

Non-Compliance with Laws and Regulations (NOCLAR)

A BRIEF OVERVIEW



What is at the core of what CAs and AGAs do; whether in public practice or in business?





One of SAICA's
strategic focus areas
is protecting and enhancing
the integrity and ethical
values
of the chartered
accountancy profession.



**INTEGRITY AND
ETHICAL VALUE
OF THE PROFESSION**




SAICA
THE SOUTH AFRICAN INSTITUTE
OF CHARTERED ACCOUNTANTS
develop.influence.lead.



WHY NOCLAR?

Some phrases that have been used to highlight the importance of these developments

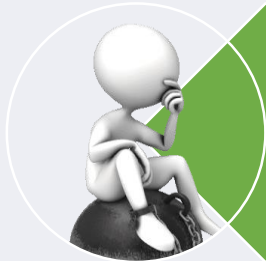
- “turning a blind eye to potential NOCLAR is not an appropriate response from professional accountants”
 - “The standard positions the accountancy profession to play a greater role in the global fight against NOCLAR, such as financial fraud, money laundering, and corruption”
 - “The IESBA encourages all professions to reflect on this new standard of ethical conduct ... and consider working towards a similarly global standard of ethics”
 - “The standard will stimulate greater accountability among organizations, help protect stakeholders and the general public from substantial harm resulting from violation of laws and regulations, and strengthen the reputation of the profession”
- 

WHY NOCLAR?

Specific public concerns that the IESBA responded to



Duty of confidentiality in the Code acting as a barrier



Auditors simply resigning before NOCLAR issues appropriately addressed



A lack of guidance to help PAs

NOCLAR definition

Non-Compliance with Laws and Regulations

Acts of omission or commission, intentional or unintentional, committed by a client or the PA's employing organisation, or by TCWG, by management or by other individuals working for or under the direction of a client or employing organisation which are contrary to the prevailing laws or regulations

PAs in public practice

- > In providing a professional service to a client
- > May encounter or be made aware of NOCLAR

PAs in business

- > In carrying out professional activities for his/her employing organisation
- > May encounter or be made aware of NOCLAR



IN ADDITION, CONSIDER THE FOLLOWING ...



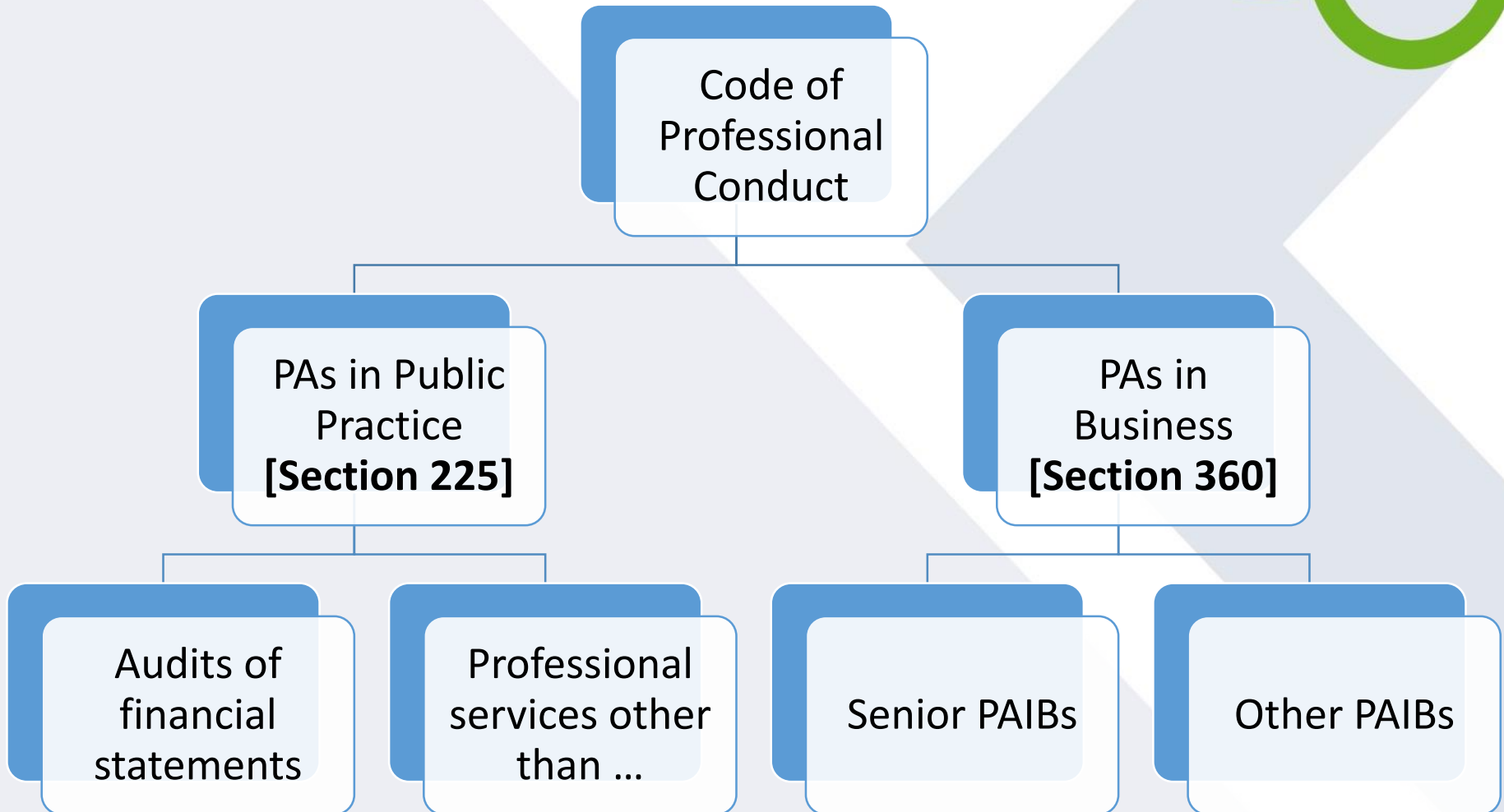
Some Consider points

- “*working for or under the direction*” means contractors, agents and non-executive directors of the client or employer are included
- Applies as of 15 July 2017, referring to the point in time the PA encounters or becomes aware of ...
 - N/A to matters already known prior to 15/7, unless early adopted
 - Act committed before 15/7, but PA becomes aware after 15/7?



Code of Professional Conduct

Differential approach to NOCLAR

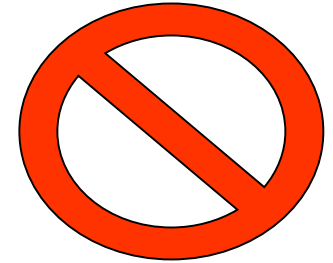


What can reasonably be asked of a PA?

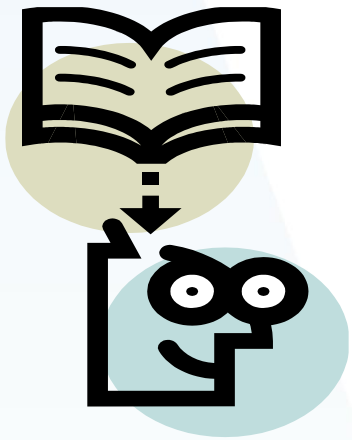
- To *recognise* NOCLAR, having regard to what should be within the scope of his/her training and experience
- No additional responsibilities to detect NOCLAR
- No increase in the range of laws and regulations (L&Rs) the PA is required to have knowledge of for purposes of
 - performing a given engagement; or
 - the PA's role within the employing organisation
- Not required to have specialised legal knowledge and skills



Not within the scope of the Code



- ❌ Matters that are clearly inconsequential
- ❌ Personal misconduct unrelated to the business activities of the client or the employing organisation
- ❌ NOCLAR other than by the client or the employing organisation, or TCWG, management or other individuals working for or under the direction of the client or the employing organisation

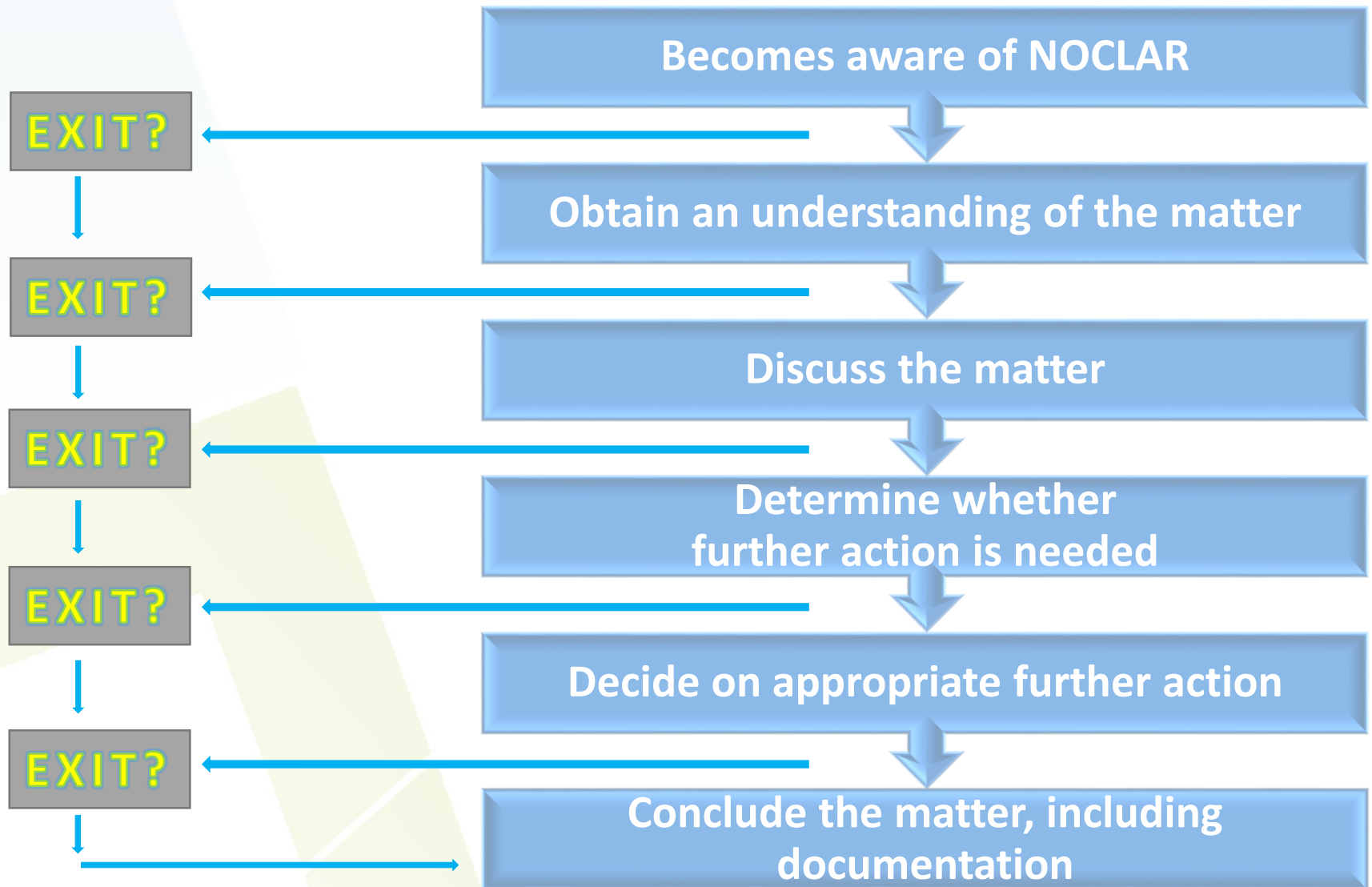


WHAT IS AN APPROPRIATE RESPONSE TO NOCLAR?

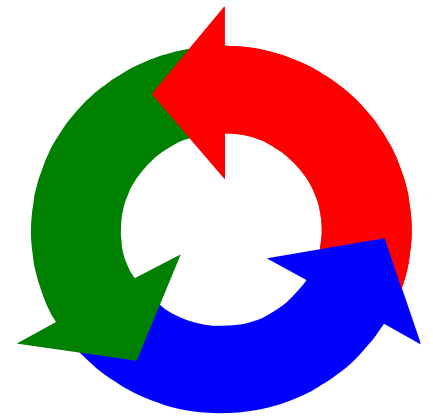
The overall objectives of the PA are:

- To comply with the fundamental principles of integrity and professional behaviour;
- By alerting management or, where appropriate, TCWG of the client or employing organisation, to seek to
 - Enable them to rectify, remediate or mitigate the consequences; or
 - Deter NOCLAR where its has not yet occurred; and
- To take such further action as appropriate in the public interest

BASIC NOCLAR RESPONSE FRAMEWORK



APPLY THE RESPONSE FRAMEWORK WITHIN THE OVERALL CONTEXT OF ...



- Laws and regulations that address the consideration, disclosure or non-disclosure of NOCLAR, or otherwise deal with the disclosure of information

[Although certain requirements under the Code may be affected, there may be other requirements that still need to be complied with]

- A firm's quality control policies and procedures, or an employing organisation's internal protocols and procedures

FURTHER ACTION IS NEEDED

What further action(s)?

Auditors / non-auditor PAIPPs / Senior PAIBs

- A. Withdraw from the engagement and the professional relationship
OR Resign from the employing organisation
- B. Disclose the matter to an appropriate authority even when there is no legal or regulatory requirement to do so

[Also Other PAIBs, in exceptional circumstances]

Only Senior PAIBs

- C. Inform the management of the parent entity of the matter



THANK YOU FOR ATTENDING



Visit the SAICA NOCLAR webpage
saica.co.za/Technical/Ethics/NOCLAR