



**INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS
OF UGANDA**



**RESPONDING TO NON-COMPLIANCE WITH LAWS
AND REGULATIONS
(NOCLAR)**

IMPLEMENTATION GUIDANCE

Disclaimer

The aim of this Guidance is to provide an overview and summary of the response framework in terms of the NOCLAR provisions that may be used as a convenient reference to consider the context for and steps involved when a CPA responds to NOCLAR or suspected NOCLAR.

This is supplementary material only and is not a substitute for the ICPAU/IFAC Code of Ethics. ICPAU members are required to be familiar with and understand their responsibilities under the Code of Ethics and, for this purpose, they should always refer to the original text of the Code, since this is the authoritative text. The Guidance is not intended to be comprehensive or to deal with all situations that might be encountered.

CPAs are encouraged to apply professional judgment in the guidance provided here-in-after. Whereas every care has been taken in the preparation of this guidance, the ICPAU disclaims any responsibility or liability that may occur, directly or indirectly, as a consequence of the use and application of this guidance.

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About ICPAU

The Institute of Certified Public Accountants of Uganda (ICPAU) was established in 1992 by an Act of Parliament now the Accountants Act, 2013. The functions of the Institute, as prescribed by the Act, are:

- To regulate and maintain the standard of accountancy in Uganda.
- To prescribe and regulate the conduct of accountants and practicing accountants in Uganda.

Vision

To be a world-class professional accountancy institute.

Mission

To develop, promote and regulate the accountancy profession in Uganda and beyond.

Core Values

- Professional Excellence.
- Accountability
- Integrity.
- Innovation

International Affiliations

- The Institute is a member of the International Federation of Accountants (IFAC),
- The Pan African Federation of Accountants (PAFA)
- The Association of Education Assessment in Africa (AEAA).

1.0 INTRODUCTION

Non-Compliance with Laws and Regulations (NOCLAR) is a new pronouncement that was included in the International Code of Ethics for Professional 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.

2.0 WHAT IS NOCLAR?

NOCLAR is defined as any act of omission or commission, intentional or unintentional, committed by a client or the CPA's 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 include those that address:

- Money laundering - offences resulting from acquiring, using, possessing, arranging or concealing 'criminal property', failure to report known or suspected money laundering or 'tipping off' offences;
- Tax and pension liabilities – including offences in relation to “tax non-compliance”;
- Fraud or theft - which may involve falsification or alteration of accounting records or other documents, misappropriation of assets, suppression or omission of the effects of transactions from documents and other records, intentional misapplication of accounting policies or wilful misrepresentations of transactions or of the entity's state of affairs;
- Corruption and bribery - insider dealing, market abuse and other acts of dishonesty which may include payment and receipt of bribes, conspiracy, soliciting or inciting to commit a crime and attempting to commit a crime or operating an anti-competitive cartel;
- Breaches of employment legislation including, for example, unlawful discrimination;

- Violation of environmental protection laws and legislation;
- Breaches of public health and safety laws.

3.0 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. 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.

4.0 SCOPE

The Code recognizes that a CPA may encounter (come upon unexpectedly) NOCLAR or suspected NOCLAR while carrying out their duties with the employing organization or in the course of providing a professional service to a client. It also recognizes that another party may bring the matter to their attention, for example, another employee of the organization or an external contractor used by the organization.

The objective of the CPA is to alert management and, where applicable, those charged with governance (TCWG) about the matter to enable them take appropriate action to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance, or deter the commission of the non-compliance where it has not yet occurred.

It is important to note that, it is and remains the responsibility of the client's management or the employing organisation's management, with the oversight of TCWG, to ensure compliance with relevant laws and regulations.

5.0 RESPONSIBILITY OF A CERTIFIED PUBLIC ACCOUNTANT (CPA) UNDER THE NEW CODE

All Certified Public Accountants (CPAs) must report NOCLAR under the new Code. 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 response framework covers the following six steps:

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

A CPA is expected to recognise NOCLAR within the context of his/her knowledge as a CPA based on his/her training and experience, and areas about which he/she possesses knowledge in a particular field. CPAs have no additional responsibility to detect NOCLAR (beyond what may already be required for purposes of a specific engagement/or because of their management role at the organisation), but rather to respond appropriately when they become aware of NOCLAR. The standard is not imposing an obligation on the CPA to go looking for non-compliance, it is advising the CPA not to “turn a blind eye” to non-compliance that they become aware of (in other words, 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).

Therefore, the overriding principle is that the CPA is expected to be able to recognise NOCLAR or suspected NOCLAR in relation to laws and regulations that he/she has an understanding of, to an extent sufficient to competently perform his or her professional duties. The CPA is not required to have specialised legal knowledge and skills, but only to have a level of knowledge of laws and regulations necessary for providing professional services or carrying out his/her employment duties.

The standard does not only relate to NOCLAR that affects the financial statements of a client, but is also related to NOCLAR that affects the going concern of the entity and or may led to significant harm to stakeholders. The following are some of the areas in which a CPA is trained and would be expected to fall within the scope of the standard:

- Laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the client’s financial

statements;

- 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.
- Those laws and regulations that address areas about which the CPA possesses knowledge in a particular field (including specialised skills). CPAs who work in or specialise in a particular field need to have an understanding of laws and regulations relevant to that particular field to an extent sufficient to competently undertake a given engagement or to competently carry out their employment duties.

In addition to complying with laws and regulations when responding to NOCLAR, the CPA is also required to consider the effect of the following in the circumstances and comply with related requirements:

- Firm policies and methodologies that address the response process to NOCLAR within the firm (i.e. how such matters should be escalated within the engagement team and within the firm), ISQC 1 and other relevant engagement standards, and cannot prescribe less stringent requirements.
- Internal protocols and procedures established by the employing organisation regarding how NOCLAR or suspected NOCLAR by the employing organisation should be raised internally (such as an ethics policy or internal whistle-blowing mechanism).

A Practising Accountant (auditor) shall parallel to his/her responsibilities under the Code, also comply with ISA 250, Revised (and other ISAs, as relevant to the audit) in performing the audit of financial statements.

Senior CPAs in Industry and Business, being part of those within an organisation that can exert significant influence over or take decisions regarding the employing organisation's resources, have a responsibility to ensure that the organisation's activities are conducted in accordance with laws and regulations and, as applicable, exercise oversight in this regard.

Other CPAs in Industry and Business, to the extent applicable to their role and function within the employing organisation, are required to comply with laws and regulations and thereby contribute to the organisation's overall compliance. They are also required to account to their superiors in this regard.

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.

The CPA shall apply knowledge, professional judgement and expertise (but not beyond what is expected from the CPA in the circumstances). The CPA may decide to consult on a confidential basis with others within the employing organisation/firm or a professional body or with legal counsel.

If at any time during the course of obtaining an understanding, or seeking to obtain an understanding of the matter the CPA determines that the matter does not represent NOCLAR or suspected NOCLAR, the CPA is not required to pursue the matter further in terms of the Code.

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):

- a) A Practising Accountant (Auditor) shall discuss the matter with the appropriate level of management and, where appropriate, TCWG. The discussion serves to clarify the Auditor's understanding of the matter and its potential consequences, and may prompt management or TCWG to investigate the matter.

The Auditor;

- Decides on the appropriate level of management with whom to discuss the matter (refer to paragraph 225.16-17);
- Advises them to take appropriate and timely actions, if they have not already done so; and
- Considers whether the client's management and TCWG understand their

legal or regulatory responsibilities with respect to the NOCLAR. If not, the auditor may suggest appropriate sources of information or recommend that they obtain legal advice.

- b) Subject to the employing organisation's internal protocols and procedures, a senior CPA in industry and business discusses the matter with his/her immediate superior (if any). The discussion serves to clarify the senior CPA's understanding of the matter and to enable a determination to be made about how the matter should be addressed.

The senior CPA may discuss the matter with the next higher level of authority within the employing organisation, and if the immediate superior appears to be involved in the matter, the CPA then takes appropriate steps to;

- Have the matter communicated to TCWG to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfil their responsibilities;
- Comply with applicable laws and regulations, including provisions governing the reporting of NOCLAR to an appropriate authority;
- Have the consequences of the NOCLAR rectified, remediated or mitigated;
- Reduce the risk of reoccurrence; and
- Seek to deter the commission of the NOCLAR if it has not yet occurred.

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.

Factors to consider in assessing the appropriateness of the response include whether:

- The NOCLAR has been adequately investigated.
- Action has been, or is being, taken to rectify, remediate or mitigate the consequences of the matter; or where the NOCLAR has not yet occurred, to deter the commission thereof.
- Appropriate steps have been, or are being taken, to reduce the risk of re-occurrence.
- The NOCLAR has been disclosed to an appropriate authority where appropriate (i.e. when required in terms of applicable law or regulation) and, if so, whether the disclosure appears adequate.

Factors to consider in assessing the effect of matters that characterise the nature, cause, circumstances and extent of the NOCLAR:

- The legal and regulatory framework.
- The urgency of the matter.
- The pervasiveness of the matter throughout the employing organisation or client.
- Whether the CPA continues to have confidence in the integrity of their superiors, management or TCWG.
- Whether the NOCLAR is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organisation, investors, creditors, employees or the general public.

Step Five – If applicable, decide on appropriate further action

- a) 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.
 - Resign from the employing organisation or from the engagement (but inform the successor the reasons for resignation).
 - Inform the management of the parent entity of the matter if the employing organisation is a member of a group.

As the consideration of the matter may involve complex analysis and judgement, the CPA may consider consulting internally, OR obtaining legal advice to

understand his/her options and the professional or legal implications of taking any particular course of action, OR consulting on a confidential basis with a regulator or professional body.

Withdraw from the engagement and the professional relationship where permitted by law or regulation or resigning from the employing organisation is not a substitute for taking other actions that may be needed to achieve the CPA's objectives under the NOCLAR provisions.

The CPA is also required to disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so. The objective is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

Considering whether to disclose to an appropriate authority also depends on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken.
 - Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
 - Whether there are actual or potential threats to the personal safety of the CPA or other individuals.
- b) If, after due consideration of the factors discussed above, the CPA determines that disclosure of the matter to an appropriate authority is an appropriate course of action:
- Such disclosure will not be considered a breach of the duty of confidentiality.
 - When making such disclosure, the auditor shall act in good faith and exercise caution when making statements and assertions.
- c) A CPA who is a practicing accountant (auditor), should also consider whether it is appropriate to inform the client of their intentions before disclosing the matter.
- d) If the employing organisation's financial statements are subject to an audit, the senior CPA shall determine whether disclosure of the matter to the external auditor is needed pursuant to his/her duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

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;
- The courses of action the CPA considered, the judgements made and the decisions that were taken; and
- How the CPA is satisfied that he/she has fulfilled the responsibility.

When disclosing confidential information, CPAs must bear in mind that any decision to disclose may be called into question at a future date. Thus, they are advised to keep detailed documentation.

In situations where they disclose confidential information to a third party, they are encouraged to keep a record of: any consent given; discussions held or decisions taken concerning the disclosure of confidential information; a schedule summarizing disclosures and to whom they were made; copies of relevant documentation; and any legal or other advice obtained.

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.

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 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 are 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.

6.0 IMPACT OF NOCLAR ON AUDITING STANDARDS

With the amendment to the Code, through NOCLAR, a number of ISAs were affected:

- a) **ISA 250 (Revised), Consideration of Laws and Regulations in an Audit of Financial Statements** now provides circumstances which may require reporting identified or suspected NOCLAR to an appropriate authority outside the entity. The Standard provides such circumstances as where the law, regulation or relevant ethical requirements require the auditor to report; where the auditor has determined reporting is an appropriate action in accordance with relevant ethical requirements; or where the law, regulation or relevant ethical requirements provide the auditor with the right to do so.

The Standard introduces categories of laws and regulations of concern and it further provides for additional responsibilities for a CPA to respond, communicate and documentation requirements regarding identified or suspected NOCLAR.

- b) **ISQC 1** continues to cover the need for accounting firms to have policies regarding confidentiality. The NOCLAR provisions now allow the firm's personnel, in certain circumstances where they 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.
- c) **ISA 220, Quality Control for an Audit of Financial Statements** under the Acceptance and Continuance of Client Relationships and Audit Engagements section, the predecessor auditor is required to provide information regarding identified or suspected non-compliance with laws and regulations to the successor auditor, where the predecessor auditor has withdrawn from the engagement as a result of identified or suspected NOCLAR.
- d) **ISA 240, The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements** introduces additional responsibilities under law, regulation or relevant ethical requirements regarding an entity's non-compliance with laws and regulations, including fraud. The standard requires the auditor to respond, communicate and document requirements regarding identified or suspected non-compliance with laws and regulations.

7.0 THE NOCLAR AND ENGAGEMENT LETTER

Whereas the Code of Ethics generally prohibits a CPA who is a practicing accountant/ auditor from disclosing confidential client information without the specific consent of the client, there are instances that will require the CPA to disclose such information (remember the client of the auditor is not necessarily management, even though they pay for the audit services, but the stakeholders that the standard is trying to protect).

Therefore right from the beginning, the engagement letter should clearly stipulate and in a conspicuous space the fact that the CPA will keep the client's personal, non-public information strictly confidential. And where the client's personal information needs to be disclosed when working with his/her other advisors or with other qualified professionals, the CPA will ask for the client's permission to do so. It should equally be made clear that the CPA may be required by legal or regulatory authorities to disclose confidential information without the client's permission.

8.0 CONFIDENTIALITY VS NON-COMPLIANCE WITH LAWS AND REGULATIONS (NOCLAR)

The Purposes of the Confidentiality Statutes and the Rules on Non-Compliance with Laws and Regulations (NOCLAR) in the Code are such that, a CPA must balance the duty of confidentiality with the duty to act in the public interest when they become aware of NOCLAR.

Confidentiality is one of the fundamental principles of the ethics code and it is not the intention of the fundamental principles to allow confidentiality be used to cover up non-compliance. Therefore in situations where NOCLAR creates a dilemma for the CPA, for example where the CPA is party to a contractually negotiated confidentiality clause in contracts for professional services, the standard should still be applied;

- a) Apply the first steps of the response framework that do not require disclosure (steps 1-4).
- b) Disclose, if by-passing the confidentiality clauses clearly serves the public interest. This is the first time that professional standards will allow CPAs to set aside their professional duty of confidentiality in order to disclose NOCLAR to appropriate public authorities in certain circumstances. In such circumstances, they would not have breached the ethical principle of confidentiality.

9.0 EFFECTIVE DATE

The NOCLAR provisions in the Code became effective on 15 July 2017. ICPAU is committed to assisting all CPAs to comply with the new requirements.


10.0 CONCLUSION

The purpose of the NOCLAR provisions is to promote a response to NOCLAR or suspected NOCLAR in the public interest. This will enable the accountancy profession to play a greater role in the fight against fraud, money laundering and corruption globally.

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.

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