

NON-COMPLIANCE WITH LAWS AND REGULATIONS (NOCLAR)

Non-Compliance with Laws and Regulations (NOCLAR) is a new pronouncement that has been included in the Professional Code of Ethics for Accountants ("the Code"). Members of the Institute of Certified Public Accountants of Uganda (ICPAU) have always been required to adhere to the highest standard of conduct and ethical behaviour. Building on the fundamental ethical principles of integrity and professional behaviour, Certified Public Accountants (CPAs) now have a duty to respond to non-compliance or suspected non-compliance with laws and regulations.

What is NOCLAR?

NOCLAR is defined as any act of omission or commission, intentional or unintentional, committed by a client or the CPAs employing organisation, by those charged with governance (TCWG) or management, or by other individuals working for or under the direction of a client or employing organisation, which is contrary to the prevailing laws or regulations.

Examples of laws and regulations covered include those that address:

PROCEEDS OF CRIME PUBLIC HEALTH AND SAFETY
SECURITIES MARKETS **BRIBERY** DATA PROTECTION
FRAUD CORRUPTION FINANCIAL PRODUCTS
FINANCIAL SERVICES BANKING MONEY LAUNDERING
SECURITIES TRADING ENVIRONMENTAL PROTECTION
TAX AND PENSION LIABILITIES TERRORIST FINANCING

Why is NOCLAR Important?



The standard positions the accountancy profession to play a greater role in the global fight against financial fraud, money laundering, and corruption. This is the first time that professional standards will permit accountants to set aside their professional duty of confidentiality in order to disclose NOCLAR to appropriate public authorities in certain circumstances.



The standard will stimulate greater accountability among organisations, help protect stakeholders and the general public from substantial harm resulting from violation of laws and regulations, and strengthen the overall reputation of the accountancy profession.

What is the duty of a Certified Public Accountant (CPA) when he or she becomes aware of non-compliance or suspected non-compliance?

The Code provides a response framework, setting out the responsibilities of a CPA and the steps that should be taken when a CPA becomes aware of non-compliance or suspected non-compliance. The Code sets out the expectation that "turning a blind eye" to non-compliance or suspected non-compliance is not an acceptable response from a CPA.

The response framework covers the following six steps:

Step One – When the CPA becomes aware of NOCLAR or suspected NOCLAR

The CPA takes steps to comply with the applicable responsibilities under the Code on a timely basis, having regard to the CPA's understanding of the nature of the matter and the potential harm to the interests of the entity or employing organisation, investors, creditors, employees or the general public.

Step Two – Obtain an understanding of the matter

The CPA obtains an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur. The CPA is required to consider the laws and regulations that are applicable to the circumstances, and the potential consequences of the NOCLAR for the entity or employing organisation, investors, creditors, employees or the general public.

Step Three – Discuss the matter

The CPA discusses the matter with the appropriate level of management (or immediate superior) and, where appropriate, those charged with governance (TCWG). The discussion serves to clarify the CPA's understanding about the matter and its potential consequences, and may prompt management or TCWG to investigate the matter.

Step Four – Determine whether further action is needed

The CPA exercises professional judgement and determines whether further action is needed in the public interest (and, if applicable, the

nature and extent of further action). The main considerations at this stage are:

- The appropriateness of the response of management, immediate superiors and, where applicable, TCWG;
- Matters that characterise the nature, cause, circumstances and extent of the NOCLAR; and
- Take into account how a reasonable and informed third party would likely evaluate the NOCLAR and the CPA's determination of the need for, and nature and extent of, further action.

Step Five – If applicable, decide on appropriate further action

- If the conclusion in step four, above, is that further action is needed, the CPA considers whether to:
- Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so; or
- Resign from the employing organisation or from the engagement.

Step Six – Documentation

The CPA should document:

- The matter;
- The results of discussions with the CPA's superiors, management, or TCWG;
- How the CPA's superiors, if any, and TCWG have responded to the matter; and
- The courses of action the CPA considered, the judgements made and the decisions that were taken.

Exceptional circumstances override

Without going through the entire response process described above, where the CPA becomes aware of actual or intended conduct that the CPA has reason to believe would constitute an imminent breach of a law or regulation and that would cause substantial harm to investors, creditors, employees or the general public, the CPA should exercise professional judgement and determine whether to immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation.

What is the duty of a CPA if they become aware of tax non-compliance?

Under the NOCLAR provisions of the Code, "tax non-compliance" is no different from any other form of non-compliance in the context of representing an act of omission or commission which is contrary to prevailing laws or regulations. The CPA should follow the response framework set out in the Code whenever he or she determines that the tax non-compliance falls within the scope of the Code.

Is there a difference in how the Code would be applied to a CPA in the public sector?

The Code applies to all CPAs irrespective of where they are employed or their role and functions. The CPA will have to follow the Code with his/her personal circumstances in mind, taking into account that the Code is also clear that the CPA must always comply with the law and not take any action or fail to act contrary to the law. The NOCLAR provisions apply to all CPAs, including auditors, and accountants in businesses, government, education and the not-for-profit sector. In addition, the NOCLAR provisions also place renewed emphasis on the role of senior-level CPAs in promoting a culture of compliance with laws and regulations and prevention of non-compliance within their organizations.

Does the CPA have a duty to respond to all acts of NOCLAR or suspected NOCLAR?

A CPA has a responsibility to respond to NOCLAR or suspected NOCLAR that is within the scope of the Code, as applicable to the CPA's circumstances (either as a CPA in public practice, in business or in the public sector).

The Code further elaborates that the following matters not covered by the NOCLAR provisions:

- Personal misconduct unrelated to the client's or employing organisation's business activities; and
- Non-compliance other than by the client or employing organisation, or other than by TCWG, management or other individuals working for or under the direction of the client or the employing organisation.

When did NOCLAR become effective?

The NOCLAR provisions in the Code became effective on 15 July 2017.

Conclusion

The NOCLAR provisions enable the accountancy profession to play a greater role in the fight against fraud, money laundering and corruption.

The NOCLAR provisions introduce an incentive that increases the likelihood that non-compliance with laws or regulations will not occur or that it will be rectified on the basis that doing so is in the public interest.

The NOCLAR provisions enhance the profession's reputation and provide a clear pathway for CPAs to disclose potential non-compliance situations to appropriate public authorities, in certain situations, without being constrained by the ethical duty of confidentiality.

ICPAU is committed to assisting all CPAs to comply with the new requirements.

For further information, please contact:

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