

RESPONDING TO A SUSPECTED ILLEGAL ACT— STRAW MAN

SECTION 100

Introduction and Fundamental Principles

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Fundamental Principles

100.5 A professional accountant shall comply with the following fundamental principles:

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- (e) Professional Behavior – to comply with relevant laws and regulations and avoid any conduct that discredits the profession.

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SECTION 140

Confidentiality

140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:

- (a) Disclosing outside the firm or employing organization 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 or employing organization.

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.

Circumstances Where Confidential Information May be Disclosed

- 140.7 The principle of confidentiality is a cornerstone of the accountancy profession. Confidentiality serves the public interest because it facilitates the free flow of information between a professional accountant and the professional accountant's client or employer. Nevertheless, there are circumstances where the professional accountant is or may be required to disclose confidential information, or when such disclosure may be appropriate.
- 140.8 A professional accountant may override the duty of confidentiality when:
- (a) Disclosure is required by law or regulation, for example, when required:
 - (i) By a court to present documents or other evidence in the course of legal proceedings; or
 - (ii) To disclose particular matters or information to a regulator or other authority;
 - (b) There is a professional duty or right to disclose, which is not prohibited by law, for example:
 - (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 accountant's interests in legal proceedings; or
 - (iv) To comply with technical standards, such as communication of relevant audit matters by the auditor of a subsidiary to the group auditor; or
 - (c) Disclosure is permitted by law and is authorized by the client or the employer.
- 140.9 In deciding whether to disclose confidential information in these circumstances, relevant factors to consider include:
- Whether the interests of any 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.
 - 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.
 - The type of communication that is expected and to whom it is addressed.
 - Whether the parties to whom the communication is addressed are appropriate recipients.
- 140.10 A professional accountant may also disclose confidential information when, in the circumstances described in Sections 225 and 360, the professional accountant judges that disclosure of a suspected illegal act to an appropriate authority would be in the public interest.

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 conduct that the professional accountant knows or should know may discredit the profession. This includes conduct 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. Such conduct may include, for example, not responding to circumstances where the professional accountant suspects that an illegal act has been committed or is about to be committed by a client or employer, as described in Sections 225 and 360 respectively.
- 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 225

Responding to a Suspected Illegal Act

- 225.1 This section addresses the responsibilities of a professional accountant in public practice when the professional accountant suspects that an illegal act has been committed or is about to be committed by a client. For the purposes of this section, illegal acts comprise fraud and other acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, management or employees of a client which are contrary to the prevailing laws or regulations. Personal misconduct unrelated to the business activities of the client and matters that are clearly inconsequential are excluded. Whether an act is actually illegal is a matter for legal determination by a court of law.

Responsibility for Compliance with Laws and Regulations

- 225.2 It is the responsibility of the client or its management, with the oversight of those charged with governance, to ensure that the client's business activities are conducted in accordance with laws and regulations. It is also the responsibility of the client, its management and those charged with governance, to address any illegal acts committed, or about to be committed, by the client or by those charged with governance, management or employees of the client.

Responsibilities of Professional Accountants in Public Practice

- 225.3 If a professional accountant in public practice suspects that an illegal act has been committed by a client, or by those charged with governance, management or employees of the client, the professional accountant shall consider whether there are any applicable legal or regulatory requirements governing how the suspected illegal act is to be addressed. If so, the professional accountant shall comply with those requirements.
- 225.4 When required by law or regulation to disclose a suspected illegal act, for example, pursuant to anti-money laundering legislation, a professional accountant in public practice shall make the disclosure in compliance with the relevant legal or regulatory requirements. In doing so, the professional accountant shall comply with any prohibitions on alerting ("tipping-off") the client to the pending disclosure.
- 225.5 If there are no legal or regulatory requirements, the professional accountant shall address the matter in the manner set out in this section. Where there are legal or regulatory requirements, the professional accountant may find the guidance in this section helpful in complying with the requirements.

Communicating with the Client

- 225.6 If a professional accountant becomes aware that an illegal act may have been committed or may be about to be committed, the professional accountant shall seek to obtain an understanding of the nature of the matter and the circumstances in which it arose. In seeking to obtain such an understanding, the professional accountant shall gather relevant information available to make an assessment. The professional accountant is expected to apply knowledge, judgment and expertise, 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. With respect to an audit client, the professional accountant shall evaluate the possible effect on the financial statements.

- 225.7 With respect to a professional accountant performing a non-audit service for a non-audit client, the professional accountant may have become aware of the suspected illegal act during the course of the engagement, but the matter may not necessarily be within the professional accountant's expertise. Nevertheless, the closer that matter is to the professional accountant's expertise, the greater the duty for that professional accountant to pursue the matter with the client.
- 225.8 The professional accountant may consult with others within the firm, a network firm, a relevant professional body on an anonymous basis, or legal counsel to:
- Understand the application of the relevant laws and regulations to the circumstances and whether the act is potentially illegal;
 - Assess the gravity of the matter;
 - Understand the potential consequences of the matter to the client, including the impact on the client's financial reporting; and
 - Identify the possible courses of action.
- 225.9 If the professional accountant in public practice is performing a non-audit service for an audit client of the firm, or a network firm, the professional accountant shall discuss the matter with the engagement partner for the audit in order that the audit engagement team is made appropriately aware of the matter and may consider the possible consequences on the audit.
- 225.10 If the professional accountant has reason to believe that an illegal act has been committed or is about to be committed, the professional accountant shall, subject to any considerations to the contrary (see paragraph 225.4), discuss the matter with the client to:
- (a) Confirm the professional accountant's understanding of the facts and circumstances relevant to the matter, and the potential consequences of the matter; and
 - (b) Understand what actions the client, its management or those charged with governance plan to take to address the matter, including whether they plan to disclose it to an appropriate authority.
- 225.11 In the case of a client that is an entity, the professional accountant shall undertake such discussions with the appropriate level of management and, where appropriate, those charged with governance. The determination of which level of management is the appropriate level with whom to discuss the matter is a matter of professional judgment. Relevant factors to consider include:
- The nature of the act.
 - The circumstances and individuals involved.
 - The likelihood of collusion.
 - The gravity of the matter.
 - Whether that level of management is able to take action to investigate the matter and take remedial action.

- 225.12 The professional accountant plays an important role as a trusted advisor to the client. Accordingly, the professional accountant shall consider whether the client, its management or those charged with governance understand their legal or regulatory responsibilities to address the matter and, if not, shall assist them in doing so. The professional accountant may recommend that the client obtain legal advice.
- 225.13 The appropriate level of management is generally at least one level above the person or persons who appear to be involved in the matter. In the context of an audit engagement, if the professional accountant suspects that management or those charged with governance are involved in the suspected illegal act that has been committed or is about to be committed, the professional accountant shall discuss the matter with the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. The professional accountant may also consider discussing the matter with internal auditors, where applicable. In the context of a group audit engagement, the appropriate level may be management at an entity that controls the client. Where no higher authority exists, or if the professional accountant believes that the communication may not be acted upon or is unsure as to the person to whom to report, the auditor shall consider the need to obtain legal advice.
- 225.14 If the client does not provide sufficient information to satisfy the professional accountant that the client is in compliance with laws and regulations, or if sufficient information about the suspected illegal act cannot be obtained, the professional accountant shall consider the need to obtain legal advice regarding possible actions to take.

Evaluating the Response of the Client

- 225.15 The professional accountant shall evaluate whether the client, its management or those charged with governance have appropriately addressed the matter.
- 225.16 When determining whether the client, its management or those charged with governance have addressed the matter appropriately, the professional accountant shall consider the nature and gravity of the matter and factors such as whether:
- The matter has been adequately investigated.
 - Action has been taken to remediate the matter.
 - Appropriate steps have been taken to reduce the risk of re-occurrence, for example, additional controls or training.
 - The matter has been disclosed to an appropriate authority if a legal or regulatory requirement exists for the client to do so, or the professional accountant believes that doing so would be in the public interest.
- 225.17 The degree to which the professional accountant is able to evaluate the response of management or those charged with governance may vary with the nature of the professional services provided to the client. In particular, professional accountants that provide audit services to their clients generally have greater access to information and management, by law or otherwise, than professional accountants that provide other professional services to their clients.

225.18 If, in the professional accountant's judgment, the response of the client is not appropriate or the professional accountant is unable to assess whether the response is appropriate, and the client is an audit client, the professional accountant shall:

- (a) Discuss the matter with those charged with governance if the professional accountant has not already done so;
- (b) If the engagement is an audit of a component of a group, discuss the matter with management or those charged with governance of the group or the group auditor, if applicable; and
- (c) Consider the implications for the auditor's report in accordance with auditing standards.

The professional accountant may also consider consulting with a relevant professional body or seeking legal advice.

225.19 If, in the professional accountant's judgment, the response of the client is not appropriate or the professional accountant is unable to assess whether the response is appropriate, and the client is not an audit client, the professional accountant shall consider:

- Discussing the matter with those charged with governance if the professional accountant has not already done so.
- Alerting the external auditor, if any, to the matter to enable the external auditor to determine whether specific action is needed in the context of the audit.
- Seeking advice from the professional accountant's professional body.
- Seeking legal advice as to the professional accountant's legal rights and possible courses of action.

225.20 In exceptional circumstances, the professional accountant may consider whether either one or both of the following actions are appropriate when, in the professional accountant's opinion, the client has not appropriately addressed the matter:

- Disclosing the matter to an appropriate authority in accordance with paragraphs 225.21-225.25.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation. Withdrawal, however, is not a substitute for complying with the requirements in this section.

Disclosing a Suspected Illegal Act to an Appropriate Authority

225.21 Where there is no legal or regulatory requirement to disclose the suspected illegal act, and to do so is not contrary to law or regulation in the relevant jurisdiction, the professional accountant shall consider whether voluntary disclosure to an appropriate authority is appropriate. A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Accordingly, a professional accountant is permitted to override the duty of confidentiality under this Code by disclosing to an appropriate authority a suspected illegal act where, in the professional accountant's judgment, such disclosure would be in the public interest.

- 225.22 The professional accountant is encouraged to seek legal advice to understand the legal implications of disclosure to an appropriate authority.
- 225.23 In determining whether or not to disclose a suspected illegal act to an appropriate authority, the professional accountant shall consider the following:
- Whether the client has already adequately disclosed the matter to an appropriate authority.
 - The degree to which the relevant information is known and substantiated.
 - The gravity of the matter, for example, the size of the amounts involved and the extent of the likely damage.
 - Whether members of the public are likely to be affected.
 - Whether there is protection afforded by legislation, such as under whistle-blowing legislation.
- 225.24 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. The professional accountant shall also consider whether it is appropriate to inform the client of the professional accountant's intentions before making such disclosure.
- 225.25 An appropriate authority is one with responsibility for such a matter. In many instances, that authority will have the ability to investigate and take action to safeguard the public interest. The appropriate authority to which to disclose the matter will depend on the nature of the illegal act, for example, a competition regulator in the case of a suspected cartel arrangement, and a securities regulator in the case of fraudulent financial reporting in a listed entity.

Documentation

- 225.26 The professional accountant is encouraged to document the steps the professional accountant took to respond to a suspected illegal act.

SECTION 360

Responding to a Suspected Illegal Act

360.1 This section addresses the responsibilities of a professional accountant in business when the professional accountant suspects that an illegal act has been committed or is about to be committed by an employing organization. For the purposes of this section, illegal acts comprise fraud and other acts of omission or commission, intentional or unintentional, committed by an employing organization, or by those charged with governance, management or employees of an employing organization which are contrary to the prevailing laws or regulations. Personal misconduct unrelated to the business activities of the employing organization and matters that are clearly inconsequential are excluded. Whether an act is actually illegal is a matter for legal determination by a court of law.

Responsibility for Compliance with Laws and Regulations

360.2 It is the responsibility of the employing organization and its management, with the oversight of those charged with governance, to ensure that the employing organization's business activities are conducted in accordance with laws and regulations. It is also the responsibility of the employing organization, its management and those charged with governance, to address any illegal acts committed, or about to be committed, by the employing organization or by those charged with governance, management or employees of the employing organization.

Responsibilities of Professional Accountants in Business

360.3 If a professional accountant in business suspects that an illegal act has been committed by an employing organization, or by those charged with governance, management or employees of the employing organization, the professional accountant shall consider whether there are any applicable legal or regulatory requirements governing how the suspected illegal act is to be addressed. If so, the professional accountant shall comply with those requirements. Otherwise, if there are no legal or regulatory requirements, the professional accountant shall address the matter in the manner set out in this section. Where there are legal or regulatory requirements, the professional accountant may find the guidance in this section helpful in complying with those requirements. Communicating with Management or Those Charged with Governance

360.4 If a professional accountant in business becomes aware that an illegal act may have been committed or may be about to be committed, the professional accountant shall seek to obtain an understanding of the nature of the matter and the circumstances in which it arose. In seeking to obtain such an understanding, the professional accountant shall gather relevant information available to make an assessment. The professional accountant is expected to apply knowledge, judgment and expertise, but is not expected to have detailed knowledge of laws and regulations beyond that which is required for the professional activity the accountant is undertaking. While the professional accountant may have become aware of the matter when carrying out the professional accountant's employment responsibilities, the suspected illegal act may not necessarily be within the professional accountant's expertise. Nevertheless, the closer that matter is to the professional accountant's expertise, the greater the duty for the professional accountant to pursue the matter with the employer.

- 360.5 The professional accountant shall consider the protocols and procedures, if any, that have been established by the employing organization to address such a matter (for example, an ethics policy).
- 360.6 The professional accountant may consult with a relevant professional body on an anonymous basis or legal counsel to:
- Understand the application of the relevant laws and regulations to the circumstances and whether the act is potentially illegal;
 - Assess the gravity of the matter;
 - Understand the potential consequences of the matter to the employing organization; and
 - Identify the possible courses of action.
- 360.7 If the professional accountant has reason to believe that an illegal act has been committed or is about to be committed, the professional accountant shall generally first address the matter within the reporting lines of the employing organization by discussing the matter with an immediate superior or higher levels of management as deemed appropriate in the circumstances. The purposes of this discussion are to:
- (a) Confirm the professional accountant's understanding of the facts and circumstances relevant to the matter, and the potential consequences of the matter; and
 - (b) Understand what actions the immediate superior, management or those charged with governance plan to take to address the matter, including whether they plan to disclose it to an appropriate authority.
- 360.8 Professional accountants in business can be involved in a variety of roles involving the preparation and reporting of financial information as well as general management activities. Employing organizations rely on the expertise of professional accountants in business to help ensure that the business activities are undertaken in accordance with relevant laws and regulations. Accordingly, the professional accountant shall consider whether management or those charged with governance understand their legal or regulatory responsibilities to address the matter and, if not, shall to the extent practicable assist them in doing so. The professional accountant in business may recommend that the employing organization obtain legal advice.
- 360.9 If the immediate superior or management does not provide sufficient information to satisfy the professional accountant that the employing organization is in compliance with laws and regulations, or if sufficient information about the suspected illegal act cannot be obtained, the professional accountant shall consider the need to obtain legal advice regarding possible actions to take.
- 360.10 In certain circumstances, the professional accountant may deem it more appropriate to communicate the matter in accordance with the protocols established by the employing organization's ethics policy where such protocols allow for anonymity, rather than discussing the matter with an immediate superior or higher levels of management. This may be appropriate when the professional accountant is employed in a relatively junior position and believes that the illegal act is deliberate and involves different layers of management. This will enable the matter to be rapidly escalated to those best able to address it.

Evaluating the Response of Management or Those Charged with Governance

- 360.11 The professional accountant shall evaluate whether the professional accountant's immediate superior, management or those charged with governance have taken appropriate remedial action.
- 360.12 When determining whether the professional accountant's immediate superior, management or those charged with governance have addressed the matter appropriately, the professional accountant shall consider the nature and gravity of the matter and factors such as whether:
- The matter has been adequately investigated;
 - Action has been taken to remediate the matter;
 - Appropriate steps have been taken to reduce the risk of re-occurrence, such as for example, additional controls or training; and
 - The matter has been disclosed to an appropriate authority if a legal or regulatory requirement exists for the employing organization to do so or the professional accountant believes that doing so would be in the public interest.
- 360.13 If, in the professional accountant's judgment, the response to the matter is not appropriate, or the professional accountant suspects that the immediate superior or management is involved in the suspected illegal act, or the professional accountant is unable to assess whether the response is appropriate, the professional accountant shall:
- Escalate the matter within the entity, for example with higher levels of management, internal audit, or those charged with governance;
 - Disclose the matter to the employing organization's external auditor, if any, to enable the auditor to determine appropriate actions in the context of the external audit, or
 - Disclose the matter in accordance with any established mechanism such as an ethics policy.
- 360.14 If the professional accountant is unable to escalate the matter, or if the professional accountant has doubts about the integrity or honesty of management and those charged with governance and there is no established mechanism such as an ethics policy, the professional accountant shall consider discussing the matter with a relevant professional body on an anonymous basis or legal counsel.
- 360.15 In exceptional circumstances, the professional accountant shall also consider whether either one or both of the following actions are appropriate when, in the professional accountant's opinion, management or those charged with governance do not take the remedial action that the professional accountant considers appropriate in the circumstances:
- Disclosing the matter to an appropriate authority in accordance with paragraphs 360.16-360.20.
 - Resigning from the employing organization. Resignation, however, is not a substitute for complying with the requirements in this section.

Disclosing a Suspected Illegal Act to an Appropriate Authority

- 360.16 Where there is no legal or regulatory requirement to disclose the suspected illegal act, and to do so is not contrary to law or regulation in the relevant jurisdiction, the professional accountant shall consider whether voluntary disclosure to an appropriate authority is appropriate. A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Accordingly, a professional accountant in business is permitted to override the duty of confidentiality under this Code by disclosing to an appropriate authority a suspected illegal act where, in the professional accountant's judgment, such disclosure would be in the public interest.
- 360.17 The professional accountant is encouraged to seek legal advice to understand the legal implications of disclosure to an appropriate authority.
- 360.18 In determining whether or not to disclose a suspected illegal act to an appropriate authority, the professional accountant shall consider the following:
- Whether the employing organization has already adequately disclosed the matter to an appropriate authority.
 - The degree to which the relevant information is known and substantiated.
 - Whether members of the public are likely to be affected.
 - The gravity of the matter, for example, the size of the amounts involved and the extent of the likely damage.
 - Whether there is protection afforded by legislation, such as under whistle blowing legislation.
- 360.19 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.
- 360.20 An appropriate authority is one with responsibility for such a matter. In many instances, that authority will have the ability to investigate and take action to safeguard the public interest. The appropriate authority to which to disclose the matter will depend upon the nature of the suspected illegal act, for example, a competition regulator in the case of a suspected cartel and a securities regulator in the case of suspected fraudulent financial reporting in a listed entity.

Documentation

- 360.21 The professional accountant is encouraged to document the steps the professional accountant took to respond to a suspected illegal act.