

## **DRAFT WORDING**

### **Responding to a Suspected Illegal Act**

- 225.1 This section provides guidance to a professional accountant in public practice on how to respond when encountering a suspected illegal act in the course of performing a professional service for a client.
- 225.2 If a professional accountant in public practice identifies a suspected illegal act, the accountant shall consider whether there are any applicable legal or regulatory requirements governing how a suspected illegal act is to be addressed and, if so, the accountant shall comply with those requirements. When required by law or regulation to disclose a suspected illegal act, for example as a result of anti-money laundering legislation, a professional accountant in public practice shall make the disclosure in compliance with the relevant legal or regulatory requirements and comply with any prohibitions on alerting (“tipping-off”) the client to the pending disclosure.
- 225.3 When there is no applicable law or regulation, this section describes the circumstances where a professional accountant in public practice shall override the fundamental principle of confidentiality and disclose a suspected illegal act to an appropriate authority.
- 225.4 Illegal acts comprise acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations. Whether a matter constitutes an illegal act is ultimately a matter for legal determination by a court of law. This section, therefore, addresses suspected illegal acts.

#### *Professional Accountant Providing Professional Services to an Audit Client*

- 225.5 If a professional accountant in public practice during an audit engagement or while performing another professional service for an audit client of the firm or a network firm acquires information that leads the accountant to suspect that an illegal act has been committed, the accountant shall take reasonable steps to confirm or dispel that suspicion. In doing so, the professional accountant is expected to apply knowledge, judgment and expertise when considering the matter, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional service for which the accountant was engaged. In taking reasonable steps to confirm or dispel the suspicion, the professional accountant may wish to consult with others within the firm.
- 225.6 If the professional accountant is unable to dispel the suspicion the accountant shall discuss the matter with the appropriate level of management. The determination of which level of management is the appropriate one is a matter of professional judgment and is affected by factors such as the nature of the act, the circumstances and individuals involved, the likelihood of collusion and the magnitude of the matter. The appropriate level of management is generally at least one level above the persons who appear to be involved in the matter.

- 225.7 If the response to the matter is not appropriate, the professional accountant shall escalate the matter to higher levels of management, within the entity or the group, as appropriate. If the highest level of management has not appropriately addressed the matter, the professional accountant shall discuss the matter with those charged with governance of the entity or the group as appropriate.
- 225.8 If the professional accountant has doubts about the integrity or honesty of management or suspects that management is implicated in the suspected illegal act, the accountant shall discuss the matter directly with those charged with governance. If the professional accountant has doubts about the integrity or honesty of those charged with governance or suspects that those charged with governance are implicated in the suspected illegal act, the accountant may consider it appropriate to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege to assist in determining the appropriate course of action.
- 225.9 If, in the professional accountant's judgment, the response to the matter is not appropriate, the accountant shall determine the appropriate course of action, including whether to terminate the professional relationships with the client.
- 225.10 When determining if the response to the matter is appropriate the professional accountant shall consider factors such as whether:
- The matter was adequately investigated;
  - Remedial action has been taken to address the matter;
  - Steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training; and
  - The entity has disclosed the matter to an appropriate authority, if any, or intends to do so within a reasonable period of time.
- 225.11 If the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest and the entity has not disclosed the matter, the accountant shall advise the entity that the matter should be disclosed to an appropriate authority. If the entity has not made an adequate disclosure within a reasonable period of time, when not prohibited by law the professional accountant shall disclose the following:
- Suspected illegal acts that directly or indirectly affect the client's financial reporting.
  - Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant, such as fraud, bribery or insider trading.
- 225.12 The determination of whether disclosure would be in the public interest will require professional judgment. In making the determination, the professional accountant shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances, would be likely to conclude that the suspected illegal act is of such consequence that disclosure would be in the public interest.

- 225.13 If the professional accountant concludes that disclosure is appropriate, the professional accountant shall determine whether there is an appropriate authority to receive the disclosure and, if so, disclose the matter to the authority.
- 225.14 The appropriate authority to which to report the matter will depend on the nature of the suspected illegal act; for example a tax authority in the case of suspected tax evasion, and a securities regulator in the case of suspected fraudulent financial reporting in a listed entity.
- 225.15 In determining how to comply with the requirements of this section, including whether the suspected illegal act should be reported to an appropriate authority, and if so, to which authority, the professional accountant may wish to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of professional privilege.
- 225.16 When making a disclosure to an appropriate authority, and thus overriding the fundamental principle of confidentiality, the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions.

*Professional Accountant Providing Professional Services to a non Audit Client*

- 225.17 If a professional accountant in public practice in the course of performing a professional service for a client that is not an audit client of the firm or a network firm acquires information that leads the accountant to suspect that an illegal act has been committed, the professional accountant shall take reasonable steps as outlined in paragraph 225.5 to confirm or dispel that suspicion.
- 225.18 If the professional accountant is unable to dispel the suspicion, and if the client is an entity, the accountant shall discuss the matter with the appropriate level of management. If the response to the matter is not appropriate, the professional accountant shall escalate the matter within management to the extent possible. If the response is still not appropriate, the professional accountant shall discuss the matter with those charged with governance. If the accountant does not have access to those charged with governance, the professional accountant shall disclose the matter to the entity's external auditor.
- 225.19 If, having discussed the matter with those charged with governance or the external auditor, in the professional accountant's judgment, the response to the matter is not appropriate, the accountant shall determine the appropriate course of action, including whether to terminate the professional relationships with the client.
- 225.20 If, having discussed the matter with those charged with governance, the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest and the entity has not disclosed the matter, the accountant shall advise the entity that the matter should be disclosed to an appropriate

authority. If the entity has not made an adequate disclosure within a reasonable period of time and the suspected illegal act relates to the professional services being provided by the professional accountant, the accountant shall disclose the matter to an appropriate authority, when not prohibited by law. If the matter is unrelated to the professional services performed by the professional accountant, the professional accountant shall disclose the matter to the entity's external auditor.

- 225.21 If the client is an individual and the professional accountant is unable to dispel the suspicion, the accountant shall discuss the matter with the individual. If the client admits to the illegal act the professional accountant shall advise the client to disclose the matter to an appropriate authority. If the client refuses to disclose the matter, or does not admit to the illegal act, the professional accountant shall determine the appropriate course of action, including whether to terminate the professional relationship with the individual. If the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest and the subject matter of the illegal act falls within the expertise of the professional accountant, the accountant shall disclose the matter to an appropriate authority, when not prohibited by law.

#### *Protection Under Legislation*

- 225.22 The professional accountant may wish to seek legal advice to obtain an understanding of any protection afforded by legislation, such as that afforded in some jurisdictions under whistle-blowing legislation, if the accountant discloses the matter to a party outside of the client.

#### *Documentation*

- 225.23 The professional accountant shall document the steps the accountant took to respond to the suspected illegal act, including the persons consulted, responses received and the disclosure, if any, made to an appropriate authority.

- 300.5 A professional accountant in business may hold a senior position within an organization. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A professional accountant in business is expected, therefore, to encourage an ethics-based culture in an employing organization that emphasizes the importance that senior management places on ethical behavior. Established whistle-blowing procedures that are in place and understood by all employees may be useful to achieve the objective of establishing and maintaining an ethics-based culture. Such procedures help to deter malpractice and increase the likelihood of senior management being alerted to a problem in time to prevent serious damage.

### **Responding to a Suspected Illegal Act**

- 360.1 This section provides guidance to a professional accountant in business on how to respond when encountering a suspected illegal act in the course of undertaking a professional activity<sup>1</sup>.
- 360.2 If a professional accountant in business identifies a suspected illegal act, the accountant shall consider whether there are any applicable legal or regulatory requirements governing how a suspected illegal act is to be addressed and, if so, the accountant shall comply with those requirements. When required by law or regulation to disclose a suspected illegal act a professional accountant in business shall make the disclosure in compliance with the relevant legal or regulatory requirements and comply with any prohibitions on alerting (“tipping off”) the employing organization to the pending disclosure.
- 360.3 When there is no applicable law or regulation, this section describes the circumstances where a professional accountant in business shall override the fundamental principle of confidentiality and disclose a suspected illegal act to an appropriate authority.
- 360.4 Illegal acts comprise acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations. Whether a matter constitutes an illegal act is ultimately a matter for legal determination by a court of law. This section, therefore addresses suspected illegal acts.
- 360.5 If a professional accountant in business in the course of performing a professional activity acquires information that leads the accountant to suspect that an illegal act has been committed, the accountant shall take reasonable steps to confirm or dispel that suspicion. In doing so, the professional accountant is expected to apply knowledge, judgment and expertise when considering the matter, but is not expected to have detailed

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<sup>1</sup> A professional activity is defined as “Activities requiring accountancy or related skills undertaken by a professional accountant including accounting, auditing, taxation, management consulting and financial management.”

knowledge of laws and regulations beyond that which is required for the professional activity the accountant is undertaking. In taking reasonable steps to confirm or dispel the suspicion, the professional accountant may wish to consult with others within the organization.

- 360.6 If the professional accountant is unable to dispel the suspicion the accountant shall determine the appropriate course of action, taking into account whether the organization has an established mechanism, such as an ethics policy, for addressing such matters.
- 360.7 The professional accountant shall generally first disclose a suspected illegal act within the reporting lines of the employing organization by reporting the matter to a superior. If the response to the matter is not appropriate the accountant shall escalate the matter to higher levels of management. If the highest level of management has not appropriately addressed the matter, the professional accountant shall discuss the matter with those charged with governance or shall disclose the matter to the entity's external auditor. If, having disclosed the matter to those charged with governance, the matter has not been appropriately addressed, the professional accountant shall determine whether to disclose the matter to the entity's external auditor.
- 360.8 If the professional accountant in business has doubts about the integrity or honesty of the accountant's superior or management or suspects that the superior is implicated in the suspected illegal act, the accountant shall discuss the matter with a higher level of authority within the organization such as those charged with governance or shall report the matter to the entity's external auditor. If the professional accountant has doubts about the integrity or honesty of those charged with governance or suspects that those charged with governance are implicated in the suspected illegal act, the accountant may consider it appropriate to discuss the matter with a relevant professional body on an anonymous basis or with a legal advisor under the protection of professional privilege or to disclose the matter to the entity's external auditor.
- 360.9 When determining if the response to the matter is appropriate, the professional accountant shall consider factors such as whether:
- The matter was adequately investigated;
  - Remedial action has been taken to address matter;
  - Steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training; and
  - The employing organization has disclosed the matter to an appropriate authority, if any, or intends to do so within a reasonable period of time.
- 360.10 If, in the professional accountant's judgment, the response to the matter is not appropriate, the accountant shall determine the appropriate course of action, including whether to resign from the employing organization.
- 360.11 If the professional accountant determines that the suspected illegal act is of such consequence that disclosure would be in the public interest and the matter has not been disclosed, the accountant shall advise the employing organization that the matter should

be disclosed to an appropriate authority. If the employing organization has not made an adequate disclosure within a reasonable period of time, when not prohibited by law the professional accountant shall disclose the following:

- Suspected illegal acts that directly or indirectly affect the employing organization's financial reporting.
- Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant, such as fraud, bribery or insider trading.

360.12 The determination of whether reporting would be in the public interest will require professional judgment. In making the determination, the professional accountant shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances would be likely to conclude that the suspected illegal act is of such consequence that disclosure would be in the public interest.

360.13 If the professional accountant concludes that disclosure is appropriate, the professional accountant shall determine whether there is an appropriate authority to receive the disclosure and, if so disclose the matter to the authority.

360.14 The appropriate authority to which to report the matter will depend upon the nature of the suspected illegal act; for example a tax authority in the case of suspected tax evasion and a securities regulator in the case of suspected fraudulent financial reporting in a listed entity.

360.15 In determining how to comply with the requirements of this section, including whether the suspected illegal act should be reported to an appropriate authority, the professional accountant may wish to discuss the matter with a relevant professional body on an anonymous basis or with a legal advisor under the protection of professional privilege.

360.16 When making a disclosure to an appropriate authority, and thus overriding the fundamental principle of confidentiality, the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions.

360.15 The professional accountant may wish to seek legal advice to obtain an understanding of any protection afforded by legislation, such as that afforded in some jurisdictions under whistle-blowing legislation, if the accountant discloses the matter to a party outside of the employing organization,.

360.16 The professional accountant shall document the steps the accountant took to respond to the suspected illegal act, including the persons consulted, responses received and the disclosure, if any, made to an appropriate authority

### *Ethical Conflict Resolution*

- 100.17 A professional accountant may be required to resolve a conflict in complying with the fundamental principles.
- 100.18 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:
- (a) Relevant facts;
  - (b) Ethical issues involved;
  - (c) Fundamental principles related to the matter in question;
  - (d) Established internal procedures; and
  - (e) Alternative courses of action.

Having considered the relevant factors, a professional accountant shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the professional accountant may wish to consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.

- 100.19 Where a matter involves a conflict with, or within, an organization, a professional accountant shall determine whether to consult with those charged with governance of the organization, such as the board of directors or the audit committee.
- 100.20 It may be in the best interests of the professional accountant to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.
- 100.21 If a significant conflict cannot be resolved, a professional accountant may consider obtaining professional advice from the relevant professional body or from legal advisors. The professional accountant generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. Instances in which the professional accountant may consider obtaining legal advice vary. ~~For example, a professional accountant may have encountered a fraud, the reporting of which could breach the professional accountant's responsibility to respect confidentiality. The professional accountant may consider obtaining legal advice in that instance to determine whether there is a requirement to report.~~
- 100.22 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant shall, where possible, refuse to remain associated with the matter creating the conflict. The professional accountant shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.



## SECTION 140

### Confidentiality

- 140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:
- (a) Disclosing outside the firm, employing organization or the auditor confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
  - (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
- 140.2 A professional accountant shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.
- 140.3 A professional accountant shall maintain confidentiality of information disclosed by a prospective client or employer.
- 140.4 A professional accountant shall maintain confidentiality of information within the firm, employing organization or auditor. The relationship between an entity and its auditor must be characterized by complete candor and full disclosure regarding all aspects of the client's business relationships, disclosure by a professional accountant to an entity's auditor is, therefore, not a breach of confidentiality under this Code.
- 140.5 A professional accountant shall take reasonable steps to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.
- 140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.
- 140.7 The following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:
- (a) Disclosure is permitted by law and is authorized by the client or the employer;
  - (b) Disclosure is required by law, for example:
    - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
    - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
  - (c) There is a professional duty or right to disclose, when not prohibited by law:

- (i) To comply with the quality review of a member body or professional body;
- (ii) To respond to an inquiry or investigation by a member body or regulatory body;
- (iii) To protect the professional interests of a professional accountant in legal proceedings; or
- (iv) To comply with technical standards and ~~ethics~~ requirements contained in Sections 225 and 360 in this Code.

140.8 In deciding whether to disclose confidential information, relevant factors to consider include:

- (a) Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant;
- (b) Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any;
- (c) The type of communication that is expected and to whom it is addressed; and
- (d) Whether the parties to whom the communication is addressed are appropriate recipients.

## SECTION 150

### Professional Behavior

- 150.1 The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession, for example if a professional accountant is associated with a client or employing organization that acts unethically.
- 150.2 In marketing and promoting themselves and their work, professional accountants shall not bring the profession into disrepute. Professional accountants shall be honest and truthful and not:
- (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
  - (b) Make disparaging references or unsubstantiated comparisons to the work of others.

## SECTION 210

### Professional Appointment

#### *Client Acceptance and Continuance*

- 210.1 Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavior may be created from, for example, questionable issues associated with the client (its owners, management or activities).
- 210.2 ~~Client-Questionable~~ issues associated with the client that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty, ~~or~~ questionable financial reporting practices or other unethical behavior.
- 210.3 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.
- Examples of such safeguards include:
- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
  - Securing the client's commitment to address the questionable issues, for example through improvinge corporate governance practices or internal controls.
- 210.4 Where it is not possible to reduce the threats to an acceptable level, the professional accountant in public practice shall decline to enter into the client relationship.
- 210.5 ~~A professional accountant in public practice shall periodically review whether to continue with a recurring client engagement.~~ Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the professional accountant to decline the engagement had that information been available earlier. A professional accountant in public practice shall, therefore, periodically review whether to continue with a recurring client engagement.
- 210.6 A threat to compliance with the fundamental principles may be created by client pressure on to reduce fees or a client's unethical behavior such as persistent aggressive earnings management or balance sheet valuations. If a professional accountant in public practice identifies a threat to compliance with the fundamental principles, the accountant shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the professional accountant in public practice shall terminate the client relationship.

### *Engagement Acceptance*

- 210.6 The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.
- 210.7 A professional accountant in public practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:
- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
  - Acquiring knowledge of relevant industries or subject matters.
  - Possessing or obtaining experience with relevant regulatory or reporting requirements.
  - Assigning sufficient staff with the necessary competencies.
  - Using experts where necessary.
  - Agreeing on a realistic time frame for the performance of the engagement.
  - Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.
- 210.8 When a professional accountant in public practice intends to rely on the advice or work of an expert, the professional accountant in public practice shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

## SECTION 300

- 300.5 A professional accountant in business may hold a senior position within an organization. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A professional accountant in business is expected, therefore, to encourage an ethics-based culture in an employing organization that emphasizes the importance that senior management places on ethical behavior.
- 300.6 A professional accountant in business shall not knowingly engage in any business, occupation, or activity, such as persistent aggressive earnings management or balance sheet valuations, that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, impairs or might impair integrity, ~~objectivity~~ or the good reputation of the profession and as a result would be incompatible with the fundamental principles.:-
- 300.15 ~~In circumstances where all~~ If a professional accountant in business believes that unethical behavior ~~or actions by others will continue to~~ has occurred within the employing organization, the professional accountant shall discuss the matter the appropriate level of management. If the response to the matter is not appropriate, the professional accountant shall escalate the matter to higher levels of management to the extent possible. If the response is still not appropriate, the professional accountant shall discuss the matter with those charged with governance, if possible. If, in the professional accountant's judgment, the response to the matter is not appropriate, the professional accountant in business may consider obtaining legal advice. In those extreme situations where all available safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a professional accountant in business and may conclude that it is appropriate to resign from the employing organization.