INSTITUTE OF SINGAPORE CHARTERED ACCOUNTANTS

Implementation Guidance
EP 100 IG 3

Code of Professional Conduct and Ethics

Frequently Asked Questions on Responding to Non-Compliance with Laws and Regulations

This Implementation Guidance (IG) was issued by the Council of the Institute of Singapore Chartered Accountants (ISCA) on 3 January 2020.

CODE OF PROFESSIONAL CONDUCT AND ETHICS

FREQUENTLY ASKED QUESTONS ON RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS

CONTENTS

Introduction

Members of the Institute of Singapore Chartered Accountants (ISCA) must adhere to Ethics Pronouncement (EP) 100 *Code of Professional Conduct and Ethics.* EP 100 is modelled after the *Code of Ethics for Professional Accountants* published by the International Ethics Standards Board for Accountants of the International Federation of Accountants (IESBA). It also encompasses locally developed SG provisions included in the *Code of Professional Conduct and Ethics for Public Accountants and Accounting Entities* issued by the Accounting and Corporate Regulatory Authority.

ISCA has adopted the IESBA's final pronouncement of Responding to Non-Compliance with Laws and Regulations (NOCLAR Pronouncement) into EP 100. The NOCLAR Pronouncement addresses professional accountants' responsibilities when they become aware of non-compliance or suspected non-compliance with laws and regulations (NOCLAR) committed by a client or employer.

With the objective of supporting the accountancy profession to fulfil the requirements of the NOCLAR Pronouncement, ISCA has developed EP 100 Implementation Guidance (IG) 3 – *Frequently Asked Questions on Responding to Non-Compliance with Laws and Regulations* to assist professional accountants and professional firms.

1 Laws and regulations

1.1 If there are conflicts between the requirements in the NOCLAR Pronouncement and existing legal or regulatory provisions governing how the professional accountant should address the non-compliance or suspected non-compliance, which one should the professional accountant comply with?[1]

A precondition to complying with the NOCLAR Pronouncement is that professional accountants first observe and comply with all applicable laws and regulations, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

2 Clearly inconsequential matters

2.1 How to define if a matter is "clearly inconsequential"?

Paragraphs 225.8 and 360.8 state that *"a professional accountant who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders and the general public, is not required to comply with this section with respect to such matters."*

As the NOCLAR Pronouncement does not define or provide examples of matters which are "clearly inconsequential", a professional accountant should exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would determine if a matter is "clearly inconsequential".

If a professional accountant is in doubt on whether a matter is "clearly inconsequential", he or she should consider consulting internally with appropriate persons, for example, the professional firm's risk management or independence partner, the company's risk management committee or internal legal department.

If after consulting with the appropriate persons and further clarification is still needed, the professional accountant can write to the ISCA Technical Enquiry Service for clarification and/or seek independent legal advice. Notwithstanding this, given that the consideration of NOCLAR matters would be subject to specific facts and circumstances, the final decision on whether a matter is "clearly inconsequential" and the responsibility of the decision rests with the professional accountant.

A professional accountant is encouraged to document the matter, the results of discussion with appropriate persons and the judgements made when concluding that the matter is clearly inconsequential in their assessment.

3 Concept of "public interest"

3.1 What is the concept of "public interest"?

The NOCLAR Pronouncement requires professional accountants to act or take further action as appropriate in the "public interest". While EP 100 and the NOCLAR Pronouncement do not define the concept of "public interest", reference is drawn from The Institute of Chartered Accountants of Scotland ("ICAS") Code of Ethics and the Public Interest Oversight Board (PIOB) which clarify the concept of "public interest" as follows:

ICAS
"Acting in the public interest involves having regard to the legitimate interests of clients, government,

[1] Guidance has been taken from IESBA Basis for Conclusions publication, *Responding to Non-Compliance with Laws and Regulations* prepared by the IESBA Staff. The publication can be downloaded from the IESBA website using this link.

financial institutions, employers, employees, investors, the business and financial community and others who rely upon the objectivity and integrity of the accounting profession to support the propriety and orderly functioning of commerce. This reliance imposes a public interest responsibility on the profession."

PIOB
"The accountancy profession can best contribute to the public interest by providing account-related information in which the public has confidence. This information will be most helpful if it is relevant to the users and is trusted by them as a faithful representation of the performance of the reported activities. Audits and other assurance services play an important role in meeting these criteria, by providing an objective and professional view in which users may have confidence."

Professional accountants can consider applying the above to enhance their understanding of the concept of "public interest".

4 Change of audit appointment

Existing requirements prior to the NOCLAR Pronouncement

(i) Predecessor auditor

Upon receipt of any inquiry of the proposed successor auditor as to whether there is any professional or other reason for the proposed change in auditor of which the proposed successor auditor should be aware before deciding whether or not to accept the appointment, the predecessor auditor shall reply in writing, advising on whether there is any professional or other reason as to why the proposed successor auditor should not accept the appointment.

If there is any such reason or other matter which should be disclosed to the proposed successor auditor, the predecessor auditor shall ensure that he or she has the permission of the client to give details of this information to the proposed successor auditor.

If client consent is not given, the predecessor auditor shall convey the fact to the proposed successor auditor.

If client consent is given, the predecessor auditor shall provide facts or other information that the proposed successor auditor needs to be aware of before deciding whether to accept the audit engagement.

In summary, client consent is required for the predecessor auditor to provide facts or other information that the proposed successor auditor needs to be aware of before deciding whether to accept the audit engagement. [paragraph SG210.11B in EP 100 revised on 14 August 2018]

(ii) Proposed successor auditor

The proposed successor auditor will generally need to obtain the client's permission to initiate discussion with the predecessor auditor. If he or she is unable to communicate with the predecessor auditor, he or she shall take reasonable steps to obtain information about any possible threats by other means. [paragraph 210.14 in EP 100 revised on 14 August 2018]

If the proposed successor auditor does not receive a reply from the predecessor auditor to his or her enquiry within a reasonable time and has no reason to believe there are any exceptional circumstances surrounding the proposed change, he or she shall use other reasonable means to communicate with the predecessor auditor. [paragraph SG210.11C in EP 100 revised on 14 August 2018]

Post-NOCLAR requirements

(i) Predecessor auditor

There is no change in the requirements for the predecessor auditor if the change of audit appointment is due to reasons other than NOCLAR matter that has not been appropriately addressed. [paragraph 210.14 in EP 100 revised on 11 December 2019]

If the change of audit appointment is a result of NOCLAR matter that has not been appropriately addressed, client consent is not required for the predecessor auditor to provide information concerning the NOCLAR with the proposed successor auditor, if the disclosure is not prohibited by law or regulation. [paragraphs 210.14 and 225.31 in EP 100 revised on 11 December 2019]

Please refer to Diagram 1 for a decision tree on the change of audit appointment from the perspective of predecessor auditor. The decision tree was prepared based on the assumption that the client has given consent to the proposed successor auditor to initiate discussion with the predecessor auditor. [paragraph 210.13 in EP 100 revised on 11 December 2019]

The predecessor auditor is advised to stipulate in the professional clearance letter to the proposed successor auditor that the contents of the professional clearance letter are not to be shared with the audit client, without prior written consent from the predecessor auditor.

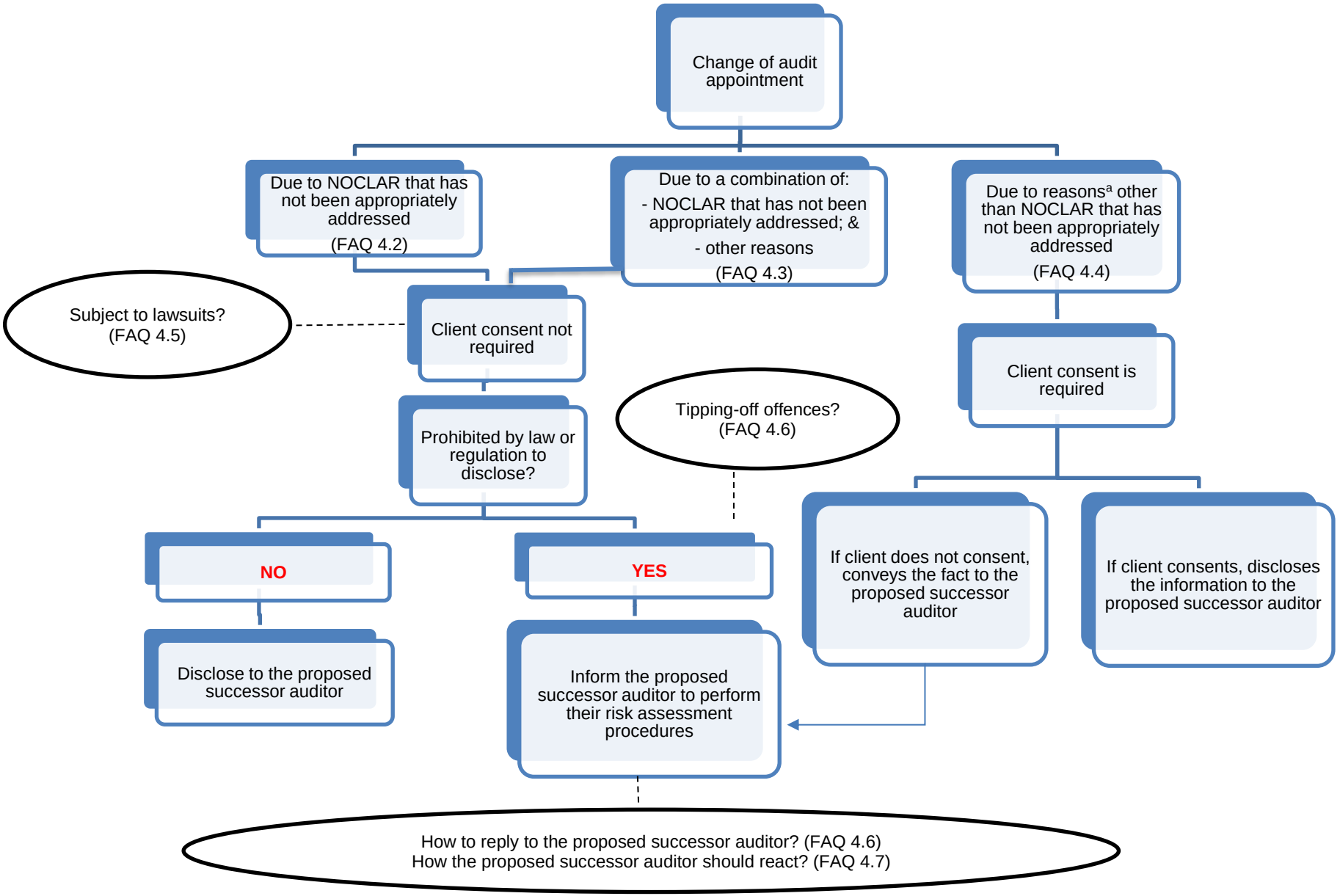
(ii) Proposed successor auditor

There is no change in the requirements for proposed successor auditor. [paragraphs 225.31 and SG210.14B in EP 100 revised on 11 December 2019]

However, except as required by applicable laws or regulations, the proposed successor auditor is advised not to disclose to the audit client, any information provided by the predecessor auditor in responding to the inquiry of the proposed successor auditor on whether there is any professional or other reason as to why the proposed successor auditor should not accept the appointment.

In addition, the proposed successor auditor is advised not to share the contents of the professional clearance letter with the audit client, without prior written consent from the predecessor auditor.

Diagram 1 Decision tree on the change of audit appointment from the perspective of predecessor auditor



[a] Include NOCLAR that has been appropriately addressed.

4.1 Is withdrawal from the audit engagement the only available course of action by the auditor if there is an identified or suspected NOCLAR that has not been appropriately addressed?[2]

No, the auditor shall exercise professional judgement, weighing all the specific facts and circumstances available to the auditor, to determine whether withdrawal from the audit engagement is an appropriate course of action. Paragraph 225.30 also explains that withdrawal from audit engagement is not a substitute for taking other actions that are needed to achieve the auditor's objectives under the NOCLAR Pronouncement.

4.2 If the change of audit appointment is a result of an identified or suspected NOCLAR matter that has not been appropriately addressed, does the NOCLAR Pronouncement require the client consent to be obtained before the predecessor auditor can share information concerning the NOCLAR with a proposed successor auditor?

No, client consent is not required. Paragraph 225.31 states that the predecessor auditor shall share information concerning the NOCLAR with the proposed successor auditor without the client consent if the disclosure is not prohibited by law or regulation. As consideration of NOCLAR matters would be subject to different facts and circumstances, the predecessor auditor should also consider obtaining legal advice to take the appropriate course of action.

The predecessor auditor shall share the information concerning the NOCLAR to the proposed successor auditor if the disclosure is not prohibited by law or regulation. If the disclosure of such information about the NOCLAR is prohibited by law or regulation, please refer to the guidance in question 4.6.

Auditors are advised to communicate their professional obligation to comply with the NOCLAR Pronouncement to their clients. They are also advised to include a clause in the audit engagement letter to make it clear that a confidentiality clause (if included in the engagement letter) would be subject to the auditors' obligation to comply with the NOCLAR Pronouncement from 1 April 2020, regardless of the financial reporting period.

4.3 If the change of audit appointment is a result of a combination of an identified or suspected NOCLAR matter that has not been appropriately addressed and other reasons, does the NOCLAR Pronouncement require the client consent to be obtained before the predecessor auditor can share information concerning the NOCLAR with a proposed successor auditor?

Client consent is not required. Once a NOCLAR matter that has not been appropriately addressed is one of the factors contributing to the auditor's resignation, the presence of such matter is a serious matter even if other reasons have contributed to the predecessor auditor's resignation.

The predecessor auditor shall share the information concerning the NOCLAR to the proposed successor auditor if the disclosure is not prohibited by law or regulation. If the disclosure of such information about the NOCLAR is prohibited by law or regulation, please refer to the guidance in question 4.6.

However, please note that client consent is still required before the predecessor auditor can share information concerning other reasons contributing to its resignations to the proposed successor auditor.

[2] Guidance has been taken from question 37 of IESBA Staff Questions & Answers publication, *Responding to Non-Compliance with Laws and Regulations – Professional Accountants in Public Practice*. The publication maybe downloaded from the IESBA website using this link.

4.4 If the change of audit appointment is a result of reasons[3] other than NOCLAR that has not been appropriately addressed, does the NOCLAR Pronouncement require the client consent to be obtained before the predecessor auditor can share information with a proposed successor auditor?

In this situation, the predecessor auditor did not withdraw from the client relationship as a result of a NOCLAR matter. Hence, client consent is required before the predecessor auditor can provide facts or other information that the proposed successor auditor needs to be aware of before deciding whether to accept the audit engagement.

4.5 Would the predecessor auditor be subject to any lawsuits if he or she communicates the identified or suspected NOCLAR to the proposed successor auditor even without the client consent?

No, if the predecessor auditor provides information concerning the NOCLAR to the proposed successor auditor in the absence of malice and the disclosure is not being prohibited by law or regulation. The predecessor auditor is reasonably protected by the statutory defence under section 208(1) [4] of Companies Act and the common law defence of qualified privilege. Accordingly, the predecessor auditor has strong protection from liability in lawsuits if he or she provides relevant information without malice to the proposed successor auditor to comply with paragraph 225.31.

4.6 How should the predecessor auditor respond to the inquiry of the proposed successor auditor and if the disclosure of such information would result in a tipping-off offence?

Tipping-off refers to the offence on disclosing any information to any person when doing so is likely to prejudice an investigation or proposed investigation under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Cap. 65A ("CDSA") and Terrorism (Suppression of Financing) Act, Cap. 325 ("TSFA"). Accordingly, both the predecessor and proposed successor auditors should be mindful whenever they are disclosing information to avoid committing any tipping-off offence.

The predecessor auditor should not disclose the identified or suspected money laundering or terrorist activities to the proposed successor auditor or make other disclosures that could amount to tipping-off as the information may be discussed with the client or former client. This is to ensure that the perpetrator does not become aware that the matter has been brought to the attention of the law enforcement agencies.

As indicated in question 4.2, the predecessor auditor shall share information concerning the NOCLAR matter with the proposed successor auditor if the disclosure is not prohibited by law or regulation, for example, CDSA and TSFA.

If provision of such facts and other information relating to the non-compliance to the proposed successor auditor is prohibited by law or regulation, the predecessor auditor should inform the proposed successor auditor to perform his own risk assessment procedures. In cases of doubt, the predecessor auditor should seek legal advice to understand the professional or legal implications before responding to the proposed successor auditor.

4.7 What should the proposed successor auditor do if he or she does not receive a reply from predecessor auditor to his inquiry on whether there are any professional reasons why he or she should not accept the appointment?

The proposed successor auditor must bear in mind that he or she should perform procedures to evaluate and conclude whether the acceptance of the new client relationship and/or audit engagement would create any threats to his or her integrity or professional behavior. As part of the procedures, he or she shall enquire the predecessor auditor whether there are any professional reasons why he or she should

[3] Include NOCLAR that has been appropriately addressed.

[4] Section 208 (1) of Companies Act states that an auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as auditor, whether the statement is made orally or in writing.

not accept the appointment.

As stated in paragraph 225.31, the proposed successor auditor shall perform other procedures to obtain information about the circumstances of the change of appointment if he or she is unable to communicate with the predecessor auditor. Examples of such procedures include inquiries of third parties such as legal counsel or industry peers or background investigations of management or those charged with governance via regulators' website or general internet search.

In addition, the proposed successor auditor should also take into consideration why he or she is unable to obtain a reply from the predecessor auditor or to communicate with the predecessor auditor when determining whether or not to accept the appointment.

Professional judgement is essential as the proposed successor auditor shall ensure that he or she is satisfied that there are no exceptional circumstances surrounding the proposed change in appointment before accepting the appointment.

5 Whistle-blower protection

5.1 What are the legislations in Singapore that accord statutory protection to whistle-blowers?

The current legislations in Singapore should provide adequate protection to whistle-blowers if the professional accountants are to report a NOCLAR.

Section 208 of the Companies Act accords an over-arching protection to professional accountants. In addition, the following legislations in Singapore also offer statutory protections to whistle-blowers if the professional accountants are to whistle-blow on matters specified under the following acts.

- Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act
- Prevention of Corruption Act
- Workplace Safety and Health Act
- Terrorism (Suppression of Financing) Act
- Competition Act
- Penal Code

As consideration of NOCLAR matters would be subject to different facts and circumstances, the professional accountants should consider obtaining legal advice to understand the professional or legal implications of taking any particular course of action.

In exceptional circumstances where the protection is adjudged not to be the case, the professional accountants should exercise professional judgement to determine if the disclosure of the NOCLAR to an authority is an appropriate course of action.

A professional accountant should also comply with the documentation requirements in accordance with the NOCLAR Pronouncement.

To note that the above whistle-blower protection does not accord protection for tipping-off offence. Please refer to FAQ 1.1 and FAQ 4.6 for guidance on tipping-off offence.

6 Disclosure of NOCLAR to an appropriate authority with respect to group audit

6.1 Is the group engagement partner in Singapore required to take action to address an identified or suspected NOCLAR matter communicated by a component auditor for purposes of the audit of the group financial statement, including in circumstances where the component is based in other foreign jurisdiction?[5]

Yes, Section 225 always requires a response from the group engagement partner, at a minimum, to obtain an understanding of the NOCLAR matter. This is consistent with the concept of not 'turning a blind eye' to an identified or suspected NOCLAR matter.

If the NOCLAR matter is clearly confined to, is being addressed by the component auditor and has no other implications for the group and its stakeholders, the group engagement partner needs not take any further action.

6.2 If the communicated NOCLAR matter was not appropriately addressed by both the component auditor and those charged with governance at the component level, what actions could be taken by the group engagement partner in Singapore under NOCLAR Pronouncement?

It is important to note that the component auditor has the primary responsibilities to address the NOCLAR matter, including disclosure to an appropriate authority.

If the NOCLAR matter was not appropriately addressed by both the component auditor and those charged with governance at the component level, the group engagement partner in Singapore could consider the followings to address the NOCLAR matter:

(1) Understand why the NOCLAR matter is not addressed by both the component auditor and those charged with governance at component level;

(2) Initiate an open dialogue with the group management and those charged with governance at group level to address the NOCLAR matter, including advising them to disclose the NOCLAR matter to an appropriate authority if necessary; or

(3) Report the NOCLAR matter to an appropriate local authority in the jurisdiction in which the NOCLAR matter has been committed so that the matter would be addressed by the laws and regulations specific to the jurisdiction in which they have been enacted or issued.

The NOCLAR pronouncement does not preclude the group engagement partner from disclosing the NOCLAR matter to an appropriate authority in the component jurisdiction as a further action in the public interest. Prior to making any disclosure, the group engagement partner should seek legal advice and evaluate whether disclosure to an appropriate authority in the component jurisdiction is an appropriate course of action to address the NOCLAR matter, having regard to the local laws and regulations applied in the component jurisdiction and external factors stated in paragraph 225.34.

[5] Guidance has been taken from question 29 of IESBA Staff Questions & Answers publication, *Responding to Non-Compliance with Laws and Regulations – Professional Accountants in Public Practice*. The publication maybe downloaded from the IESBA website using this link.

6.3 Under what circumstances would the group engagement partner in Singapore be required to disclose the NOCLAR matter to the Singapore's authority?

If the NOCLAR matter communicated by the component auditor causes or leads to a breach of laws or regulations in Singapore, the group engagement partner in Singapore shall disclose the NOCLAR matter to an appropriate authority in Singapore.

The group engagement partner shall also consider, in the context of the group audit, if the NOCLAR matter is relevant to other components as well. If it is relevant, the group engagement partner shall communicate the NOCLAR matter to the professional accountants performing work at the other components. This may not necessarily be a rare circumstance given that some NOCLAR such as fraud, bribery and money laundering can be orchestrated across national borders.

6.4 If the foreign jurisdiction in which the NOCLAR has occurred does not adopt NOCLAR pronouncement, is the group engagement partner in Singapore still responsible for addressing the NOCLAR matter, including considering disclosure to the appropriate authority in the foreign jurisdiction?

Paragraphs 19 (a) and A37 of Singapore Standard of Auditing 600 *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)* require the group engagement partner to obtain an understanding of whether the component auditor understands and will comply with the ethical requirements that are relevant to the group audit, sufficient to fulfil the component auditor's responsibilities in the group audit. Such requirements may be different or in addition to those applying to the component auditor when performing a statutory audit in the component auditor's jurisdiction.

Thus, if the foreign jurisdiction in which the NOCLAR has occurred does not adopt NOCLAR pronouncement, the component auditor still has the primary responsibilities to address the NOCLAR matter, including disclosure to the appropriate authority in the foreign jurisdiction. In the event that the NOCLAR matter was not appropriately addressed by the component auditor, please refer to the guidance in question 6.2 for further action the group engagement partner in Singapore may take to address the NOCLAR matter in the public interest.

Copyright