

**INTERNATIONAL STANDARD ON AUDITING
(UK AND IRELAND) 250**

**SECTION A - CONSIDERATION OF LAWS AND REGULATIONS
IN AN AUDIT OF FINANCIAL STATEMENTS**

(Effective for audits of financial statements for periods ending on or after 15 December 2010)

CONTENTS

	Paragraph
Introduction	
Scope of this ISA (UK and Ireland).....	1 – 1-1
Effect of Laws and Regulations	2
Responsibility for Compliance with Laws and Regulations	3 - 8
Effective Date	9
Objectives	10
Definition	11 – 11-1
Requirements	
The Auditor’s Consideration of Compliance with Laws and Regulations	12 - 17
Audit Procedures When Non-Compliance Is Identified or Suspected	18 - 21
Reporting of Identified or Suspected Non-Compliance	22 - 28
Documentation	29
Application and Other Explanatory Material	
Responsibility for Compliance with Laws and Regulations	A1 - A6
The Auditor’s Consideration of Compliance with Laws and Regulations	A7 - A12
Audit Procedures When Non-Compliance Is Identified or Suspected	A13 - A18-1
Reporting of Identified or Suspected Non-Compliance	A18-2 - A20
Documentation	A21

International Standard on Auditing (UK and Ireland) (ISA (UK and Ireland)) 250, “Consideration of Laws and Regulations in an Audit of Financial Statements” should be read in conjunction with ISA (UK and Ireland) 200, “Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing (UK and Ireland).”

Introduction

Scope of this ISA (UK and Ireland)

1. This International Standard on Auditing (UK and Ireland) (ISA (UK and Ireland)) deals with the auditor's responsibility to consider laws and regulations in an audit of financial statements. This ISA (UK and Ireland) does not apply to other assurance engagements in which the auditor is specifically engaged to test and report separately on compliance with specific laws or regulations.
- 1-1. Guidance on the auditor's responsibility to report direct to regulators in the financial sector is provided in Section B of this ISA (UK and Ireland).

Effect of Laws and Regulations

2. The effect on financial statements of laws and regulations varies considerably. Those laws and regulations to which an entity is subject constitute the legal and regulatory framework. The provisions of some laws or regulations have a direct effect on the financial statements in that they determine the reported amounts and disclosures in an entity's financial statements. Other laws or regulations are to be complied with by management or set the provisions under which the entity is allowed to conduct its business but do not have a direct effect on an entity's financial statements. Some entities operate in heavily regulated industries (such as banks and chemical companies). Others are subject only to the many laws and regulations that relate generally to the operating aspects of the business (such as those related to occupational safety and health, and equal employment opportunity). Non-compliance with laws and regulations may result in fines, litigation or other consequences for the entity that may have a material effect on the financial statements.

Responsibility for Compliance with Laws and Regulations (Ref: Para. A1-A6)

3. It is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with the provisions of laws and regulations, including compliance with the provisions of laws and regulations that determine the reported amounts and disclosures in an entity's financial statements.^{1a}

Responsibility of the Auditor

4. The requirements in this ISA (UK and Ireland) are designed to assist the auditor in identifying material misstatement of the financial statements due to non-compliance with laws and regulations. However, the auditor is not responsible for preventing non-compliance and cannot be expected to detect non-compliance with all laws and regulations.
5. The auditor is responsible for obtaining reasonable assurance that the financial statements, taken as a whole, are free from material misstatement, whether caused by

^{1a} In the UK and Ireland those charged with governance are responsible for the preparation of the financial statements.

fraud or error.¹ In conducting an audit of financial statements, the auditor takes into account the applicable legal and regulatory framework. Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements in the financial statements may not be detected, even though the audit is properly planned and performed in accordance with the ISAs (UK and Ireland).² In the context of laws and regulations, the potential effects of inherent limitations on the auditor's ability to detect material misstatements are greater for such reasons as the following:

- There are many laws and regulations, relating principally to the operating aspects of an entity, that typically do not affect the financial statements and are not captured by the entity's information systems relevant to financial reporting.
- Non-compliance may involve conduct designed to conceal it, such as collusion, forgery, deliberate failure to record transactions, management override of controls or intentional misrepresentations being made to the auditor.
- Whether an act constitutes non-compliance is ultimately a matter for legal determination by a court of law.

Ordinarily, the further removed non-compliance is from the events and transactions reflected in the financial statements, the less likely the auditor is to become aware of it or to recognize the non-compliance.

6. This ISA (UK and Ireland) distinguishes the auditor's responsibilities in relation to compliance with two different categories of laws and regulations as follows:
 - (a) The provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements such as tax and pension laws and regulations (see paragraph 13); and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, but compliance with which may be fundamental to the operating aspects of the business, to an entity's ability to continue its business, or to avoid material penalties (for example, compliance with the terms of an operating license, compliance with regulatory solvency requirements, or compliance with environmental regulations); non-compliance with such laws and regulations may therefore have a material effect on the financial statements (see paragraph 14).
7. In this ISA (UK and Ireland), differing requirements are specified for each of the above categories of laws and regulations. For the category referred to in paragraph 6(a), the auditor's responsibility is to obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations. For the category referred to in paragraph 6(b), the auditor's responsibility is limited to undertaking specified audit procedures to help identify non-compliance with those laws and regulations that may have a material effect on the financial statements.

¹ ISA (UK and Ireland) 200, "Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing," paragraph 5.

² ISA (UK and Ireland) 200, paragraph A51.

8. The auditor is required by this ISA (UK and Ireland) to remain alert to the possibility that other audit procedures applied for the purpose of forming an opinion on financial statements may bring instances of identified or suspected non-compliance to the auditor's attention. Maintaining professional skepticism throughout the audit, as required by ISA (UK and Ireland) 200,³ is important in this context, given the extent of laws and regulations that affect the entity.

Effective Date

9. This ISA (UK and Ireland) is effective for audits of financial statements for periods ending on or after 15 December 2010.

Objectives

10. The objectives of the auditor are:
- (a) To obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements;
 - (b) To perform specified audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements; and
 - (c) To respond appropriately to non-compliance or suspected non-compliance with laws and regulations identified during the audit.

Definition

11. For the purposes of this ISA (UK and Ireland), the following term has the meaning attributed below:

Non-compliance – Acts of omission or commission by the entity, either intentional or unintentional, which are contrary to the prevailing laws or regulations. Such acts include transactions entered into by, or in the name of, the entity, or on its behalf, by those charged with governance, management or employees. Non-compliance does not include personal misconduct (unrelated to the business activities of the entity) by those charged with governance, management or employees of the entity.

- 11-1. This ISA (UK and Ireland) also refers to 'money laundering'. 'Money laundering' is defined in legislation^{3a} and in general terms involves an act which conceals, disguises,

³ ISA (UK and Ireland) 200, paragraph 15.

^{3a} In the UK, the Money Laundering Regulations 2007 and the requirements of the Proceeds of Crime Act 2002 (POCA) bring auditors within the regulated sector, requiring them to report suspected money laundering activity and adopt rigorous client identification procedures and appropriate anti-money laundering procedures.

In Ireland, the Criminal Justice Act 1994 (Section 32) Regulations 2003 designate accountants, auditors, and tax advisors and others for the purposes of the anti-money laundering provisions of the Criminal Justice Act, 1994, as amended.

converts, transfers, removes, uses, acquires or possesses property resulting from criminal conduct.

Requirements

The Auditor's Consideration of Compliance with Laws and Regulations

12. As part of obtaining an understanding of the entity and its environment in accordance with ISA (UK and Ireland) 315,⁴ the auditor shall obtain a general understanding of:
 - (a) The legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates; and
 - (b) How the entity is complying with that framework. (Ref: Para. A7)
13. The auditor shall obtain sufficient appropriate audit evidence regarding compliance with the provisions of those laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements. (Ref: Para. A8 – A8-1)
14. The auditor shall perform the following audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements: (Ref: Para. A9 – A10-1)
 - (a) Inquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations; and
 - (b) Inspecting correspondence, if any, with the relevant licensing or regulatory authorities.
15. During the audit, the auditor shall remain alert to the possibility that other audit procedures applied may bring instances of non-compliance or suspected non-compliance with laws and regulations to the auditor's attention. (Ref: Para. A11 – A11-2)
16. The auditor shall request management and, where appropriate, those charged with governance to provide written representations that all known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing financial statements have been disclosed to the auditor. (Ref: Para. A12)
17. In the absence of identified or suspected non-compliance, the auditor is not required to perform audit procedures regarding the entity's compliance with laws and regulations, other than those set out in paragraphs 12-16.

Audit Procedures When Non-Compliance Is Identified or Suspected

18. If the auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the auditor shall obtain: (Ref: Para. A13)

⁴ ISA (UK and Ireland) 315, "Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment," paragraph 11.

- (a) An understanding of the nature of the act and the circumstances in which it has occurred; and
 - (b) Further information to evaluate the possible effect on the financial statements. (Ref: Para. A14)
19. If the auditor suspects there may be non-compliance, the auditor shall^{4a} discuss the matter with management and, where appropriate, those charged with governance. If management or, as appropriate, those charged with governance do not provide sufficient information that supports that the entity is in compliance with laws and regulations and, in the auditor's judgment, the effect of the suspected non-compliance may be material to the financial statements, the auditor shall consider the need to obtain legal advice. (Ref: Para. A15-A16)
20. If sufficient information about suspected non-compliance cannot be obtained, the auditor shall evaluate the effect of the lack of sufficient appropriate audit evidence on the auditor's opinion.
21. The auditor shall evaluate the implications of non-compliance in relation to other aspects of the audit, including the auditor's risk assessment and the reliability of written representations, and take appropriate action. (Ref: Para. A17 - A18-1)

Reporting of Identified or Suspected Non-Compliance

Reporting Non-Compliance to Those Charged with Governance

22. Unless all of those charged with governance are involved in management of the entity, and therefore are aware of matters involving identified or suspected non-compliance already communicated by the auditor, ⁵ the auditor shall^{4a} communicate with those

^{4a} Subject to compliance with legislation relating to 'tipping off' or 'prejudicing an investigation'.

In the UK, 'tipping off' is an offence under POCA section 333A. It arises when an individual discloses:

- (a) that a report (internal or external) has already been made where the disclosure by the individual is likely to prejudice an investigation which might be conducted following the internal or external report that has been made; or
- (b) that an investigation is being contemplated or is being carried out into allegations that a money laundering offence has been committed and the disclosure by the individual is likely to prejudice that investigation.

Whilst 'tipping off' requires a person to have knowledge or suspicion that a report has been or will be made, a further offence of prejudicing an investigation is included in POCA section 342. Under this provision, it is an offence to make any disclosure which may prejudice an investigation of which a person has knowledge or suspicion, or to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents relevant to such an investigation.

The disclosure offences under sections 333A and 342 are not committed if the person disclosing does not know or suspect that it is likely to prejudice an investigation.

In Ireland Section 58 of the Criminal Justice Act, 1994, as amended, establishes the offence of "prejudicing an investigation". This relates both to when a person, knowing or suspecting that an investigation is taking place, makes any disclosure likely to prejudice the investigation or when a person, knowing that a report has been made, makes any disclosure likely to prejudice any investigation arising from the report."

⁵ ISA (UK and Ireland) 260, "Communication with Those Charged with Governance," paragraph 13.

charged with governance matters involving non-compliance with laws and regulations that come to the auditor's attention during the course of the audit, other than when the matters are clearly inconsequential.

23. If, in the auditor's judgment, the non-compliance referred to in paragraph 22 is believed to be intentional and material, the auditor shall^{4a} communicate the matter to those charged with governance as soon as practicable. (Ref: Para. A18-2)
24. If the auditor suspects that management or those charged with governance are involved in non-compliance, the auditor shall^{4a} communicate the matter to the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. Where no higher authority exists, or if the auditor 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. (Ref: Para. A18-3)

Reporting Non-Compliance in the Auditor's Report on the Financial Statements

25. If the auditor concludes that the non-compliance has a material effect on the financial statements, and has not been adequately reflected in the financial statements, the auditor shall, ^{4a} in accordance with ISA (UK and Ireland) 705, express a qualified opinion or an adverse opinion on the financial statements. ⁶
26. If the auditor is precluded by management or those charged with governance from obtaining sufficient appropriate audit evidence to evaluate whether non-compliance that may be material to the financial statements has, or is likely to have, occurred, the auditor shall^{4a} express a qualified opinion or disclaim an opinion on the financial statements on the basis of a limitation on the scope of the audit in accordance with ISA (UK and Ireland) 705.
27. If the auditor is unable to determine whether non-compliance has occurred because of limitations imposed by the circumstances rather than by management or those charged with governance, the auditor shall evaluate the effect on the auditor's opinion in accordance with ISA (UK and Ireland) 705. (Ref: Para. A18-4)

Reporting Non-Compliance to Regulatory and Enforcement Authorities

28. If the auditor has identified or suspects non-compliance with laws and regulations, the auditor shall determine whether the auditor has a responsibility to report the identified or suspected non-compliance to parties outside the entity. (Ref: Para. A19-A20)

Documentation

29. The auditor shall include in the audit documentation identified or suspected non-compliance with laws and regulations and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.⁷ (Ref: Para. A21)

⁶ ISA (UK and Ireland) 705, "Modifications to the Opinion in the Independent Auditor's Report," paragraphs 7-8.

⁷ ISA (UK and Ireland) 230, "Audit Documentation," paragraphs 8-11, and paragraph A6.

Application and Other Explanatory Material

Responsibility for Compliance with Laws and Regulations (Ref: Para. 3-8)

- A1. It is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with laws and regulations. Laws and regulations may affect an entity's financial statements in different ways: for example, most directly, they may affect specific disclosures required of the entity in the financial statements or they may prescribe the applicable financial reporting framework. They may also establish certain legal rights and obligations of the entity, some of which will be recognized in the entity's financial statements. In addition, laws and regulations may impose penalties in cases of non-compliance.
- A2. The following are examples of the types of policies and procedures an entity may implement to assist in the prevention and detection of non-compliance with laws and regulations:

- Monitoring legal requirements and ensuring that operating procedures are designed to meet these requirements.
- Instituting and operating appropriate systems of internal control.
- Developing, publicizing and following a code of conduct.
- Ensuring employees are properly trained and understand the code of conduct.
- Monitoring compliance with the code of conduct and acting appropriately to discipline employees who fail to comply with it.
- Engaging legal advisors to assist in monitoring legal requirements.
- Maintaining a register of significant laws and regulations with which the entity has to comply within its particular industry and a record of complaints.

In larger entities, these policies and procedures may be supplemented by assigning appropriate responsibilities to the following:

- An internal audit function.
- An audit committee.
- A compliance function.

A2-1. In the UK and Ireland, in certain sectors or activities (for example financial services), there are detailed laws and regulations that specifically require directors to have systems to ensure compliance. Breaches of these laws and regulations could have a material effect on the financial statements.

- A2-2. In the UK and Ireland, it is the directors' responsibility to prepare financial statements that give a true and fair view of the state of affairs of a company or group and of its profit or loss for the financial year. Accordingly it is necessary, where possible non-compliance with law or regulations has occurred which may result in a material misstatement in the financial statements, for them to ensure that the matter is appropriately reflected and/or disclosed in the financial statements.
- A2-3. In the UK and Ireland directors and officers of companies have responsibility to provide information required by the auditor, to which they have a legal right of access^{7a}. Such legislation also provides that it is a criminal offence to give to the auditor information or explanations which are misleading, false or deceptive.

Responsibility of the Auditor

- A3. Non-compliance by the entity with laws and regulations may result in a material misstatement of the financial statements. Detection of non-compliance, regardless of materiality, may affect other aspects of the audit including, for example, the auditor's consideration of the integrity of management or employees.
- A4. Whether an act constitutes non-compliance with laws and regulations is a matter for legal determination, which is ordinarily beyond the auditor's professional competence to determine. Nevertheless, the auditor's training, experience and understanding of the entity and its industry or sector may provide a basis to recognize that some acts, coming to the auditor's attention, may constitute non-compliance with laws and regulations.
- A5. In accordance with specific statutory requirements, the auditor may be specifically required to report, as part of the audit of the financial statements, on whether the entity complies with certain provisions of laws or regulations. In these circumstances, ISA (UK and Ireland) 700⁸ or ISA 800⁹ deal with how these audit responsibilities are addressed in the auditor's report. Furthermore, where there are specific statutory reporting requirements, it may be necessary for the audit plan to include appropriate tests for compliance with these provisions of the laws and regulations.

Considerations Specific to Public Sector Entities

- A6. In the public sector, there may be additional audit responsibilities with respect to the consideration of laws and regulations which may relate to the audit of financial statements or may extend to other aspects of the entity's operations.

^{7a} In the UK under Section 499 of the Companies Act 2006 or Sections 193(3) and 197 of the Companies Act, 1990 in Ireland.

⁸ ISA (UK and Ireland) 700, "Forming an Opinion and Reporting on Financial Statements," paragraph 38.

The APB has not promulgated ISA 700 as issued by the IAASB for application in the UK and Ireland. In the UK and Ireland the applicable auditing standard is ISA (UK and Ireland) 700, "The Auditor's Report on Financial Statements." Paragraph 21 of ISA (UK and Ireland) 700 is the equivalent to paragraph 38 of ISA 700.

⁹ ISA 800 "Special Considerations—Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks," paragraph 11.

ISA 800 has not been promulgated by the APB for application in the UK and Ireland.

The Auditor's Consideration of Compliance with Laws and Regulations

Obtaining an Understanding of the Legal and Regulatory Framework (Ref: Para. 12)

- A7. To obtain a general understanding of the legal and regulatory framework, and how the entity complies with that framework, the auditor may, for example:
- Use the auditor's existing understanding of the entity's industry, regulatory and other external factors;
 - Update the understanding of those laws and regulations that directly determine the reported amounts and disclosures in the financial statements;
 - Inquire of management as to other laws or regulations that may be expected to have a fundamental effect on the operations of the entity;
 - Inquire of management concerning the entity's policies and procedures regarding compliance with laws and regulations; and
 - Inquire of management regarding the policies or procedures adopted for identifying, evaluating and accounting for litigation claims.

Laws and Regulations Generally Recognized to Have a Direct Effect on the Determination of Material Amounts and Disclosures in the Financial Statements (Ref: Para. 13)

- A8. Certain laws and regulations are well-established, known to the entity and within the entity's industry or sector, and relevant to the entity's financial statements (as described in paragraph 6(a)). They could include those that relate to, for example:
- The form and content of financial statements^{9a};
 - Industry-specific financial reporting issues;
 - Accounting for transactions under government contracts; or
 - The accrual or recognition of expenses for income tax or pension costs.

^{9a} In the UK under The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008-409) and The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008-410) or The Companies (Amendment) Act, 1986 in Ireland.

In the UK and Ireland, these laws and regulations include:

- Those which determine the circumstances under which a company is prohibited from making a distribution except out of profits available for the purpose^{9b}.
- Those laws which require auditors expressly to report non-compliance, such as the requirements relating to the maintenance of adequate accounting records^{9c} or the disclosure of particulars of directors' remuneration in a company's financial statements^{9d}.

Some provisions in those laws and regulations may be directly relevant to specific assertions in the financial statements (for example, the completeness of income tax provisions), while others may be directly relevant to the financial statements as a whole (for example, the required statements constituting a complete set of financial statements). The aim of the requirement in paragraph 13 is for the auditor to obtain sufficient appropriate audit evidence regarding the determination of amounts and disclosures in the financial statements in compliance with the relevant provisions of those laws and regulations.

Non-compliance with other provisions of such laws and regulations and other laws and regulations may result in fines, litigation or other consequences for the entity, the costs of which may need to be provided for in the financial statements, but are not considered to have a direct effect on the financial statements as described in paragraph 6(a).

A8-1. In the UK and Ireland, the auditor's responsibility to express an opinion on an entity's financial statements does not extend to determining whether the entity has complied in every respect with applicable tax legislation. The auditor needs to obtain sufficient appropriate evidence to give reasonable assurance that the amounts included in the financial statements in respect of taxation are not materially misstated. This will usually include making appropriate enquiries of those advising the entity on taxation matters (whether within the audit firm or elsewhere). If the auditor becomes aware that the entity has failed to comply with the requirements of tax legislation, the auditor considers whether to report the matter to parties outside the entity.

Procedures to Identify Instances of Non-Compliance – Other Laws and Regulations (Ref: Para. 14)

A9. Certain other laws and regulations may need particular attention by the auditor because they have a fundamental effect on the operations of the entity (as described in paragraph 6(b)). Non-compliance with laws and regulations that have a fundamental effect on the operations of the entity may cause the entity to cease operations, or call into question the entity's continuance as a going concern. For example, non-compliance with the requirements of the entity's license or other entitlement to perform its operations could

^{9b} In the UK under Section 830 of the Companies Act 2006 or Section 45 of the Companies (Amendment) Act, 1983 in Ireland.

^{9c} In the UK under Section 498 of the Companies Act 2006 and, in Ireland, under Section 193 and 194 of the Companies Act, 1990.

^{9d} In the UK under Section 497 of the Companies Act 2006. There is no equivalent in Ireland.

have such an impact (for example, for a bank, non-compliance with capital or investment requirements)^{9e}. There are also many laws and regulations relating principally to the operating aspects of the entity that typically do not affect the financial statements and are not captured by the entity's information systems relevant to financial reporting.

A10. As the financial reporting consequences of other laws and regulations can vary depending on the entity's operations, the audit procedures required by paragraph 14 are directed to bringing to the auditor's attention instances of non-compliance with laws and regulations that may have a material effect on the financial statements.

A10-1. When determining the type of procedures necessary in a particular instance the auditor takes account of the particular entity concerned and the complexity of the regulations with which it is required to comply. In general, a small company which does not operate in a regulated area will require few specific procedures compared with a large multinational corporation carrying on complex, regulated business.

Non-Compliance Brought to the Auditor's Attention by Other Audit Procedures (Ref: Para. 15)

A11. Audit procedures applied to form an opinion on the financial statements may bring instances of non-compliance or suspected non-compliance with laws and regulations to the auditor's attention. For example, such audit procedures may include:

- Reading minutes;
- Inquiring of the entity's management and in-house legal counsel or external legal counsel concerning litigation, claims and assessments; and
- Performing substantive tests of details of classes of transactions, account balances or disclosures.

A11-1. In the UK and Ireland, the auditor is alert for instances of possible or actual non-compliance with laws and regulations including those that might incur obligations for partners and staff in audit firms to report to a regulatory or other enforcement authority. See paragraphs A11-2 and A19-1 – A19-12.

Money Laundering Offences

A11-2. Anti-money laundering legislation in the UK and Ireland imposes a duty on the auditor to report suspected money laundering activity. There are similar laws and regulations relating to financing terrorist offences^{9f}. The detailed legislation in both countries differs but the impact on the auditor can broadly be summarised as follows:

- Partners and staff in audit firms are required to report suspicions of conduct which would constitute a criminal offence which gives rise to direct or indirect benefit.

^{9e} Such requirements exist in the UK under the Financial Services and Markets Act 2000 and in Ireland under the Investment Intermediaries Act 1995, the Central Bank Acts 1942 to 1989 and the Credit Union Act, 1997.

^{9f} In the UK, the Terrorism Act 2000 contains reporting requirements for the laundering of terrorist funds which include any funds that are likely to be used for the financing of terrorism.

In Ireland, the Criminal Justice Act 1994 (as amended) requires reporting suspicions of terrorist financing to the appropriate authorities.

- Partners and staff in audit firms need to be alert to the dangers of ‘tipping-off’ (in the UK) or ‘prejudicing an investigation’ (in Ireland), as this will constitute a criminal offence under the anti-money laundering legislation.^{4a}

For the UK further detail is set out in Practice Note 12 (Revised): Money Laundering – Guidance for auditors on UK legislation.

Written Representations (Ref: Para. 16)

A12. Because the effect on financial statements of laws and regulations can vary considerably, written representations provide necessary audit evidence about management’s knowledge of identified or suspected non-compliance with laws and regulations, whose effects may have a material effect on the financial statements. However, written representations do not provide sufficient appropriate audit evidence on their own and, accordingly, do not affect the nature and extent of other audit evidence that is to be obtained by the auditor.¹⁰

Audit Procedures When Non-Compliance Is Identified or Suspected

Indications of Non-Compliance with Laws and Regulations (Ref: Para. 18)

A13. If the auditor becomes aware of the existence of, or information about, the following matters, it may be an indication of non-compliance with laws and regulations:

- Investigations by regulatory organizations and government departments or payment of fines or penalties.
- Payments for unspecified services or loans to consultants, related parties, employees or government employees.
- Sales commissions or agent’s fees that appear excessive in relation to those ordinarily paid by the entity or in its industry or to the services actually received.
- Purchasing at prices significantly above or below market price.
- Unusual payments in cash, purchases in the form of cashiers’ cheques payable to bearer or transfers to numbered bank accounts.
- Unusual transactions with companies registered in tax havens.
- Payments for goods or services made other than to the country from which the goods or services originated.
- Payments without proper exchange control documentation.
- Existence of an information system which fails, whether by design or by accident, to provide an adequate audit trail or sufficient evidence.
- Unauthorized transactions or improperly recorded transactions.
- Adverse media comment.

¹⁰ ISA (UK and Ireland) 580, “Written Representations,” paragraph 4.

Matters Relevant to the Auditor's Evaluation (Ref: Para. 18(b))

A14. Matters relevant to the auditor's evaluation^{10a} of the possible effect on the financial statements include:

- The potential financial consequences of non-compliance with laws and regulations on the financial statements including, for example, the imposition of fines, penalties, damages, threat of expropriation of assets^{10b}, enforced discontinuation of operations, and litigation.
- Whether the potential financial consequences require disclosure.
- Whether the potential financial consequences are so serious as to call into question the fair presentation of the financial statements, or otherwise make the financial statements misleading.

Audit Procedures (Ref: Para. 19)

A15. The auditor may discuss the findings with those charged with governance where they may be able to provide additional audit evidence. For example, the auditor may confirm that those charged with governance have the same understanding of the facts and circumstances relevant to transactions or events that have led to the possibility of non-compliance with laws and regulations.

A16. If management or, as appropriate, those charged with governance do not provide sufficient information to the auditor that the entity is in fact in compliance with laws and regulations, the auditor may consider it appropriate to consult with the entity's in-house legal counsel or external legal counsel about the application of the laws and regulations to the circumstances, including the possibility of fraud, and the possible effects on the financial statements. If it is not considered appropriate to consult with the entity's legal counsel or if the auditor is not satisfied with the legal counsel's opinion, the auditor may consider it appropriate to consult the auditor's own legal counsel as to whether a contravention of a law or regulation is involved, the possible legal consequences, including the possibility of fraud, and what further action, if any, the auditor would take.

Evaluating the Implications of Non-Compliance (Ref: Para. 21)

A17. As required by paragraph 21, the auditor evaluates the implications of non-compliance in relation to other aspects of the audit, including the auditor's risk assessment and the reliability of written representations. The implications of particular instances of non-compliance identified by the auditor will depend on the relationship of the perpetration

^{10a} ISA (UK and Ireland) 620, "Using the Work of an Auditor's Expert" applies if the auditor judges it necessary to obtain appropriate expert advice in connection with the evaluation of the possible effect of legal matters on the financial statements.

^{10b} The Proceeds of Crime Act 2002 ("POCA") provides procedures to enable the authorities to confiscate in criminal proceedings or bring an action for civil recovery of assets which represent the benefits of criminal conduct.

In Ireland, the Criminal Assets Bureau, an agency responsible for the confiscation of assets, was established by the Criminal Assets Bureau Act 1996.

and concealment, if any, of the act to specific control activities and the level of management or employees involved, especially implications arising from the involvement of the highest authority within the entity.

- A18. In exceptional cases, the auditor may consider whether withdrawal from the engagement, where withdrawal is possible under applicable law or regulation, is necessary when management or those charged with governance do not take the remedial action that the auditor considers appropriate in the circumstances, even when the non-compliance is not material to the financial statements. When deciding whether withdrawal from the engagement is necessary, the auditor may consider seeking legal advice. If withdrawal from the engagement is not possible, the auditor may consider alternative actions, including describing the non-compliance in an Other Matter(s) paragraph in the auditor's report.¹¹

A18-1. Withdrawal from the engagement by the auditor is a step of last resort. It is normally preferable for the auditor to remain in office to fulfil the auditor's statutory duties, particularly where minority interests are involved. However, there are circumstances where there may be no alternative to withdrawal, for example where the directors of a company refuse to issue its financial statements or the auditor wishes to inform the shareholders or creditors of the company of the auditor's concerns and there is no immediate occasion to do so.

Reporting of Identified or Suspected Non-Compliance

Reporting Non-Compliance to Those Charged with Governance (Ref: Para. 23)

- A18-2. If a non-compliance is intentional but not material the auditor considers whether the nature and circumstances make it appropriate to communicate to those charged with governance as soon as practicable.

Suspicion that Management or Those Charged with Governance are Involved in Non-Compliance (Ref: Para. 24)

- A18-3. In the case of suspected Money Laundering it may be appropriate to report the matter direct to the appropriate authority.

¹¹ ISA (UK and Ireland) 706, "Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report," paragraph 8.

In the UK and Ireland, if the auditor concludes that the view given by the financial statements could be affected by a level of uncertainty concerning the consequences of a suspected or actual non-compliance which, in the auditor's opinion, is significant, the auditor, subject to a consideration of 'tipping off' or 'prejudicing an investigation' (see footnote 4a), includes an explanatory paragraph referring to the matter in the auditor's report.

Reporting Non-Compliance in the Auditor's Report on the Financial Statements (Ref: Para. 27)

A18-4. In the UK and Ireland, when considering whether the financial statements reflect the possible consequences of any suspected or actual non-compliance, the auditor has regard to the requirements of applicable accounting standards. Suspected or actual non-compliance with laws or regulations may require disclosure in the financial statements because, although the immediate financial effect on the entity may not be material^{11a}, there could be future material consequences such as fines or litigation. For example, an illegal payment may not itself be material but may result in criminal proceedings against the entity or loss of business which could have a material effect on the true and fair view given by the financial statements.

Reporting Non-Compliance to Regulatory and Enforcement Authorities (Ref: Para. 28)

A19. The auditor's professional duty to maintain the confidentiality of client information may preclude reporting identified or suspected non-compliance with laws and regulations to a party outside the entity. However, the auditor's legal responsibilities vary by jurisdiction and, in certain circumstances, the duty of confidentiality may be overridden by statute, the law or courts of law. In some jurisdictions, the auditor of a financial institution has a statutory duty to report the occurrence, or suspected occurrence, of non-compliance with laws and regulations to supervisory authorities. Also, in some jurisdictions, the auditor has a duty to report misstatements to authorities in those cases where management and, where applicable, those charged with governance fail to take corrective action. The auditor may consider it appropriate to obtain legal advice to determine the appropriate course of action.

A19-1. Legislation in the UK and Ireland establishes specific responsibilities for the auditor to report suspicions regarding certain criminal offences (for example, in relation to money laundering offences (see paragraph A11-2) and, in the Republic of Ireland, indictable offences under company law and the Criminal Justice (Theft and Fraud Offences) Act 2001). In addition, the auditor of entities subject to statutory regulation^{11b}, has separate responsibilities to report certain information direct to the relevant regulator. Standards and guidance on these responsibilities is given in Section B of this ISA (UK and Ireland) and relevant APB Practice Notes.

A19-2. The procedures and guidance in Section B of this ISA (UK and Ireland) can be adapted to circumstances in which the auditor of other types of entity becomes aware of a suspected instance of non-compliance with laws or regulations which the auditor is under a statutory duty to report.

^{11a} As discussed in ISA (UK and Ireland) 320, "Materiality in Planning and Performing an Audit," judgments about materiality are made in light of surrounding circumstances and are affected by the size or nature of a matter or a combination of both.

^{11b} Auditors of financial service entities, pension schemes and, in the UK, charities have a statutory responsibility, subject to compliance with legislation relating to 'tipping off' or 'prejudicing an investigation' (see footnote 4a), to report matters that are likely to be of material significance to the regulator.

Timing of Reports

A19-3. Some laws and regulations stipulate a period within which reports are to be made. If the auditor becomes aware of a suspected or actual non-compliance with law and regulations which gives rise to a statutory duty to report, the auditor complies with any such stipulated periods for reporting. Ordinarily the auditor makes a report to the appropriate authority as soon as practicable.

Reporting in the Public Interest

A19-4. Where the auditor becomes aware of a suspected or actual instance of non-compliance with law or regulations which does not give rise to a statutory duty to report to an appropriate authority the auditor considers whether the matter may be one that ought to be reported to a proper authority in the public interest and, where this is the case, except in the circumstances covered in paragraph A19-6 below, discusses the matter with those charged with governance, including any audit committee^{11c}.

A19-5. If, having considered any views expressed on behalf of the entity and in the light of any legal advice obtained, the auditor concludes that the matter ought to be reported to an appropriate authority in the public interest, the auditor notifies those charged with governance in writing of the view and, if the entity does not voluntarily do so itself or is unable to provide evidence that the matter has been reported, the auditor reports it.

A19-6. The auditor reports a matter direct to a proper authority in the public interest and without discussing the matter with the entity if the auditor concludes that the suspected or actual instance of non-compliance has caused the auditor no longer to have confidence in the integrity of the those charged with governance.

A19-7. Examples of circumstances which may cause the auditor no longer to have confidence in the integrity of those charged with governance include situations:

- Where the auditor suspects or has evidence of the involvement or intended involvement of those charged with governance in possible non-compliance with law or regulations which could have a material effect on the financial statements; or
- Where the auditor is aware that those charged with governance are aware of such non-compliance and, contrary to regulatory requirements or the public interest, have not reported it to a proper authority within a reasonable period. In such a case, if the auditor determines that continued holding of office is untenable or the auditor is removed from office by the client, the auditor will be mindful of the auditor's reporting duties^{11d}.

A19-8. Determination of where the balance of public interest lies requires careful consideration. An auditor whose suspicions have been aroused uses professional judgment to determine

^{11c} In rare circumstances, according to common law, disclosure might also be justified in the public interest where there is no instance of non-compliance with law or regulations, e.g. where the public is being misled or their financial interests are being damaged; where a miscarriage of justice has occurred; where the health and safety of members of the public or the environment is being endangered – although such events may well constitute breaches of law or regulation.

^{11d} In the UK, under Part 16 of the Companies Act 2006.

whether the auditor’s misgivings justify the auditor in carrying the matter further or are too insubstantial to deserve reporting. The auditor is protected from the risk of liability for breach of confidence or defamation provided that:

- In the case of breach of confidence, disclosure is made in the public interest, and such disclosure is made to an appropriate body or person^{11e}, and there is no malice motivating the disclosure; and
- In the case of defamation disclosure is made in the auditor’s capacity as auditor of the entity concerned, and there is no malice motivating the disclosure.

In addition, the auditor is protected from such risks where the auditor is expressly permitted or required by legislation to disclose information^{11f}.

A19-9. 'Public interest' is a concept that is not capable of general definition. Each situation must be considered individually. In the UK, legal precedent indicates that matters to be taken into account when considering whether disclosure is justified in the public interest may include:

- The extent to which the suspected or actual non-compliance with law or regulations is likely to affect members of the public;
- Whether those charged with governance have rectified the matter or are taking, or are likely to take, effective corrective action;
- The extent to which non-disclosure is likely to enable the suspected or actual non-compliance with law or regulations to recur with impunity;
- The gravity of the matter;
- Whether there is a general ethos within the entity of disregarding law or regulations; and
- The weight of evidence and the degree of the auditor’s suspicion that there has been an instance of non-compliance with law or regulations.

^{11e} In the UK, proper authorities could include the Serious Fraud Office, the Crown Prosecution Service, police forces, the Financial Services Authority the Panel on Takeovers and Mergers, the Society of Lloyd’s, local authorities, the Charity Commissioners for England and Wales, the Scottish Office For Scottish Charities, HM Revenue and Customs, the Department of Business Innovation and Skills and the Health and Safety Executive.

In Ireland, comparable bodies could include the Garda Bureau of Fraud Investigation, the Revenue Commissioners, the Irish Stock Exchange, the Irish Financial Services Regulatory Authority, the Pensions Board, the Director of Corporate Enforcement, the Health and Safety Authority, The Charities Regulatory Authority and the Department of Enterprise Trade and Employment.

^{11f} In the UK, the Employments Rights Act 1996 would give similar protection to an individual member of the audit engagement team who made an appropriate report in the public interest. However, ordinarily a member of the engagement team who believed there was a reportable matter would follow the audit firm’s policies and procedures to address such matters. ISA (UK and Ireland) 220, “Quality Control for an Audit of Financial Statements,” paragraph 18(a), requires that the engagement partner shall take responsibility for the engagement team undertaking appropriate consultation on difficult or contentious matters. If differences of opinion arise within the engagement team, ISA (UK and Ireland) 220, paragraph 22, requires that the engagement team shall follow the firm’s policies and procedures for dealing with and resolving differences of opinion.

A19-10. An auditor who can demonstrate having acted reasonably and in good faith in informing an authority of a breach of law or regulations which the auditor thinks has been committed would not be held by the court to be in breach of duty to the client even if, an investigation or prosecution having occurred, it were found that there had been no offence.

A19-11. The auditor needs to remember that the auditor's decision as to whether to report, and if so to whom, may be called into question at a future date, for example on the basis of:

- What the auditor knew at the time;
- What the auditor ought to have known in the course of the audit;
- What the auditor ought to have concluded; and
- What the auditor ought to have done.

The auditor may also wish to consider the possible consequences if financial loss is occasioned by non-compliance with law or regulations which the auditor suspects (or ought to suspect) has occurred but decided not to report.

A19-12. The auditor may need to take legal advice before making a decision on whether the matter needs to be reported to a proper authority in the public interest.

Considerations Specific to Public Sector Entities

A20. A public sector auditor may be obliged to report on instances of non-compliance to the legislature or other governing body or to report them in the auditor's report.

Documentation (Ref: Para. 29)

A21. The auditor's documentation of findings regarding identified or suspected non-compliance with laws and regulations may include, for example:

- Copies of records or documents.
- Minutes of discussions held with management, those charged with governance or parties outside the entity.

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