

## **VRC comments on IFAC exposure draft 'NOCLAR'**

**"Responding to Non-Compliance with Laws and Regulations"** (May 2015; [www.ifac.org](http://www.ifac.org)).

### **Objective**

The objective of the exposure draft is to develop a framework to guide auditors, other professional accountants (PA's) in public practice, and PAs in business (PAIB's) in deciding how best to act in the public interest when they come across an act or suspected act of non-compliance with laws and regulations (NOCLAR)

### **Structure**

In the exposure draft, distinction is made between PA'S (Professional Accountants), Auditors, Senior PAIB's (Professional accountants in Business), other PA's in public practice.

### **Requirements**

Although the phrasing is different for each group of professionals, in general the advice in the exposure draft comes down to:

- To comply with the fundamental principles of integrity and professional behavior
- Alerting management/ those charged with governance (TCWG), to seek to:
  - o Enable them to rectify, remediate or mitigate the consequences of the identified or suspected NOCLAR; or
  - o Deter the commission of NOCLAR
- Disclose the matter to an appropriate authority / External Auditor
- To take such further action as may be needed in the public interest

### **Analysis**

In relation to the VRC Code of Conduct (Gedragscode), this exposure draft does not contain elements, which are not covered by the Gedragscode. However, the Gedragscode is defined in general terms, whereas the exposure draft much more specifies the required behaviours for various Financial professionals.

In the consultation round, there have been many objections on the practicality of the exposure draft. Respondents expressed fundamental concerns about the proposed requirement for PAs providing professional services to an audit client to disclose certain Suspected Illegal Acts to an appropriate authority in the absence of a legal or regulatory framework that requires such a disclosure and in the absence of appropriate legal protections.

### **Comments**

We do in general support the concerns raised by the respondents and would have to discuss the consequences for the members of the VRC in case the exposure draft in its current form is endorsed by the IESBA.

With respect to the content of the draft, we have the following comments:

- We notice that the draft is mainly focused on the negative situation of non-compliance, whereas the positive attention on how to create an ethical company culture is missed out.
- It could be helpful to include some cases and dilemma's, which are used to give examples on required behaviour.
- The distinction between the behavior from the PA, PAIB, and Auditor can be made more explicit.

**Proposal**

We suggest to respond to the IESBA that, although we do not have fundamental objections to the content of the exposure draft, we do have concerns on the implementation and consequences for individual members of the VRC in case the draft is accepted in the current format.

VRC Enforcement and Ethics Committee,  
Eric Dortland and Luc Jalink

Amsterdam, the Netherlands  
August 2015