'jurisdiction/s' throughout the standard.
ISQC 1, paragraph A56	ICAS	Please see earlier comments regarding the replacement of 'responsibilities' with the term 'legal or professional ethical duty or right'.
ISQC 1, paragraph A56	IRBA	We recommend that the second sentence of paragraph A56 be amended to ensure consistency with the change made in the proposed ISA 250: <ul style="list-style-type: none"> "In certain circumstances, the firm's personnel may have the legal or ethical <u>duty or</u> right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality".
ISA 210, paragraph 10	IRBA	To ensure that the client understands the auditor's responsibilities relating to an entity's non-compliance with laws and regulations, the auditor should consider including suitable wording in this regard in his/her engagement letter with the client. We recommend that the following bullet point be included in ISA 210 paragraph A24: <ul style="list-style-type: none"> "A reference to, and description of, the auditor's legal or ethical duty or right to report identified or suspected non-compliance with laws and regulations to parties outside the entity".

Paragraph Number	Source	Comment
ISA 220, paragraph A8a	CPAA	This paragraph may benefit from greater clarity with respect to the nature of the ‘information regarding any facts or circumstances’ which is being referred to. To address this, an additional phrase could be added ‘including any identified or suspected non-compliance with laws and regulations’.
ISA 220, paragraph A8a	EYG	We suggest adding a footnote to “relevant ethical requirements” as follows: “ <u>See, for example, Section 210.13 of the IESBA Code</u> ”.
ISA 220, paragraph A8a	IDW	Clarification ought to be provided that, contractually speaking, the predecessor auditor can only provide such information with a client waiver, unless law or regulation provides for the provision of such information without such a waiver.
ISA 220, paragraph A8a	WPK	ISA 220.A8a was supplemented that “law, regulation, or relevant ethical requirements may require the auditor to request, <u>prior to accepting the engagement</u> , the predecessor auditor to provide known information 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”. We would like to point out that not ethical requirements but laws could require the auditor to do so. But there are jurisdictions where this would be an override of confidentiality. Against this background we would recommend either to renounce the amendment or to substantiate the explanation (similar to ISA 250.A19).
ISA 240, paragraph 3	EYG	We suggest adding the following sentence to this paragraph to align with ISA 250.5: “ <u>Whether fraud has actually occurred is ultimately a matter for legal determination by an appropriate legal or adjudicative body.</u> ”
ISA 240, paragraph 8a	ANAN	insert "(for example IESBA Code)" after requirements
ISA 240, paragraph 8a	IRBA	Paragraph 8a Please refer to comment under paragraph 2 dealing with ISA 250 paragraph 8a of this comment letter.
ISA 240, paragraph 8a	JICPA	Paragraph 8a has no relevant connection with the other paragraphs in the Introduction section of ISA 240, which provides guidance for a proper understanding of the auditor’s responsibilities with regard to “fraud” as defined in ISA 240. If the IAASB believes that paragraph 8a should be included, additional guidance to clarify the relationship between “fraud” in ISA 240 and “non-compliance” in ISA 250 should be included, as well (for, example, “ <i>Non-compliance can result from fraudulent activity.</i> ”). Alternatively, if the IAASB believe there is no ambiguity between “fraud” and “non-compliance” in the extant ISA 240 and additional

Paragraph Number	Source	Comment
		<p>guidance is deemed to be necessary, it means that paragraph A8a itself is unnecessary and therefore should be deleted.</p> <p>In addition, the second sentence of paragraph 8a (“Complying with relevant ethical requirements regarding an entity’s non-compliance with laws and regulations may provide further information that is relevant to the auditor’s work in accordance with this and other ISAs”) applies to all ISAs, not only to ISA 240. We therefore believe this sentence is not necessary.</p>
ISA 240, paragraph 40	EYG	We suggest inserting “unless prohibited by law or regulation” as follows: “...the auditor shall communicate these matters, <u>unless prohibited by law or regulation</u> , on a timely basis....”
ISA 240, paragraph 40	ICAS	We believe that the ‘tipping off’ material should be given greater prominence and therefore should be placed in the requirements section as opposed to the explanatory material.
ISA 240, paragraph 40–42	IOSCO	<p><i>Applicability of Reporting to Components</i></p> <p>We note that within paragraphs 40-42 and the associated application material in ISA 240, <i>The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements</i>, communication to management and TCWG regarding an identified or suspected fraud only applies to the “entity.” Unlike the ISAs’ definition of a “group” that includes a component, it is not clear whether the reference to “entity” as used in paragraphs 40-42 of ISA 240 encompasses NOCLAR occurring at a component. We believe the Board should make it clear that paragraphs 40-42 of ISA 240 also extends to components of the entity.</p>
ISA 240, paragraph 43	ICAS	Please see earlier comments regarding the replacement of ‘responsibilities’ with the term ‘legal or professional ethical duty or right’.
ISA 240, paragraph 43	NZAUASB	<p>The NZAuASB recommends that the requirement in para 43 of ISA 240 should be consistent with the requirement in para 28 of ISA 250 as follows:</p> <p>43. If the auditor has identified or suspects a fraud, the auditor shall determine whether there is a <u>legal or ethical responsibility duty or right</u> to report the occurrence or suspicion to a party outside the entity. Although the relevant ethical requirements regarding maintaining confidentiality may preclude such reporting, in some circumstances the duty of confidentiality may not apply, be overridden by laws or regulations, or include a duty or right to report to an appropriate authority.</p>

Paragraph Number	Source	Comment
ISA 240, paragraph 43	PWC	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 relevant ethical requirements regarding maintaining confidentiality may preclude such reporting, in some circumstances the duty of confidentiality may not apply , be overridden by laws or regulations, or <u>law, regulation, or relevant ethical requirements</u> may include a duty or right <u>responsibility</u> to report to an appropriate. (Ref: Para. A65–A67)
ISA 240, paragraph A59a	ANAN	The Association agrees with the provisions. REASON FOR COMMENT: The provisions are in tandem with Nigeria's anti money laundering Act.
ISA 240, paragraph A59a	ICAS	As highlighted in our earlier comment on paragraph 40, we believe that this content should also be given greater prominence and should be placed in the requirements section.
ISA 240, paragraph A59a	PWC	A59a. In some jurisdictions, laws or regulations may prohibit alerting (“tipping off”) the entity when , for example, <u>when</u> the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation.
ISA 240, paragraph A65	ANAN	The Association agrees with the provisions REASON FOR COMMENT: The provisions are in tandem with Nigeria's Anti Money laundering Act. Besides, it is mandatory for the Auditor to report such matter.
ISA 240, paragraph A65	CPAA	ISQC 1 Paragraph A56, ISA 240 Paragraph A65 & ISRE 2400 Paragraph A92: These paragraphs state that the firm’s personnel/the auditor/the practitioner may have the legal or ethical right to disclose identified or suspected NOCLAR to an appropriate authority ‘without breaching the duty of confidentiality’. We would argue that it would remain a breach of confidentiality, however it would be one which would be considered appropriate under the IESBA Code. Consequently, we suggest either deleting ‘without breaching the duty of confidentiality’ from each paragraph or revising the wording to state ‘...disclose identified or suspected NOCLAR to an appropriate authority, which would be considered an appropriate breach of the duty of confidentiality’. In addition, ISA 240 paragraph A65 refers to ‘countries’, however this is both inconsistent with other standards, which all use the term jurisdiction, and does not reflect the circumstances where different legal requirements apply in difference jurisdictions within one country. Note that ISA 240 paragraphs A19 and A56 also use the term ‘country’. We suggest changing the word ‘country/ies’ to ‘jurisdiction/s’ throughout the standard.

Paragraph Number	Source	Comment
ISA 240, paragraph A65	DTT	<p>It was noted that the terminology in paragraph A65 of ISA 240 was not consistent with that in paragraph A19 (second bullet) of ISA 250 of the Proposal. DTTL also has additional edits to paragraph A65 of ISA 240 to further clarify the proposed language. The amended wording is as follows:</p> <p>A65. The auditor’s professional duty to maintain the confidentiality of client information, <u>or to abide by laws and regulations of certain jurisdictions</u>, may preclude reporting fraud or other identified or suspected non-compliance with laws or regulations to <u>an appropriate authority</u> party outside the entity. However, the auditor’s legal responsibilities vary by country <u>jurisdiction</u> and, in certain circumstances, the duty of confidentiality may be overridden by laws or regulations. Law, regulation, or relevant ethical requirements may include a duty or right to report <u>the matter</u> to an appropriate authority. In some countries <u>jurisdictions</u>, the auditor of a financial institution has a statutory duty to report the occurrence of fraud to supervisory authorities. Also, in some countries <u>jurisdictions</u> the auditor has a duty to report misstatements to <u>appropriate</u> authorities in those cases where management and, <u>where applicable</u>, those charges with governance fail to take corrective action. In certain circumstances, the auditor may have the right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality.</p> <p>DTTL observed that the word “country[ies]” is also used in paragraphs A19 and A56 of ISA 240. These should be amended to use the word “jurisdiction[s]”, so as to ensure the consistent use of terminology throughout the ISA.</p>
ISA 240, paragraph A65	ICAS	Please see earlier comments regarding the replacement of ‘responsibilities’ with the term ‘legal or professional ethical duty or right’.
ISA 240, paragraph A65	IRBA	<p>Paragraph A65 (third sentence)</p> <p>We recommend that “financial institution” be changed to “entity”. A similar change should also be made to the first bullet point of paragraph A19 in proposed ISA 250.</p>
ISA 240, paragraph A65	NZAUASB	The NZAuASB prefers the three bullet point approach described above for ISA 250 paragraph A19 that is dealing with the legal right or duty to report, the ethical right or duty to report or the legal or ethical duty to maintain confidentiality to the proposed paragraph A65 in ISA 240. We consider this is more consistent with the IESBA code. As currently worded, para A65 may be read to imply that the professional or ethical duty may preclude reporting but this is overridden where the auditor has a legal responsibility. This overlooks that that there may be an ethical duty to report. We recommend that paragraph A65 should be re-ordered as follows (no mark-up shown where text has been moved):

Paragraph Number	Source	Comment
		<p>“Law or, regulation, or relevant ethical requirements may include a duty or right to report to an appropriate authority <u>without breaching the duty of confidentiality</u>. In some <u>jurisdictions countries</u>, the auditor of a financial institution has a statutory duty to report the occurrence of fraud to supervisory authorities. Also, in some <u>jurisdictions countries</u> 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.</p> <p>The auditor may have the <u>legal or ethical</u> right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality¹⁷. <u>In other circumstances, the auditor’s legal or ethical professional duties</u> to maintain the confidentiality of client information may preclude reporting fraud or other identified or suspected non-compliance with laws or regulations to a party outside the entity. However, the auditor’s legal responsibilities vary by country and, in certain circumstances, the duty of confidentiality may be overridden by laws or regulations. In certain circumstances,”</p>
ISA 240, paragraph A65	PWC	<p>A65. The auditor’s professional duty to <u>Relevant ethical requirements regarding</u> maintaining the confidentiality of client information may preclude reporting fraud or other identified or suspected non-compliance with laws or regulations to a party outside the entity. However, the auditor’s legal responsibilities vary by country and, in certain circumstances, the duty of confidentiality may be overridden by laws or regulations. Law, regulation, or relevant ethical requirements may include a duty or right <u>responsibility</u> to report to an appropriate authority. 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 certain circumstances, the auditor may have the right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality. Under some ethical requirements, when the auditor determines that reporting identified or suspected fraud or non-compliance with laws or regulations to an appropriate authority is an appropriate course of action, this would not be considered a breach of the auditor’s duty of confidentiality.</p>
ISA 240, paragraph A65	WPK	<p>The supplement in ISA 240.A65 („or other identified or suspected non-compliance with laws or regulations“) is in our view not necessary because ISA 240 is about Fraud. NOCLAR itself is addressed in ISA 250.</p>
ISA 260, paragraph 7	ANAN	<p>The Association agrees with the provisions</p>

¹⁷ See, for example, Section 225.29 of the International Ethics Standards Board for Accountants’ Code of Ethics for Professional Accountants (IESBA Code)

Paragraph Number	Source	Comment
		REASON FOR COMMENT: The The provisions are in tandem with Nigeria's Anti Money laundering Act. Besides, it is mandatory for the Auditor to report such matter.
ISA 260, paragraph 7	ICAS	We welcome this approach - to include the 'tipping off' reference upfront at the start of the standard. We would suggest a similar approach is adopted within the other ISAs as per our earlier comments.
ISA 260, paragraph 7	PWC	7. <u>Laws</u> or <u>regulations</u> 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, <u>when</u> 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 260, paragraph A8	ANAN	The Association agrees with the provisions. REASON FOR COMMENT: The provisions are in tandem with Nigeria's Anti Money laundering Act.
ISA 260, paragraph A8	ICAS	As highlighted in our earlier comments, we believe that this content should also be given greater prominence and should be placed in the requirements section.
ISA 450, paragraph A8	PWC	A8. <u>Laws</u> or <u>regulations</u> 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, <u>when</u> 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.
ISA 500	IRBA	The Code raises several questions regarding documentation on how auditors have executed their duties under the Code as well as how management has responded to actual or suspected non-compliance. We therefore suggest that it would be appropriate to consider amendments to ISA 500 and ISA 580. We recommend the following: ISA 500 <ul style="list-style-type: none"> • Paragraph A26 be amended as follows-

Paragraph Number	Source	Comment
		<p>“As noted in paragraph A1, while audit evidence is primarily obtained from audit procedures performed during the course of the audit, it may also include information obtained from other sources such as, for example, previous audits (in certain circumstances), and a firm’s quality control procedures for client acceptance and continuance <u>and complying with certain additional responsibilities under relevant ethical requirements (e.g. regarding an entity’s non-compliance with laws and regulations)</u>. The quality of all audit evidence is affected by the relevance and reliability of the information upon which it is based.”</p> <ul style="list-style-type: none"> • Include a new paragraph A33a as follows: <p>“ISA 250 provides further guidance with respect to the auditor complying with any additional responsibilities under relevant ethical requirements regarding an entity’s non-compliance with laws and regulations that may provide further information that is relevant to the auditor’s work in accordance with ISAs, including the consideration of the reliability of information to be used as audit evidence.” [Include a footnote that refers to 250. 8a]</p> <p>ISA 580</p> <ul style="list-style-type: none"> • Include a new paragraph A24a as follows: <p>“The auditor may have additional responsibilities under relevant ethical requirements regarding an entity’s non-compliance with laws and regulations. Complying with those additional responsibilities may provide further information that is relevant to the auditor’s work and considerations under the ISAs, including possible concerns relating to the competence, integrity, ethical values or diligence of management, or about its commitment to or enforcement of these.”</p>
ISA 600	IRBA	We believe that the amendment proposed in ISA 220 should also be included in ISA 600 in order to ensure that the standard is aligned with the Code.
ISRE 2400	DTT	ISRE 2400 (Revised) and ISAE 3402 do not include guidance related to ensuring that the auditor or service auditor, as the case may be, remains aware of the issues surrounding alerting (“tipping-off”) the entity. DTTL believes that application material should be added to the aforementioned ISAs to address this omission.
ISRE 2400, paragraph 48(d)	NZAUASB	<p>Paragraph 48(d) of ISRE 2400 refers to the need for the practitioner to make enquiries about...</p> <p>“the existence of any actual, suspected or alleged:</p> <p>(i) fraud or illegal acts affecting the entity; and</p>

Paragraph Number	Source	Comment
		<p>(ii) non-compliance with provisions of laws and regulations that are generally recognised 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.</p> <p>The NZAuASB considers that making enquiries regarding the second category of laws and regulations as outlined in ISA 250 paragraph 6 may be relevant in “affecting the entity”. The NZAuASB recommends that the second category of laws and regulations should be added to paragraph 48(d) and notes that this second category is covered by the scope of the IESBA’s ethical responsibilities. Aligning the scope in paragraph 48(d), as follows, may help to avoid any confusion:</p> <p>“the existence of any actual, suspected or alleged:</p> <p>(i) fraud or illegal acts affecting the entity; and</p> <p>(ii) non-compliance with provisions of laws and regulations that are generally recognised 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; and</p> <p><u>(iii) 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.”</u></p>
ISRE 2400, paragraph 52	NZAUASB	<p>The NZAuASB recommends that paragraph 52 of ISRE 2400 (Revised) should be amended consistently with the wording in ISA 250 as follows:</p> <p>“52(d) determine whether there is a <u>legal or ethical duty or right</u> responsibility to report the occurrence or suspicion of fraud or <u>non-compliance</u> illegal acts to a party outside the entity.</p>
ISRE 2400 (Revised) paragraph A92	ANAN	This does not apply to our jurisdiction.
ISRE 2400, paragraph A92	CPAA	ISQC 1 Paragraph A56, ISA 240 Paragraph A65 & ISRE 2400 Paragraph A92: These paragraphs state that the firm’s personnel/the auditor/the practitioner may have the legal or ethical right to disclose identified or suspected NOCLAR to an appropriate authority ‘without breaching the duty of confidentiality’. We would argue that it would remain a breach of confidentiality, however it would be one which would be considered appropriate under the IESBA Code. Consequently, we suggest either deleting ‘without breaching

Paragraph Number	Source	Comment
		<p>the duty of confidentiality’ from each paragraph or revising the wording to state ‘...disclose identified or suspected NOCLAR to an appropriate authority, which would be considered an appropriate breach of the duty of confidentiality’.</p> <p>In addition, ISA 240 paragraph A65 refers to ‘countries’, however this is both inconsistent with other standards, which all use the term jurisdiction, and does not reflect the circumstances where different legal requirements apply in difference jurisdictions within one country. Note that ISA 240 paragraphs A19 and A56 also use the term ‘country’. We suggest changing the word ‘country/ies’ to ‘jurisdiction/s’ throughout the standard.</p> <p>A19, ISA 240 Paragraph 43 & ISRE 2400 Paragraph A92: ISA 250 states that ‘The duty of confidentiality may not apply or may be overridden’. Similarly, ISA 240 and ISRE 2400 state ‘in some/certain circumstances the duty of confidentiality may not apply, be overridden by laws or regulations’. We cannot envisage a circumstance in which the duty of confidentiality does not apply except where it is overridden. Therefore we consider that the phrase ‘may not apply’ will cause confusion and should be removed</p>
ISRE 2400, paragraph A92	ICAS	As highlighted in our earlier comments, we believe that this content should also be given greater prominence and should be placed in the requirements section.
ISRE 2400, paragraph A92	IRBA	<p>Please refer to comment under paragraph 8 dealing with inconsequential matters.</p> <p>Furthermore, we recommend that the second sentence of paragraph A92 be amended to ensure consistency with the changes made in proposed ISA 250:</p> <ul style="list-style-type: none"> • “The practitioner’s ethical, legal, and regulatory responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may not apply, be overridden by laws or regulations, or law, regulation, or R relevant ethical requirements may include a duty or right to report to an appropriate authority. In certain circumstances, the practitioner may have the legal or ethical duty or right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality.”
ISRE 2400, paragraph A92	NZAUASB	<p>As highlighted above, the NZAuASB considers that the duty of confidentiality always applies but is not considered to be breached where disclosure is made to appropriate parties in certain circumstances. The NZAuASB also recommends that it would be clearer to separate the duty to disclose, the right to disclose or the duty or right to maintain confidentiality and therefore recommends that paragraph A92 should be reworded as follows:</p> <p>A92. Under this ISRE, if the practitioner has identified or suspects fraud or illegal acts non-compliance, the practitioner is required to determine whether there is a responsibility legal or ethical <u>legal or ethical</u> duty or right to report the occurrence or suspicion to a party outside the entity. The practitioner’s ethical, legal, and regulatory responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may not apply, be overridden by laws or regulations or law, regulation, or</p>

Paragraph Number	Source	Comment
		<p>relevant ethical requirements may include a duty or right to report to an appropriate authority. Law or regulation may include a duty to report to an appropriate authority without breaching the duty of confidentiality. In certain circumstances, the practitioner may have the legal or ethical right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality.¹⁹ However, in other cases, the practitioner’s legal or ethical duties to maintain confidentiality may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.</p>
ISRE 2400, paragraph A92	PWC	<p>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 practitioner’s ethical, legal, and regulatory responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may not apply, be overridden by laws or regulations or law, regulation, or relevant ethical requirements may include a duty or right <u>responsibility</u> to report to an appropriate authority. In certain circumstances, the practitioner may have the legal or ethical duty or right to disclose identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching the duty of confidentiality. <u>Under some ethical requirements, when the auditor determines that reporting identified or suspected fraud or non-compliance with laws or regulations to an appropriate authority is an appropriate course of action, this would not be considered a breach of the auditor’s duty of confidentiality.</u> However, in other cases, the practitioner’s legal or ethical duties to maintain confidentiality may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity.</p>
ISAE 3000	IRBA	<p>Currently, ISAE 3000 (Revised) includes only one reference to identified or suspected NoCLAR (in paragraph 45(a)). We believe that in order to align the standard with the Code, additional requirements and application and other explanatory material should be considered to further contextualise the consideration of non-compliance with laws and regulations and also to ensure consistency in the work effort among practitioners, including those who are not bound by the IESBA Code.</p>
ISAE 3000	NZAUASB	<p>The NZAuASB is concerned that the proposed scope of the IESBA exposure draft differs from the scope of the requirements of the ISAEs. This concern has also been raised with the IESBA. The proposed scope of Section 225 of the IESBA Code applies to:</p> <ul style="list-style-type: none"> (a) laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the client’s financial statements; and (b) other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client’s financial statements, but compliance with which may be fundamental to the operating aspects of the client’s business, to its ability to continue its business, or to avoid material penalties. <p>The focus of the requirements of the ISAEs is on subject matter information other than financial statements (for example paragraph A87 of ISAE 3410). The NZAuASB considers that this creates an inconsistency between the ethical requirements and the</p>

Paragraph Number	Source	Comment
		<p>international standards. The NZAuASB has recommended to the IESBA that the scope of the laws and regulations in section 225 should be aligned to the subject matter of the engagement. If however, this change is not made, then the NZAuASB considers that there remains a perceived inconsistency between the international assurance standards and the proposed IESBA code.</p> <p><i>Extract from ISAE 3000 (Revised)</i></p> <p>45. The practitioner shall make inquiries of the appropriate party(ies) regarding:</p> <p>(a) Whether they have knowledge of any actual, suspected or alleged intentional misstatement or non-compliance with laws and regulations affecting the subject matter information; (Ref: Para. A101)</p> <p><i>Extract from ISAE 3410</i></p> <p>34. When performing the procedures required by paragraphs 33L or 33R, the practitioner shall consider at least the following factors: (Ref: Para. A84–A89)</p> <p>The likelihood of intentional misstatement in the GHG statement; (Ref: Para. A84–A86)</p> <p>The likelihood of non-compliance with the provisions of those laws and regulations generally recognized to have a direct effect on the content of the GHG statement; (Ref: Para. A87)</p> <p>A87 This ISAE distinguishes the practitioner’s responsibilities in relation to compliance with two different categories of law and regulation as follows:</p> <p>(a) The provisions of law and regulation generally recognized to have a direct effect on the determination of material amounts and disclosures in the GHG statement in that they determine the reported quantities and disclosures in an entity’s GHG statement. Paragraph 34(b) requires the practitioner to consider the likelihood of material misstatement due to non-compliance with the provisions of such law or regulation when performing the procedures required by paragraphs 33L or 33R; and</p> <p>(a) Other law or regulation that do not have a direct effect on the determination of the quantities and disclosures in the GHG statement, 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, or compliance with environmental regulations). Planning and performing an engagement with professional scepticism, as required by ISAE 3000 (Revised), is important in the context of remaining alert to the possibility that procedures applied for the purpose of forming a conclusion on the GHG statement may bring instances of identified or suspected non-compliance with such law or regulation to the practitioner’s attention.</p>

Paragraph Number	Source	Comment
ISAE 3402, paragraph A53	DTT	<p>The following edit should be made to paragraph A53 of ISAE 3402 to ensure the consistent use of terminology:</p> <p>A53. Appropriate actions to respond to the circumstances identified in paragraph 56 may include:</p> <ul style="list-style-type: none"> • ... • ... • Communicating with third parties (for example, a regulator) when the service auditor has a duty or right to do so. • ... • ...
ISAE 3402, paragraph A53	NZAUASB	<p>The NZAuASB understands that the proposed IESBA framework, as it applies to assurance practitioners that are not auditors, identifies further actions (in proposed paragraph 255.43) that may provide the right to disclose the matter to the external auditor or to an appropriate authority. The NZAuASB considers that the right to disclose the matter to the external auditor should also be covered in the guidance in ISAE 3402 (where the external auditor of the financial statements differs from the service auditor).</p> <p>The NZAuASB therefore recommends the following change</p> <p>A53. Appropriate actions to respond to the circumstances identified in paragraph 56 may include:</p> <ul style="list-style-type: none"> • 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 <u>or external auditor, where the external auditor or the financial statements differs from the service auditor</u>) when required <u>the auditor has a legal or ethical duty or right to do so</u>. • Modifying the service auditor’s opinion, or adding an Other Matter paragraph. • Withdrawing from the engagement. <p>The NZAuASB also recommends that the requirement in paragraph 56 should be amended for consistency as follows:</p> <p>“If the service auditor becomes aware of non-compliance with laws and regulations, fraud, or uncorrected errors attributable to the service organisation 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 <u>determine whether there is a legal or ethical duty or right to report the occurrence to a party outside the service organisation and shall take appropriate action</u>.</p>

Paragraph Number	Source	Comment
ISAE 3402, paragraph 56	ICAS	<p>As highlighted in our earlier comments, we believe that this content should also be given greater prominence and should be placed in the requirements section.</p> <p>Once again, please see earlier comments regarding the replacement of ‘responsibilities’ with the term ‘legal or professional ethical duty or right’.</p>
ISAE 3410, paragraph 78	NZAUASB	<p>The NZAuASB similarly recommends that consistent amendments should be made to paragraph 78 of ISAE 3410, which currently refers to the practitioner’s “responsibility to report them to another party”. As above, the NZAuASB recommends that this requirement should refer to the <u>legal or ethical duty of right</u> to report them to another party.</p>
ISQC1 12 (o)	IDW	<p>We would like to point out that the wording in 140.7 (c) (iv) is not aligned with the wording in this paragraph of ISQC 1, which in our opinion is the correct wording.</p>
ISQC1 A56	PWC	<p>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 ethical duty or right <u>responsibility</u> to do so. In certain circumstances, the firm’s personnel may have the legal or ethical right to disclose <u>reporting identified or suspected non-compliance with laws or regulations to an appropriate authority without breaching would not be considered a breach of the auditor’s duty of confidentiality.</u>¹⁷ 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.</p>