

Non-compliance with Laws and Regulations (NOCLAR)

A Game Changer for Directors and Finance Professionals in Nigeria

KPMG in Nigeria

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Introduction

The International Ethics Standards Board for Accountants (IESBA), a global body for the accounting profession, issued a code of ethics that mandates professional accountants, chief financial officers, directors and other people charged with governance to respond to Non-compliance with Laws and Regulations ("NOCLAR"), effective 15 July 2017. NOCLAR comprises acts of omission or commission, intentional or unintentional, committed by;

- Companies
- Those charged with governance such as Directors, Executives, C-Suite Officers
- Management
- Individuals working under the direction of a company that is contrary to the prevailing laws or regulations of Nigeria

NOCLAR also sets out the responsibilities of those charged with governance and professional accountants in business¹ when they encounter non-compliance or suspected non-compliance with Laws and Regulations and ethical business conduct.

Consequently, the Institute of Chartered Accountants of Nigeria ("ICAN" or "the Institute") has adopted NOCLAR effective 16 July 2017 and members of ICAN are required to

comply with NOCLAR. NOCLAR is also applicable to all members of International Federation of Accountants (IFAC).

Scope and Responsibilities

Laws and regulations under the scope of NOCLAR comprise those that relate to:

- The determination of material amounts and disclosures in financial statements
- The Company's ability to preserve shareholder value, avoid penalties, maintain public trust and integrity

Examples of laws and regulations include those that deal with:

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



NOCLAR increases the demand for regulatory compliance with laws and regulations and supports zero tolerance to non – compliance with laws and regulations.

¹A professional accountant in business includes senior professional accountants such as directors, officers or senior employees that are able to exert significant influence over and make decisions on the acquisition, deployment and control of a company's financial technological, physical and intangible resources

Some of the responsibilities assigned under NOCLAR include:

Responsibilities of those charged with Governance and management	Responsibilities of professional accountants in business
They must ensure that the company's business activities are conducted in accordance with laws and regulations	They should report instances of non-compliance using the company's established protocols and procedures on a timely basis
They should identify and address any non-compliance with laws and regulations by members of the board, management team or employees or individuals working under the direction of the company	They should; <ul style="list-style-type: none"> • obtain understanding of the non-compliance or suspected non-compliance with laws and regulations • consult on a confidential basis with other colleagues, professional body or a legal counsel • discuss the matter with the immediate supervisor or the next higher level of authority in the organization if the immediate supervisor is involved in the matter.

NOCLAR and the impact on businesses operating in Nigeria

NOCLAR increases the demand for regulatory compliance and supports zero tolerance for unethical business practices.

It takes compliance requirements a step further by assigning individual responsibility for compliance to all professional accountants, management staff and directors in Nigeria.

Hence, they are expected to take actions that will deter non-compliance and ensure it is reported for prompt remediation when it occurs.

Currently, regulatory non-compliance and unethical business practices are some of the greatest risks to any organisation's viability and reputation in Nigeria, and they can negatively impact all its relevant stakeholders. This is evidenced in the recent wave of landmark fines issued against major commercial players, demonstrating significant drive towards the implementation of stricter regulatory compliance. Over the last two years, several companies have been fined with amounts from N1 billion to N1trillion; other organisations are being sanctioned, suspended or undergoing regulatory investigations.

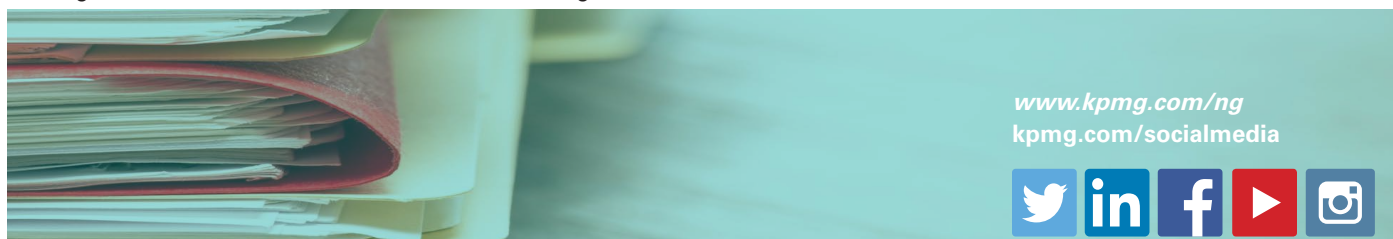
In light of this, Board of directors, audit committee members, chief finance officers and other professional accountants cannot afford to be negligent, as they are required to play a more proactive role in promoting and shaping a culture of regulatory compliance.

Unfortunately, only a limited number of Senior Practitioners in Nigeria seem to have a handle on regulatory compliance within their organisations today. For instance, several organisations are yet to put together a complete register of all regulations impacting their operations or implement a program that promotes good business ethics.

More than ever before, chief financial officers, heads of internal audit, and other persons charged with governance, are expected to put in place structures and processes required to strengthen corporate compliance and ethics, thereby minimising their individual exposure to violating the NOCLAR Standard and the Code of Ethics for Professional Accountants. Some of the immediate actions that could be implemented include;

- Reviewing the effectiveness of the current process to identify gaps in compliance with laws, regulations and good business ethics

- Championing the development of a regulatory rule book i.e. a compendium of all applicable rules and regulations the organisation is exposed to
- Establishing a compliance function, board and management committees, or designating existing structures that would be responsible for monitoring regulatory compliance
- Establishing processes and systems for assessing, monitoring, managing and reporting regulatory compliance and unethical practices
- Establishing and communicating appropriate codes of conduct that provide guidance on ethical issues such as asset misappropriation, conflict of interest, insider trading, bribery, abuse of office, amongst others
- Implementing due diligence programs for employees and third parties
- Establishing whistle-blower mechanisms that provide a platform for stakeholders to anonymously report instances of regulatory non-compliance and unethical practices
- Implementing a framework for effective internal audits & investigations and ensures accountability through consequence management



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