

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 the accountant encounters a suspected illegal act in the course of performing a professional service. Some illegal acts are required under law or regulation to be disclosed to an appropriate authority. If such disclosure is required, a professional accountant shall comply with the disclosure requirements. Where disclosure is not required under law or regulation, this section describes the circumstances where a professional accountant in public practice shall override the fundamental principle of confidentiality and disclose illegal acts to an appropriate authority.

225.2 Illegal acts comprise acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations. Examples of illegal acts include:

- Fraudulent financial reporting involving intentional misstatements including omissions of amounts or disclosures in financial statements to deceive financial statement users;
- Misappropriation of assets;
- Money laundering offences;
- Tax evasion;
- Insider trading;
- Bribery;
- Health and safety offences;
- Environmental offences; and
- Breaches of employment legislation.

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.

225.3 If a professional accountant in public practice in the course of performing a professional service acquires information which 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 appropriate levels of 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 in accordance with firm policies and procedures. The professional accountant may also wish to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege.

- 225.4 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.
- 225.5 If the response to the matter is not appropriate, the professional accountant shall escalate the matter. If the highest level of management has not appropriately responded to the matter, the professional accountant shall discuss the matter with those charged with governance.
- 225.6 If the professional accountant has doubts about the integrity or honesty of management and 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, 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.
- 225.7 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.
- 225.8 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.
- 225.9 If the professional accountant determines that disclosure of the suspected illegal act 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, the professional accountant shall disclose the matter to an appropriate authority when not prohibited by law. The matters that the professional accountant shall disclose are:
- Suspected illegal acts that directly or indirectly affect the client's financial reporting; and

- Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant, such as fraud, bribery or insider trading.

225.10 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 public interest is best served by disclosing the matter to an appropriate 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.

225.11 A professional accountant shall not disclose a suspected illegal act before having given the matter careful thought and having taken appropriate advice. When making a disclosure to an appropriate authority the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions.

225.12 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 tax evasion, and a securities regulator in the case of fraudulent financial reporting in a listed entity. In determining which party is the appropriate 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.

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

225.14 When required by law 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 requirements.

225.15 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 Suspected Fraud or Illegal Acts

360.1 This section provides guidance to a professional accountant in business on how to respond when the accountant encounters a suspected illegal act in the course of undertaking a professional activity¹. Some illegal acts are required under law or regulation to be disclosed to an appropriate authority. If such disclosure is required, a professional accountant shall comply with the disclosure requirements. Where disclosure is not required under law or regulation, this section describes the circumstances where a professional accountant in business shall override the fundamental principles of confidentiality and disclose an illegal act to an appropriate authority.

360.2 Illegal acts comprise acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations.. Examples of illegal acts include:

- Fraudulent financial reporting involving intentional misstatements including omissions of amounts or disclosures in financial statements to deceive financial statement users;
- Misappropriation of assets;
- Money laundering offences;
- Tax evasion;
- Insider trading;
- Bribery;
- Health and safety offences;
- Environmental offences; and
- Breaches of employment legislation.

¹ 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.”

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.

- 360.3 If a professional accountant in business in the course of performing a professional activity encounters circumstances which lead the accountant to suspect that an illegal act may have been committed, the accountant shall take reasonable steps to confirm or dispel that suspicion. In doing so, the professional accountant is expected to apply appropriate levels of 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 activities 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. The professional accountant may also wish to discuss the matter with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege.
- 360.4 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.
- 360.5 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. 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.
- 360.6 If the professional accountant in business has doubts about the integrity or honesty of the accountant's superior or management and 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, 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.
- 360.7 When determining if the response to the matter is appropriate, the professional accountant shall consider factors such as whether:
- The matter was appropriately 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.
- 360.8 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.
- 360.9 If the professional accountant has determined that disclosure of the suspected illegal act 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 the professional accountant shall disclose the matter to an appropriate authority, when not prohibited by law. The matters that the professional accountant shall disclose are:
- Suspected illegal acts that directly or indirectly affect the employing organization's financial reporting; and
 - Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant, such as fraud, bribery or insider trading.
- 360.10 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 public interest is best served by disclosing the matter 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.
- 360.11 A professional accountant shall not disclose a suspected illegal act before having given the matter careful thought and having taken appropriate advice. When making a disclosure to an appropriate authority the professional accountant shall act reasonably, in good faith and exercise caution when making statements and assertions.
- 360.12 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 tax evasion and a securities regulator in the case of fraudulent financial reporting in a listed entity. In determining which party is the 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.
- 360.13 The professional accountant may wish to seek legal advice to obtain an understanding of any protection afforded by legislation if the accountant discloses the matter to a party outside of the employing organization, such as is afforded in some jurisdictions under whistle-blowing legislation,.

- 360.14 When required by law or legislation to disclose the matter, for example as a result of anti-money laundering legislation, a professional accountant shall disclose that information in compliance with the relevant legal requirements.
- 360.15 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