



Mr Imran Vanker
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Dear Mr Vanker

**PwC comments on proposed amendments to the IRBA Code:
*Responding to Non-Compliance with Laws and Regulations***

Introduction

The International Ethics Standards Board for Accountants (IESBA) released final amendments to the IESBA Code of Ethics on Responding to Non-Compliance with Laws and Regulations (NOCLAR).

As the IRBA adopted Parts A and B of the IESBA Code as prescribed by way of the Code of Professional Conduct for Registered Auditors (the IRBA Code) in South Africa, the IESBA's final amendments to NOCLAR resulted in amendments to Parts A and B and the Committee for Auditor Ethics (CFAE) indicated that it will consider possible revisions to the IRBA Code.

The CFAE indicated that it is seeking comments on the following questions:

- Do registered auditors require clarification on the relationship between the proposed Code amendments and the statutory requirement contained in Section 45 Reportable Irregularities (RIs) of the Auditing Profession Act, 2005 (Act 26 of 2005)?
- Are there other matters of clarification that you would like to bring to the attention of the CFAE?

PwC appreciates the opportunity to respond to the CFAE's invitation of 9 September 2016 and to comment on the IRBA's proposed revisions to the Code of Professional Conduct for Registered Auditors (the IRBA Code) in South Africa.

PwC supports the IRBA's objective of setting high-quality ethics standards for auditors in South Africa and facilitating the convergence of international and national ethics standards. PwC has been closely monitoring the IESBA's deliberations and draft proposals regarding non-compliance with laws and regulations (NOCLAR) since its inception. PwC as a network firm provided extensive comments to the International Auditing and Assurance Standards Board through its comment letter dated, October, 2015.

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Response to specific questions

We are of the view that clarification is needed regarding the following aspects reflected in the Code in relation to S 45 of the APA and in relation to other matters:

1.1 Communicating with Those Charged with Governance

Sections 100.25 and 100.26

“100.25 When communicating with those charged with governance in accordance with the provisions of this Code, the professional accountant or firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the professional accountant or firm communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, the professional accountant or firm shall determine whether communication with all of those charged with governance is also necessary so that they are adequately informed.

100.26 In some cases, all of those charged with governance are involved in managing the entity, for example, a small business where a single owner manages the entity and no one else has a governance role. In these cases, if matters are communicated with person(s) with management responsibilities, and those person(s) also have governance responsibilities, the matters need not be communicated again with those same person(s) in their governance role. The professional accountant or firm shall nonetheless be satisfied that communication with person(s) with management responsibilities adequately informs all of those with whom the professional accountant or firm would otherwise communicate in their governance capacity.”

Comment

The Revised Guide for Registered Auditors: Reportable Irregularities in terms of the Auditing Profession Act (“RI Guide”) issued by the IRBA in May 2015 contains guidance on the measures for auditors to discuss the RI report with members of the management board of an entity. It is recommended that the RI Guide should be enhanced to also reflect the duties of the auditor where legislation prohibits the auditor from discussing non-compliance with those charged with governance. In South Africa the law prohibits alerting (“tipping off”) the entity, for example, when the auditor is required to report the non-compliance to an appropriate authority pursuant to anti-money laundering legislation. The above sections in the Code are obligatory for auditors (“shall”) and the RI Guide does not emphasise the circumstances where discussing non-compliance with laws and regulations are regarded as “tipping-off” and prohibited by law.

The same considerations will apply between auditors and predecessor auditors, whereas auditors will be precluded to discuss non-compliance with laws and regulations pertaining to money-laundering control as envisaged by paragraphs 210.14.



1.2 Reporting obligations to authorities (other regulators)

Guidance on the reporting obligations of auditors to other regulators on non-compliance with laws and regulations will be welcomed. Additional guidance on the circumstances when reporting obligations arise will enable auditors to discharge obligations towards other regulators in South Africa including the Financial Services Board, the South African Reserve Bank, the Financial Intelligence Centre (amongst others). The relationship between these reporting obligations and the obligations posed under S 45 of the APA also need clarification including the circumstances under which dual reporting obligations to more than one regulator exist.

1.3 Confidentiality

Guidance on the relationship between confidentiality and reporting obligations will be welcomed and the circumstances under which reporting under the APA and other legislation may or may not constitute a breach of confidentiality and the regulatory protection afforded to auditors who may inadvertently breach client confidentiality whilst under the impression that reporting obligations are being complied with.

1.4 Determination of the prevalent legislation to consider for purposes of expressing an opinion on the financial statements

In the audit of financial statements the auditor is required to comply with International Standard on Auditing (ISA) 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*. Considering compliance with laws and regulations is fundamentally based on the auditor's main objective of expressing an opinion on the financial statements. Where non-compliance with laws and regulations are remotely removed from the events and transactions reflected in the financial statements, it may be unlikely that the auditor will recognise the non-compliance of secondary laws. It stands to reason if ISA 250 sufficiently equips the auditor to recognise the laws that may have an unforeseen impact on the financial statements with reference to large penalties, loss of turnover and loss of key personnel as a result of imprisonment. Other examples may include unenforceability of agreements due to non-compliance with key requirements contained in legislation. Further guidance on prevalent regulatory requirements in general but also industry specific legislation may assist the auditor in this regard.

1.5 Non-compliance with foreign legislation and the cross border exchange of information with network firm auditors and foreign regulators

Circumstances may also arise where a foreign subsidiary or component of a South African company contravenes a law or regulation, either South African or foreign. Such an unlawful act or omission may trigger reporting obligations in South Africa and considerations of exchanging information to the network where the same firm is also the auditor in other territories. Guidance on the impact of foreign legislation and the permissibility of exchanging the information with auditors and regulators cross-border will be welcomed.



We thank you for the opportunity to point out the areas in which clarification is required as requested in your invitation and trust that our comments will be valuable in the implementation of the IRBA Code amendments.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michiel Engelbrecht", written over a light gray horizontal line.

Michiel Engelbrecht

Director