



 **EXPLORING THE IESBA CODE**  
**Installment 8: Responding to Non-Compliance with Laws and Regulations [for PAIBs]**

**探索国际会计师  
职业道德准则理事会守则**  
**第8部分：应对不遵守法律法规 [专业执业会计师]**

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**CCS Insights**  
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## Responding to Non-Compliance with Laws and Regulations [for PAIBs]




- This publication addresses Professional Accountants In Business (PAIBs). Installment 9 will address this topic relative to auditors and other professional accountants in public practice.
- The acknowledgment of duty to act in the public interest is a distinctive feature of the accountancy profession. Professional accountants may encounter instances in which they discover or suspect that their employer or a client is in non-compliance with laws and regulations.
- In 2016, the IESBA issued guidance on responding to NOCLAR and added amendments to sections 225 and 360 in the IESBA's Code of Ethics for Professional Accountants.

## Responding to Non-Compliance with Laws and Regulations [for PAIBs]






- NOCLAR (Non-compliance with laws and regulations) is defined as conduct by an employee, management or governance of a client company that, intentionally or unintentionally, results in a violation of laws and regulations, has a direct impact on the material amounts or disclosures in the client's financial statements, or has a material impact on the operations of the client company.
- This new standard sets a measuring stick for global accountants in ethics and professionalism. **It is worth noting that for the first time**, this new standard explicitly allows accountants to **set aside the duty of confidentiality** when responding to NOCLAR.

**Responding to  
Non-Compliance with Laws and Regulations [for PAIBs]**



- Under these circumstances, taking action on a timely basis is required by the PAIB in light of the nature of the situation and the potential harm to the employing organisation, investors, creditors, employees, and the general public. The PAIBs must:-
  - understand and comply with the Code and any legal or regulatory provisions in their jurisdiction that differs from or go beyond those in the Code. For example, requirements to report the matter to authorities or prohibitions on notifying the employing organisation that action is being taken.
  - take into account any current norms and processes within their organisation that provide direction on how to deal with NOCLAR (e.g., ethics and whistleblowing policies).

**Responding to  
Non-Compliance with Laws and Regulations [for PAIBs]**

- The fundamental principles of integrity and professional behaviour of the Code compel accountants to respond appropriately to non-compliance with laws and regulations (NOCLAR) by putting the public interest first.
- NOCLAR does not impose an obligation to PAIBs to disclose a non-compliance, or suspected non-compliance to authority when there is no legal obligation to do so.
- However, PAIBs must comply with the relevant NOCLAR requirements and consider whether a disclosure to an appropriate authority is an appropriate course of action in the circumstances.

## Examples of Relevant Laws and Regulations that may be Involved



- Fraud, corruption and bribery
- Banking and other financial products/services
- Data protection
- Environmental protection
- Securities markets and trading
- Money laundering, terrorist financing and proceeds of crime
- Tax and pension liabilities/payments
- Public health and safety



## NOCLAR Response Framework



- 1) Becomes aware of NOCLAR or suspected NOCLAR
- 2) Obtain an understanding of the matter
- 3) Discuss the matter
- 4) Determine whether further action is needed
- 5) If applicable, decide on appropriate further action, for example, to disclose the issue to the appropriate authority
- 6) Documentation

## 应对不遵守法律法规 [专业执业会计师]



- 本出版物涉及企业中的专业执业会计师 (PAIBs)。第9期将讨论与审计师和其他公共执业的专业会计师有关这个话题。
- 对为公众利益行事责任的认可，是会计行业的一个显著特点。专业执业会计师 (PAIBs) 可能会遇到他们发现或怀疑其雇主或客户不遵守法律和法规的情况。
- 早在2016年，IESBA发布了关于对 NOCLAR 的应对指南，并且在会计师职业道德准则 (IESBA's Code of Ethics for Professional Accountants) 中对第225和360节做了新增修订。

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## 应对不遵守法律法规 [专业执业会计师]



- 不遵守法律法规 [NOCLAR] 是指客户公司中的职员、管理层、治理层故意或无意导致的有违法规的，会对客户财务报表的重大金额或重大披露有直接影响的，或对客户公司的经营有重要影响的行为。
- 这一新的标准为全球会计师在职业道德和专业素养方面制定了一把量尺。
- 值得我们注意的一点是，这一新标准第一次明确地允许了会计师在应对 NOCLAR 时可以将保密义务搁置一边 (set aside the duty of confidentiality)。



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## 应对不遵守法律法规 [专业执业会计师]



- 在这种情况下，考虑到情况的性质和对雇佣机构、投资者、债权人、雇员和公众的潜在危害，专业执业会计师 (PAIBs) 需要及时采取行动。他们必须:-
  - 了解并遵守本守则以及其管辖范围内不同于或超出本守则的任何法律或监管规定。例如，向当局报告此事的要求，或禁止将正在采取的行动通知雇佣机构的规定。
  - 考虑到其组织内所提供的如何应对不遵守法律法规 [NOCLAR] 的任何现行规范和流程 (例如，道德和举报政策)。

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## 应对不遵守法律法规 [专业执业会计师]



- 在本准则的诚信和专业行为的基本原则下，在应对不遵守法律法规 [NOCLAR] 迫使会计师以公众利益为前提。
- 在没有法律义务的情况下，应对不遵守法律法规 [NOCLAR] 并不强加给专业执业会计师向当局披露不合规行为或涉嫌不合规行为的责任。
- 但是，专业执业会计师必须遵守相关的应对不遵守法律法规 [NOCLAR] 的要求，并考虑在这种情况下，向适当的当局作出披露是否是一个适当的行动方案。



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## 相关可能会涉及到的法律和法规的例子




- 欺诈、腐败和贿赂
- 银行和其他金融产品/服务
- 数据保护
- 环境保护
- 证券市场和交易
- 洗钱、恐怖主义融资和犯罪收益
- 税收和养老金责任/支付
- 公共健康和安




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## NOCLAR 应对指南给出了一个清晰的框架




- 1) 要求我们对于当前事件有充分了解；
- 2) 要求会计师与治理层进行充分沟通，要求他们及时、恰当地对 NOCLAR 做出整改；
- 3) 要求会计师与项目负责人进行沟通，除非法律禁止；
- 4) 要求会计师判断鉴于公众利益是否要采取进一步行动，这包括评价管理层、治理层的整改效果如何；
- 5) 要求会计师判断是否需要将所发现的情况报告给相关政府机构；
- 6) 要求会计师在底稿中记录其所做出的一系列判断和决定。


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  - ✓ 寻求本身独立的专业意见，因为各别案例所涉及的范围和层面皆不同。
  
- When you apply the content in our videos and publications as a reference, you need to:
  - ✓ check the information contained therein, whether it's up-to-date, accurate and complete, and
  - ✓ seek your independent professional advice because the scope and extent involved in each case are different.



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