

06/08/04

**APG.7 DRAFT AUDITING PROFESSION BILL, 2004**

**BILL**

**To regulate the auditing profession; to make provision for an Independent Regulatory Board for Auditors, a Standard-Setting Board for Auditor Ethics and a Standard-Setting Board for Auditing; to replace the Public Accountants' and Auditors' Act, 1991, as amended, and to provide for incidental matters.**

**PREAMBLE**

**SINCE** the auditing profession in South Africa is in agreement that -

The primary responsibility of the profession is to protect and promote the public interest through services rendered;

To offer auditing services or services of a public accountant a person must be registered with, and subject to the jurisdiction of, an Independent Regulatory Board for Auditors;

The Independent Regulatory Board for Auditors must ensure that every registered auditor in South Africa is appropriately qualified and held accountable for their professional conduct, adherence to ethical practices, and the implementation of standards comparable to international standards;

All disciplinary proceedings brought against a registered auditor by the Independent Regulatory Board for Auditors should be conducted by independent persons, suitably skilled and qualified to ensure a fair hearing and an appropriate sanction for any wrong doing by auditors;

The Government of South Africa, represented by the National Treasury, should perform an oversight function with regard to the operations, decisions, and objectives of the Independent Regulatory Board for Auditors;

**AND SINCE** the efficient fulfilment of its role in the South African economy and society requires a fundamental reorganisation of the profession,

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:

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## CHAPTER I

### DEFINITIONS AND ESTABLISHMENT OF BOARDS

#### Definitions

1. In this Act, unless the context otherwise indicates -

“accreditation”, in relation to a professional body, means accreditation under sections 6 and 7 by the IRBA and “accrediting”, “accredit”, and “accredited”, respectively, have corresponding meanings;

“audit” means the examination of –

- (a) financial statements with the objective of expressing an opinion as to their fairness and as to their compliance with an identified financial reporting framework and any applicable statutory requirements, or
- (b) financial and other information, prepared in accordance with appropriate criteria, with the objective of expressing an opinion on the financial information.

“auditing pronouncements” include Statements of South African Auditing Standards, practice statements, guides and circulars developed or adopted and issued by the SBA;

“Board” means one of the Boards described in section 2;

"company" has the same meaning as in the Companies Act 1973 (Act No. 61 of 1973);

“ensure”, where it appears in a provision of this Act, means to take all reasonably necessary and expedient steps in order that the clear objectives of the provision can be achieved;

“firm” means a partnership or company such as is described in paragraphs (a) and (b) of section 12(1);

“IFAC” means the International Federation of Accountants and, in relation to IFAC, any reference to a successor body is a reference to a body equivalent to IFAC which is recognised internationally;

“IRBA” means the Independent Regulatory Board for Auditors established under section 2(1);

“the Minister” means the Minister of Finance;

“NQF” means the National Qualifications Framework approved by the Minister of Education for the registration of national standards and qualifications under the South African Qualifications Authority Act 1995 (Act No.58 of 1995);

“practice”, in relation to an auditor means the practice of the auditor who holds out to be qualified, and where required, registered, and places professional services at the disposal of the public for reward;

“prescribe” means prescribe by rule; and “prescribed” and “prescribing” have corresponding meanings;

“professional body” means a body of, or representing, auditors or both accountants and auditors;

“Public Accountants’ and Auditors’ Board” means the board established under the Public Accountants’ and Auditors’ Act, 1991(Act No. 80 of 1991);

“publish” means to publish in the Gazette, or in any official publication dealing with the auditing profession and distributed or circulated on a national basis to members of that profession; and “publishing” and “published” have corresponding meanings;

“registered auditor” means an individual or firm registered as an auditor with the IRBA;

“rule” means a rule made under section 50 by a Board; and

“SBA” means the Standard-Setting Board for Auditing referred to in section 2(2)(b);

“SBE” means the Standard-Setting Board for Auditor Ethics referred to in section 2(2)(a);

“Statements of South African Auditing Standards” mean statements of generally accepted auditing standards developed and issued by SBA.

### **Regulatory and other bodies for the regulation of the auditing profession**

2. (1) This Act establishes a juristic person known as the Independent Regulatory Board for Auditors (IRBA) for the regulation of the auditing profession.

(2) This Act also provides for the appointment of the following subsidiary Boards, namely -

- (a) the Standard-Setting Board for Auditor Ethics (SBE); and
- (b) the Standard-Setting Board for Auditing (SBA).

(3) The SBE and the SBA shall pursue their objectives, exercise their powers, and carry out their duties according to the provisions of this Act and shall be accountable to the IRBA for what they do.

## **CHAPTER II**

### **INDEPENDENT REGULATORY BOARD FOR AUDITORS, ACCREDITATION AND REGISTRATION**

#### *IRBA*

#### **IRBA: composition and succession to property etc.**

3. (1) The IRBA shall consist of not more than ten members appointed by the Minister from among persons with suitable qualifications or experience.

(2) In the making of appointments under subsection (1), the Minister must secure that, disregarding any temporary vacancy in its membership, not more than two-fifths of the members of the IRBA are registered auditors.

(3) The Minister shall appoint a member of the IRBA as the chairperson and another as the deputy chairperson and may appoint an alternate member for every member of the IRBA appointed under subsection (1).

(4) The Minister may appoint an official of the Treasury as an additional member of the IRBA, and a member so appointed shall have the same rights as members appointed under subsection (1) other than a right to vote.

(5) If the IRBA considers it necessary for its proper functioning, it may invite one or more suitable persons to serve in an advisory capacity, which persons may participate in all the proceedings of the IRBA, but may not vote.

(6) On and after the date this section comes into force, the IRBA shall be regarded as the successor to the Public Accountants' and Auditors' Board (in this subsection and subsection (7) referred to as "the PAAB") and, in order to give effect to that succession, -

(a) all property which, immediately before the date this section comes into force, was property of the PAAB shall, by virtue of this Act (and without any assignment or other form of transfer or the need for any consent) become on that date property of the IRBA;

(b) all rights or obligations of the PAAB (whether contractual or otherwise) which were in existence immediately before the date this section comes into force and do not fall within paragraph (a) shall become, on that date, rights or obligations of the IRBA and, in their application or construction, be treated for all purposes as if the PAAB and the IRBA were the same person in law; and

(c) as respects anything done or falling to be done, or any other thing occurring, on or after the date this section comes into force, any reference in an existing document to the PAAB shall be construed as or, as the case may require, as including a reference to the IRBA;

and in this subsection "property" means property of any description, whether real or personal, movable or immovable, and wherever situated.

(7) For the purposes only of section 197 of the Labour Relations Act 1995 (Act No.66 of 1995) (protection of staff on transfer of employment) the provisions of subsection (6) shall be regarded as the transfer of a business from the PAAB to the IRBA.

### **IRBA: objectives**

**4.** The IRBA shall have the following objectives:

(a) to protect the public interest in the Republic through services rendered by auditors;

(b) to oversee the SBE in the promotion and maintenance of internationally comparable standards of professional ethics by registered auditors;

(c) to oversee the SBA in the development and maintenance of internationally comparable auditing standards in the Republic;

(d) to implement appropriate standards of qualification in the auditing profession;

(e) to ensure disciplinary action under this Act;

(f) to maintain a registration system and a register for registered auditors; and

(g) to liaise with all accredited professional bodies on matters of common interest.

### **IRBA: powers and duties**

5. (1) The IRBA must carry out the obligations imposed on it by this Act, and may do anything which is reasonable or necessary to achieve its objectives and, in accordance with the provisions of this Act, may do all or any of the following -

- (a) take any steps to promote the integrity of the auditing profession, including –
  - (i) the investigation of alleged improper conduct, the conduct of disciplinary hearings and the prescribing of guidelines for punishments to be imposed;
  - (ii) the declaration, in the prescribed manner and with the consent of the Minister, of any particular business practice to be undesirable for all or a particular category of auditors, or any specific auditor; and
  - (iii) making application to any court of competent jurisdiction for an order prohibiting any person not registered as an auditor from committing or continuing to commit any act reserved for a registered auditor under this Act, or in conflict with any law, and which the IRBA has reason to believe is to be committed or is being committed by the person concerned;
- (b) ensure the standards of professional qualifications, competence, ethics and service of registered auditors, including the setting and administration of examinations;
- (c) establish and maintain a registration system and a register for registered auditors, which register must at all reasonable times be open to inspection by any member of the public;
- (d) determine and levy –
  - (i) registration and other fees payable by registered auditors;
  - (ii) any other fees which are to be payable under this Act; and
  - (iii) charges for any services provided to registered auditors by the IRBA, the SBA or the SBE;
- (e) determine the need for, and the nature and level of indemnity or fidelity insurance to be carried by, a registered auditor;
- (f) determine what portion of any fee is payable in respect of any part of a year and the date on which the fee or portion thereof becomes payable;
- (g) establish, oversee, fund and provide secretarial and administrative support for the SBE and the SBA;
- (h) participate in the activities of bodies –
  - (i) registered under the South African Qualifications Authority Act 1995 (Act No.58 of 1995) and responsible for establishing education and training standards or qualifications in respect of the auditing profession; or
  - (ii) accredited under that Act and responsible for monitoring and auditing achievements under standards or qualifications referred to in subparagraph (i);
- (i) participate in the activities of bodies whose main purpose is the development and setting of auditing standards, whether national or international;
- (j) employ persons to assist it in the performance of its functions;



(k) hire, purchase or otherwise acquire movable or immovable property for the effective performance of its functions, and let, sell or otherwise dispose of such property;

(m) borrow or raise money in accordance with the Public Finance Management Act, 1999 (No.1 of 1999);

(n) invest its funds in a manner it deems fit;

(o) publish a journal or any other publication, and issue newsletters and circulars containing information and guidelines relating to the auditing profession; and

(p) encourage, and in appropriate circumstances finance, education in connection with, and research into any matter affecting, the auditing profession.

(2) In pursuing its objectives the IRBA may formally or informally co-operate with or assist any other organisation with similar objectives, whether inside or outside the Republic.

(3) The IRBA must at all times, on its own or in co-operation with any other appropriate body, ensure the existence of clear and appropriate requirements to be complied with by any person wishing to register as an auditor.

(4) The IRBA must establish a committee to develop and set the requirements for the development and achievement of professional competence for registered auditors contemplated in this Act.

(5) Where the IRBA has assigned the power to a committee –

(a) to decide whether or not a person may be registered as an auditor, or

(b) to inquire into any case of alleged improper conduct, and to impose any punishment in respect thereof,

the IRBA may not overrule any such action or decision by the committee concerned.

#### *Accreditation of professional bodies*

#### **Requirements for accreditation**

**6.** (1) In order to qualify for accreditation, a professional body must meet the requirements of subsection (4) of this section.

(2) At the commencement of its functions by the IRBA, any body which at that time is accredited to the PAAB shall be considered to be a professional body accredited by the IRBA.

(3) Any professional body to which subsection (2) applies must within one year after the commencement of the IRBA's functions provide proof to the IRBA that it complies with the requirements for accreditation listed in subsection (4).

(4) In order to be accredited, a professional body must demonstrate, to the satisfaction of the IRBA that –

(a) it complies with the requirements for the development and achievement of professional competence determined by the IRBA;

(b) its qualifications are registered at and meet the requirements of the applicable level of the NQF as determined by the IRBA;

- (c) it has appropriate mechanisms for ensuring that its members participate in continuing professional education;
- (d) it has mechanisms to ensure that its members are disciplined where appropriate;
- (e) it is, and is likely to continue to be financially and operationally viable for the foreseeable future;
- (f) it keeps a register of its members in the form determined by the IRBA;
- (g) it has in place appropriate programmes and structures to ensure that it is actively endeavouring to achieve the objective of being representative of all sectors of the South African population; and
- (h) it meets any other requirement determined by the IRBA from time to time.

### **Accreditation of professional bodies**

**7.**(1) In order to obtain accreditation, a professional body must apply in writing to the IRBA.

(2) If the IRBA is satisfied that the professional body complies with its requirements for accreditation, it must grant the application.

(3) In order to retain its accreditation, an accredited professional body must at least once a year at a time to be determined by the IRBA, satisfy the IRBA that it continues to comply with the requirements for accreditation listed in section **6(4)**.

(4) The accreditation of an accredited professional body lapses if it ceases to exist and the IRBA has confirmed that the professional body is no longer in existence.

(5) The IRBA must cancel the accreditation by it of a professional body if that body -

- (a) ceases to comply with any requirement for accreditation; or
- (b) fails to pay any annual fee or portion thereof within three months after it has become payable as mentioned in section **5(1)(f)**.

Provided that, prior to the cancellation, the IRBA must give notice in writing to the professional body concerned of its intention to cancel and the reasons on which it is based, and afford the professional body a period, of not less than 21 days and not more than 30 days, in which to submit grounds for not proceeding to cancellation.

(6) If the IRBA considers that cancellation of accreditation would not be in the best interests of the public or the auditing profession or the members of a professional body referred to in subsection (5), it may extend the accreditation of the professional body concerned on such conditions as, after consultation with the Minister, it considers appropriate.

(7) A professional body may by written notice to the IRBA renounce its accreditation.

(8) A professional body which is no longer accredited is not relieved of any outstanding financial obligation towards the IRBA.

### **Effect of termination of accreditation on members who are registered auditors**

**8.**(1) The fact that the accreditation of a professional body has ended as mentioned in section **7(4) or (5)**, does not affect the registration under this Act of any auditor who was a member of the professional body at the time of the termination.

(2) Auditors referred to in subsection (1) must within six months of the termination of the accreditation, or within such other period as may be determined by the IRBA, provide written proof to the IRBA that they have become members of another accredited professional body.

(3) On the termination of the accreditation of a professional body, the IRBA must inform all the registered auditors who were members at the time of the termination, and advise them of their duty to provide the IRBA with the written proof referred to in subsection (2).

(4) Where a registered auditor referred to in subsection (1) fails to comply with the requirements of this section, the IRBA may cancel the registration of the auditor under this Act:

Provided that, prior to the cancellation, the IRBA must give notice in writing to the auditor concerned of its intention to cancel and the reasons on which it is based, and afford the auditor a period, of not less than 21 days and not more than 30 days, in which to submit grounds for not proceeding to cancellation.

### *Registration of individual auditors and firms*

#### **Registration of individuals as auditors**

9. (1) An individual who wishes to be registered as an auditor must lodge with the IRBA a written application for registration, accompanied by the required fee and such information as the IRBA may require.

(2) If, after considering an application, the IRBA is satisfied that the applicant -

(a) has been certified by a professional body accredited by the IRBA, and of which the applicant is a member, to have complied with the education and training requirements for a registered auditor,

(b) is a fit and proper person,

(c) is not less than 21 years of age, and

(d) where a period of more than five years has elapsed between the date of complying with the education and training requirements for a registered auditor and the date of the application, has the necessary competence to practise as an auditor,

then, subject to subsections (3) and (4), the IRBA must register the applicant, enter the applicant's name in the register, and issue to the applicant a certificate of registration in the prescribed form.

(3) The IRBA may not register an individual if the individual -

(a) has at any time been removed from an office of trust on account of misconduct related to a discharge of that office;

(b) has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery, uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding such an amount as may be prescribed by the Minister from time to time;

(c) is for the time being declared by a competent court to be of unsound mind or unable to manage the person's own affairs; or

(d) is disqualified from registration under a disciplinary punishment imposed under this Act.

(4) The IRBA may decline to register a person who is an unrehabilitated insolvent or who has entered into a compromise with creditors or who has been provisionally sequestered.

## **10. Cancellation and removal of registration**

(1) Subject to subsection (3), the IRBA must cancel the registration of any registered auditor -

(a) who subsequent to registration becomes subject to any of the disqualifications mentioned in paragraphs (a) to (d) of section 9(3);

(b) whose registration was made in error or on information subsequently proved to be false; or

(c) who prior to registration has been guilty of conduct by reason of which the auditor is in the opinion of the IRBA not a fit and proper person to be registered.

(2) Subject to subsection (3), the IRBA may cancel the registration of any registered auditor

(a) whose estate is sequestered or provisionally sequestered or who enters into a compromise with creditors;

(b) who fails to pay any fee or portion thereof after it has become payable as mentioned in section 5(1)(f); or

(c) who ceases to be a member of an accredited professional body.

(3) Prior to cancelling a registration under subsection (1) or (2), the IRBA must give notice in writing to the auditor concerned of its intention to cancel and the reasons on which it is based, and afford the auditor a period, of not less than 21 days and not more than 30 days, in which to submit grounds for not proceeding to cancellation.

(4) At the written request of a registered auditor, the IRBA must remove the auditor's name from the register, but the removal does not affect any liability incurred by the auditor prior to the date of the removal.

(5) The fact that an auditor's registration has been cancelled or removed, does not prevent the IRBA from instituting disciplinary proceedings for conduct committed prior to the cancellation or removal.

(6) As soon as practicable after an auditor's registration has been cancelled or removed the IRBA shall publish notice of the cancellation or removal, specifying the auditor's name.

## **Practice by registered auditor**

**11.** (1) No person except a registered auditor may engage in practice or hold out as an auditor in practice or use the description "certified public accountant" or any other designation or description likely to create the impression of being an auditor in practice.

(2) In order to engage in practice, a registered auditor must have paid all applicable fees determined by the IRBA under this Act.

(3) Nothing in this section prohibits any person in the employment of an entity from using the description "internal auditor" in relation to that entity.

(4) A registered auditor who is not in practice as an individual practitioner may practise as a member of a firm only if, by virtue of section 12, the firm is itself a registered auditor.

## **12. Registration of firms which are partnerships or companies**

(1) The only firms which may become registered auditors are -

(a) partnerships of which all the partners are individuals who are themselves registered auditors; and

(b) companies which comply with subsection (3).

(2) On an application by a firm which is a partnership fulfilling the conditions in subsection (1)(a), the IRBA must register the firm as a registered auditor.

(3) The IRBA must register a company as a registered auditor if, and only if, the following conditions are fulfilled -

(a) the company is incorporated and registered as a company under the Companies Act, 1973, with a share capital and its memorandum of association provides that its directors and past directors shall be liable jointly and severally, together with the company, for its debts and liabilities contracted during their periods of office;

(b) only individuals who are registered auditors are members or shareholders of the company;

(c) every shareholder of the company is a director thereof, and every director is a shareholder except that -

(i) where a shareholder of the company dies, the estate of the shareholder may continue to hold the relevant shares for a period of six months as from the date of the death or for such longer period as the IRBA may approve; or

(ii) where a shareholder of the company ceases to conform to any requirement of paragraph (b), the shareholder may continue to hold the relevant shares for a period of six months as from the date on which the shareholder ceases so to conform or for such longer period as the IRBA may approve;

(d) no voting rights attach to any share contemplated in paragraph (c)(i) and (ii), and a shareholder mentioned in that paragraph does not act as a director of the company or receive, directly or indirectly, any director's fees or remuneration or participate in the income of or profits earned by the company in its business;

(e) the articles of association of the company provide that the company may, without confirmation by a court, purchase on such terms as it may deem expedient any shares held in it;

(f) shares purchased under paragraph (e) are available for allotment in accordance with the company's articles of association;

(g) the company's articles of association provide, notwithstanding any provision to the contrary in any other law, that a member of the company may not appoint a person who is not a member of the company to attend or speak or vote on behalf of the member at any meeting of the company; and

(h) the company ceases to engage in practice immediately when it ceases to conform to paragraph (a) or (b):

Provided that, at a time when paragraph (c)(i) or (c)(ii) applies, the provisions of paragraph (h) do not apply to the company by reason only of the fact that a shareholder of the company is the estate of a deceased shareholder or, as the case may be, has ceased to be a registered auditor.

(4) In its application to a company which is a registered auditor, section 20 of the Companies Act, 1973 (qualifications to be a private company), has effect with the omission of subsection (1)(b) (limit on number of members).

### **Information to be furnished by registered firm and auditor**

**13.** (1) Every firm which is a registered auditor must notify the IRBA of any change in its name, composition or address not later than 30 days after the date on which the change takes place.

(2) Within fourteen days of the receipt of a written request from any person for whom a registered auditor or the auditor's firm acts as auditor or who proposes to appoint the registered auditor or the auditor's firm as its auditor, the registered auditor must furnish the following information -

- (a) every firm name or title under which the auditor or the firm practises;
- (b) the place or places of business of all firms in which the auditor is in practice as a partner, director or member;
- (c) the full names of all (if any) of the auditor's partners, co-directors or co-members; and
- (d) the auditor's first names or initials, surname, ordinary business address and ordinary residential address.

(3) In subsection (2) "the auditor's firm" means the partnership or company of which the auditor is a partner or member; and where, under that subsection, a registered auditor is required to supply information relating to a firm, the supply of the information in the name of the firm shall be a sufficient compliance (so far as relates to the details of the firm) with the obligation of the individual auditor.

## **CHAPTER III**

### **FUNCTIONS AND COMPOSITION OF SUBSIDIARY BOARDS**

#### **Standard-Setting Board for Auditor Ethics: composition**

**14.** (1) The SBE consists of the following members appointed by the IRBA:

- (a) five registered auditors;
- (b) three persons representing users of audit services;
- (c) one person representing an exchange which is the holder of a stock exchange licence issued under the Stock Exchange Control Act, 1985 (No.1 of 1985); and
- (d) one advocate or attorney with at least ten years' experience in the practice of law.

(2) The IRBA must appoint an alternate member for every member of the SBE.

**SBE: objectives**

**15.** The SBE has the following objectives in respect of registered auditors:

- (a) to promote high and internationally comparable standards of professional ethics;
- (b) to promote an understanding of professional ethics amongst professional bodies accredited by the IRBA and registered auditors;
- (c) to ensure that rules and guidelines for professional ethics developed by the SBE are responsive to the expectations of business, financial institutions and the general public.

**SBE: powers and duties**

**16.** The SBE may do anything that is reasonable or necessary to achieve its objectives, and in particular must -

- (a) determine what constitutes improper conduct by registered auditors by developing rules and guidelines for professional ethics and prescribing a code of professional conduct;
- (b) interact on any matter relating to its objectives with professional bodies and any other body or organ of state (as defined in section 239 of the Constitution) with an interest in the auditing profession;
- (c) provide advice to registered auditors on matters of professional ethics and conduct;
- (d) refer to the IRBA any matter which it considers should be dealt with under Chapter V as an allegation of improper conduct; and
- (e) provide such information as may be required by the IRBA to enable it to perform its functions under section 47.

**Standard-Setting Board for Auditing: composition**

**17.** (1) The SBA consists of the following members appointed by the IRBA:

- (a) five registered auditors;
- (b) one person with experience of business;
- (c) the incumbent of the office of the Auditor-General, or a person nominated by that incumbent;
- (d) the incumbent of the office of Executive Officer of the Financial Services Board, or a person nominated by that incumbent;
- (e) one person with experience in the teaching of auditing at a University recognised or established under the Higher Education Act, 1997 (Act No.101 of 1997); and
- (f) the incumbent of the office of the Registrar of Banks, or a person nominated by that incumbent.

(2) The IRBA must appoint an alternate member for every member of the SBA.

**SBA: objectives**

**18.** The SBA has the following objectives in respect of registered auditors:

- (a) to promote high and internationally comparable auditing standards;
- (b) to ensure rules and guidelines for auditing standards developed by the SBA are responsive to the expectations of business, financial institutions and the general public.

**SBA: powers and duties**

**19.** (1) The ISBA may do anything that is reasonable or necessary to achieve its objectives, and in particular must -

- (a) develop and maintain auditing pronouncements;
  - (b) consider relevant changes in South Africa and internationally by -
    - (i) monitoring developments by other auditing standard-setting bodies and sharing information where requested; and
    - (ii) making recommendations on other assurance services that can be provided by registered auditors;
  - (c) promote and ensure the relevance of auditing pronouncements by -
    - (i) considering the needs of users of audit reports;
    - (ii) liaising with any committee established by the SBA for this purpose on standards to be maintained by registered auditors and to receive feedback on areas where auditing pronouncements are needed;
    - (iii) ensuring the greatest possible consistency between such pronouncements and accepted international pronouncements; and
    - (iv) consulting with professional bodies on the direction and appropriateness of auditing pronouncements;
  - (d) influence the nature of international auditing pronouncements by -
    - (i) preparing and submitting comment on exposure drafts or discussion papers and replies to questionnaires prepared by the International Auditing Practices Committee of IFAC or a successor body; and
    - (ii) nominating representatives to committees of the International Auditing Practices Committee of IFAC or a successor body when requested to do so; and
  - (e) refer to the IRBA any matter which it considers should be dealt with under Chapter V as an allegation of improper conduct.
- (2) The SBA must publish all auditing pronouncements.
- (3) The SBA must provide such information as may be required by the IRBA to enable it to perform its functions under section **47**.



## CHAPTER IV

### POWERS AND DUTIES OF REGISTERED AUDITORS AND REVIEWS BY IRBA

#### **General obligation of registered auditors in relation to audit**

**20.** (1) Unless a registered auditor who is conducting the audit of an entity is satisfied about the criteria specified in subsection (2), the auditor may not, without such qualifications or modifications as may be appropriate in the circumstances, express an opinion to the effect that any financial statement, including any annex thereto, which relates to the entity, fairly represents, in all material respects, the financial position of the entity and the results of its operations and cashflow.

(2) The criteria referred to in subsection (1) are –

(a) that the auditor has carried out the audit free from any restrictions whatsoever and in compliance, so far as applicable, with Statements of South African Auditing Standards relating to the conduct of the audit; and

(b) that proper accounting records in one of the official languages of the Republic have been kept in connection with the entity in question so as to reflect and explain all its transactions and record all its assets and liabilities correctly and adequately; and

(c) that the auditor has obtained all information, vouchers and other documents which in the auditor's opinion were necessary for the performance of the auditor's duties; and

(d) that the auditor has not had occasion, in the course of the audit or otherwise during the period to which the audit relates, to send a report to the IRBA under section 22(2) relating to a reportable irregularity, or that, if such a report was so sent, the auditor has been able, prior to expressing the opinion referred to in subsection (1), to send to the IRBA a notification under section 22(3) that the auditor has become satisfied that no reportable irregularity has taken place or is taking place.

(3) If a registered auditor or, where the registered auditor is a member of a firm, any other member of that firm was responsible for keeping the books, records or accounts of an entity, the auditor must, in reporting on anything in connection with the business or financial affairs of the entity, indicate that the auditor or that other member of the firm was responsible for keeping those accounting records.

(4) For the purpose of subsection (3), a person shall not be regarded as responsible for keeping the books, records or accounts of an entity by reason only that that person makes closing entries or assists with any adjusting entries or frames any financial statements or other document from existing records.

#### **Auditor having financial interest in entity excluded from audit**

**21.** (1) A registered auditor may not conduct the audit of any financial statements of an entity (whether as an individual auditor or as a member of a firm) if, at any time during a period to which those financial statements relate or at any time during the two years ending at the beginning of that period the auditor has or had a financial interest in the entity.

(2) In subsection (1) "financial interest" means a financial interest of any description whatsoever (and whether direct or indirect), other than -

(a) a right to fees or charges earned by the auditor (or the firm of which the auditor is a member) in respect of services; or

(b) in the case of an entity which is or includes a pension fund organisation or which provides a collective investment scheme, any interest in the fund or scheme which gives the auditor no greater right to participate in the making of decisions as to the management of the entity than any other member of the fund or scheme.

(3) In subsection (2)(b), -

(a) "pension fund organisation" has the same meaning as in the Pension Fund Act 1956 (Act No. 24 of 1956); and

(b) "collective investment scheme" has the same meaning as in the Collective Investment Schemes Control Act 2002 (Act No. 45 of 2002).

### **Auditor's duty to report on irregularities**

**22.** (1) In this section –

"management board", in relation to an entity which is a company, means the board of directors of the company and, in relation to any other entity, means the body or individual having control and direction of the business of the entity;

"nominated auditor" means the individual who is for the time being appointed to perform the relevant auditing functions, whether by virtue of being personally appointed as auditor or by virtue of being a member of a firm which is so appointed;

"reportable irregularity" means any unlawful act or omission committed by any person in the conduct of the management or control of an entity, which -

(a) has caused or is likely to cause financial loss which is material to the entity or to any partner, member, shareholder or creditor of the entity; or

(b) is fraudulent or amounts to theft or is otherwise dishonest; or

(c) represents a material breach of any fiduciary duty owed by such person to any entity itself or any partner, member, shareholder or creditor of the entity, or under any law applying to the entity or the conduct or management thereof;

"appropriate regulator", in relation to an entity which is a financial institution, as defined in the Financial Services Board Act 1990 (Act No. 97 of 1990), means the Financial Services Board and, in relation to any other entity regulated by any law, means such regulator or other authority (if any) as appears to the IRBA to be appropriate in relation to the entity.

(2) Where the nominated auditor of an entity is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of the entity-

(a) the auditor shall, without delay, send a report in writing to the IRBA giving particulars of the irregularity, together with such other information and particulars as the auditor considers appropriate and stating whether, in the auditor's opinion, it is likely that the irregularity will be rectified within 30 days; and

(b) unless the auditor considers it inappropriate in the circumstances of the case, the auditor shall also, without delay, send a copy of the report to the members of the management board of the entity at the same time drawing the attention of the board to the provisions of this section, and requesting all of them, individually or collectively, to acknowledge receipt of the copy of the report.

(3) If, within the period of 30 days after the date of sending the report referred to in subsection (2)(a), the nominated auditor has become satisfied that no reportable irregularity has taken place or is taking place, or that the relevant irregularity has ceased and that adequate steps have been taken for the prevention or recovery of any loss consequent upon it, the auditor must, not later than the expiry of that period of 30 days, send to the IRBA -

(a) notification to that effect, together with such explanatory information and particulars as the auditor may think fit; and

(b) if a copy of the report was sent as mentioned in paragraph (b) of subsection (2), acknowledgements of receipt received from the persons mentioned in that paragraph, and of any replies received from them.

(4) Subject to subsection (5), if the IRBA receives a report under subsection (2)(a) relating to any entity, the IRBA shall, by notice in writing, inform the appropriate regulator of the details of the reportable irregularity to which the report relates and of any other information relevant to it; but, without the consent of the nominated auditor by whom the report was provided, the IRBA shall not disclose the source of the report to the regulator.

(5) A notice under subsection (4) shall be sent as follows –

(a) if the report under subsection (2)(a) contains a statement that, in the auditor's opinion, it is likely that the irregularity will be rectified within 30 days but no relevant notification is received under subsection (3), then at the end of those 30 days; and

(b) if the report under subsection (2)(a) does not contain such a statement, then as soon as practicable after receiving the report.

(6) If, at a time after the IRBA has informed the appropriate regulator as required by subsections (4) and (5)(b), the IRBA receives a notification under subsection (3) with respect to the reportable irregularity concerned, the IRBA shall forthwith inform the regulator of the receipt of the notification and of the accompanying explanatory information and particulars.

(7) The IRBA may disclose any information relating to an entity and provided to it under this section to all or any of the following -

(a) any state official vested with a statutory interest in the entity;

(b) any partner, member, shareholder or creditor of the entity;

(c) any juristic person of whom the entity is a member or who is vested with authority over the entity or who has the power to take disciplinary steps in respect of the entity;

(d) the committee of any stock exchange on which securities of the entity are listed; and

(e) any other person to whom the IRBA believes it to be in the public interest to disclose.

(8) For the purpose of determining whether any reportable irregularity has taken place or is taking place, an auditor may carry out such investigations as the auditor may deem fit and, in performing any duty referred to in the preceding provisions of this section, the auditor must

have regard to all the information which comes to the knowledge of the auditor from any source.

(9) Nothing in this section confers upon any person any right of action against a registered auditor which, but for the provisions of this section, that person would not have had.

(10) Where any entity is sequestrated or liquidated (whether provisionally or finally) and a registered auditor who is the nominated auditor at the time of the sequestration or liquidation has sent or is about to send a report about the entity to the IRBA under subsection (2)(a), then, as soon as a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, has been appointed, the nominated auditor must forthwith (or at the same time as the report is sent to the IRBA) send to the trustee or liquidator concerned a copy of the report and of the information and particulars referred to in subsection (2)(a).

### **Limitation of liability of auditor for opinions, reports, statements etc.**

**23.** (1) In respect of any opinion expressed or report or statement made by a registered auditor in the ordinary course of duties, -

(a) the auditor does not incur any liability to a client of the auditor or any third party, unless it is proved that the opinion was expressed, or the report or statement made, maliciously or pursuant to a negligent performance of the auditor's duties; and

(b) where it is proved that the opinion was expressed or the report or statement was made pursuant to a negligent performance of the auditor's duties, the auditor does not incur any liability to any third party who has relied on the opinion, report or statement, for financial loss suffered as a result of having relied thereon, unless subsection (2) applies.

(2) This subsection applies if it is proved that the auditor -

(a) knew or could in the particular circumstances reasonably have been expected to know, at the time when the negligence occurred in the performance of the duties pursuant to which the opinion was expressed or the report or statement was made, -

(i) that the opinion, report or statement would be used by a client to induce the third party to act or refrain from acting in some way or to enter into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or

(ii) that the third party would rely on the opinion, report or statement for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or

(b) in any way represented, at any time after the opinion was expressed or the report or statement was made, to the third party that the opinion, report or statement was correct, while at that time the auditor knew or could in the particular circumstances reasonably have been expected to know that the third party would rely on that representation for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person.

(3) Nothing in subsections (1) and (2) confers upon any person any right of action against a registered auditor which, but for the provisions of those subsections, the person would not have had.

(4) For the purposes of subsection (2) the fact that a registered auditor performed the functions of an auditor is not in itself proof that the auditor could reasonably have been expected to know that -

- (a) the client would act as contemplated in paragraph (a)(i) of that subsection; or
- (b) the third party would act as contemplated in paragraphs (a)(ii) or paragraph (b) of that subsection.

(5) The provisions of subsections (1) and (2) do not affect -

- (a) any liability of a registered auditor arising from -
  - (i) a contract between a third party and the auditor; or
  - (ii) any statutory provision; or
- (b) any disclaimer of liability by an auditor.

(6) In this section -

- (a) “client” means the person for whom a registered auditor or the firm of the auditor has performed the duties concerned;
- (b) “third party” means any person other than the client concerned;

and any reference to a report or statement made includes a reference to a certificate given or a statement, account or document certified and corresponding expressions shall be construed accordingly.

### **Practice reviews**

**24.** (1) The IRBA, or any person authorised by it, may review the practice of a registered auditor and may inspect and make copies of any book, document or thing in the possession or under the control of a registered auditor.

(2) The IRBA may recover the costs of a review or inspection under this section from the registered auditor concerned.

(3) A registered auditor must, at the request of the IRBA, or the person authorised by it, produce a book, document or thing and, subject to the provisions of the common law or any other law (including that relating to professional privilege), may not refuse to produce such book, document or thing, even though the auditor is of the opinion that the book, document or thing contains confidential information of a client.

(4) A registered auditor who acts in good faith during the review of the practice of the auditor or such an inspection, and who produces a book, document or thing under subsection (3) may not be held liable criminally or under civil law as a result of the production of the book, document or thing.

(5) No person who is or was concerned with the performance of any function under this section may disclose any information obtained in the performance of that function except –

- (a) for the purpose of an investigation or a hearing under Chapter V;
- (b) to a person authorised for the purpose by the IRBA and who of necessity requires it for the performance of functions under this Act;

- (c) if the person of necessity supplies it in the performance of functions under this Act;
- (d) when required to do so by order of a court of law; or
- (e) at the written request of, and to, any competent authority established by law which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution.

## **CHAPTER V**

### **DISCIPLINARY MATTERS**

#### **Appointment of tribunal and committees to carry out disciplinary functions**

**25.** (1) For the purpose of carrying out their disciplinary functions in relation to registered auditors, that is to say, their functions under section *5(1)(a)(i)*, the IRBA shall establish -

- (a) a disciplinary tribunal;
- (b) one or more investigatory committees; and
- (c) one or more disciplinary committees, each consisting solely of registered auditors;

and section **42** applies to the membership of investigatory and disciplinary committees as it applies in relation to other committees.

(2) The members of the disciplinary tribunal shall be appointed as follows -

- (a) the IRBA shall appoint as president of the disciplinary tribunal a person with experience as a judge or senior counsel; and the person so appointed is referred to in this Chapter as "the Tribunal President"; and,
- (b) the IRBA shall appoint the other members of the disciplinary tribunal in equal numbers from among persons who are or have been registered auditors and from among other persons appearing to the IRBA to be suitably qualified having regard to the functions conferred on the tribunal under this Chapter;

and, in the event of an equality of votes among the members of the disciplinary tribunal on any issue, the Tribunal President shall have a second or casting vote.

#### **Allegations of improper conduct**

**26.** (1) The IRBA shall refer to an investigatory committee any allegation, complaint or charge of improper conduct, whether prescribed or not, which it receives in respect of a person who is or was a registered auditor unless it appears to the IRBA that the allegation, complaint or charge relates to conduct at a time when that person was not so registered.

(2) If it appears to the IRBA that a registered auditor -

- (a) is failing or has failed to perform any duties devolving upon the auditor in his or her capacity as an auditor of any entity with such degree of care and skill as in the opinion of the IRBA may reasonably be expected, or
- (b) is or has been negligent in the performance of any such duties,

then, whether or not the auditor is liable to be or has been criminally charged or has been convicted in respect of the failure or negligence, the IRBA shall refer the matter to an investigatory committee as an allegation of improper conduct.

(3) If, in the course of any proceedings before any court of law, it appears to the court that there is prima facie proof of improper conduct on the part of registered auditor the court shall direct a copy of the record of the proceedings or such part thereof as relates to that conduct, to be sent to the IRBA.

(4) Notwithstanding the provisions of any other law, whenever it appears to an official of any body charged with the regulation or supervision of any entity that there is prima facie proof of improper conduct on the part of a registered auditor, the official must forthwith send a report of that conduct to the IRBA.

(5) The IRBA shall refer to an investigatory committee any record or report received by it under subsection (3) or (4).

### **Investigation of allegations**

**27** (1) In the following provisions of this Chapter an "allegation of improper conduct" means

-

(a) any such allegation, complaint or charge of improper conduct as is referred to in section **26(1)**;

(b) any matter referred as an allegation of improper conduct under section **26(2)**; or

(c) any court record or report referred under section **26(5)**.

(2) An investigatory committee shall investigate or cause to be investigated any allegation of improper conduct which is referred to it under section **26** and, if the investigatory committee considers that there is a prima facie case to be answered, it shall refer the results of its investigation to the Tribunal President.

(3) The fact that any alleged improper conduct forms (or that the IRBA has reason to believe is likely to form) the subject of criminal or civil proceedings in a court of law, shall not of itself prevent the continuation of an investigation before any such proceedings have been concluded.

(4) For the purpose of investigating any allegation of improper conduct an investigatory committee may -

(a) require the registered auditor to whom the allegation relates or any other person to produce to the committee any book, document or thing which is the possession or under the control of that auditor or other person and which relates to the subject-matter of the allegation, including specifically, but without limitation, any working papers of the registered auditor; and

(b) inspect and, if the investigatory committee considers it appropriate, retain any such book, document or other thing for the purposes of its investigations;

(c) make copies of and take extracts from, any such book, document or other thing;

and the provisions of this subsection apply notwithstanding that the registered auditor is of the opinion that the book, document or other thing contains confidential information about a client

(5) Nothing in this section affects the law relating to professional privilege or the right of any professional body to take disciplinary or other action against any of its members in accordance with its constitution and rules.

### **Allocation of allegations to disciplinary tribunal or disciplinary committee**

**28.** (1) Where the results of an investigation of an allegation of improper conduct are referred to the Tribunal President under section 27(2), the Tribunal President shall consider whether the alleged conduct is of such a nature that, if proved, it would affect public trust in the auditing profession.

(2) If the Tribunal President concludes that the alleged conduct is of the nature mentioned in subsection (1), the alleged conduct shall be referred for hearing before the disciplinary tribunal and, in any other case, the alleged conduct shall be referred for hearing before a disciplinary committee.

### **Notice and evidential provisions applicable to investigations and hearings**

**29.** (1) A person whose conduct forms the subject of a hearing must be informed of the nature of the complaint made against the person and is entitled to appear personally or to be represented by some other person duly authorised in writing to produce evidence, call and examine witnesses and cross-examine other witnesses.

(2) Neither evidence given for the purpose of any investigation or hearing nor any decision on a hearing may be used by or against a person whose conduct is the subject of the investigation or hearing in any subsequent civil or criminal proceedings in any court, but may be used in disciplinary proceedings before any professional body.

(3) In any investigation or hearing it is sufficient, for the purpose of proving the proper execution or the terms or the content or the authenticity of a document, for a copy of the document purporting to be a copy of the original to be used in evidence, subject to the right of any person to adduce evidence that any copy so presented in evidence is not authentic.

(4) Any book, document or other thing which is retained in connection with an allegation of improper conduct as mentioned in section 27(4)(b) may be admitted in evidence in any investigation or hearing concerning the allegation.

(5) In this section "hearing" means a hearing by the disciplinary tribunal or a disciplinary committee under section 30.

### **Disciplinary hearings**

**30.** (1) This section applies where the matter of any alleged conduct is referred under section 28 for hearing before the disciplinary tribunal or a disciplinary committee; and in the following provisions of this section and section 31 "disciplinary body" means the disciplinary tribunal or, as the case may require, the disciplinary committee to whom the matter is referred.

(2) The disciplinary body may -

(a) summon any person who, in its opinion, may be able to give material information concerning the subject of the hearing or who is believed to be in possession or have custody or control of any book, document or thing which has any bearing on the



subject of the hearing, to appear before it at a time and place specified in the summons, and to be interrogated or to produce that book, document or thing and may retain that book, document or thing for examination;

(b) call any person present who was or could have been summoned under paragraph (a) to give evidence at the hearing;

(c) administer an oath to, or accept an affirmation from any such person;

(d) interrogate any such person and require the person to produce any book, document or thing in possession or custody or under control of the person; and

(e) appoint any person to advise it at the hearing on matters pertaining to law, procedure or evidence;

and, if the Tribunal President or, as the case may be, the chairperson of the disciplinary committee so requests, a person appointed under paragraph (e) may interrogate any such person as is referred to in paragraph (b).

(3) A summons for the attendance before the disciplinary body of any person or for the production of any book, document or thing must -

(a) be in the form prescribed by the IRBA,

(b) be signed by the Tribunal President or the chairperson of the IRBA or a person authorised by the IRBA for the purpose; and

(c) be served in the same manner as it would have been served if it had been a subpoena in a civil matter in a magistrate's court.

(4) In a hearing before a disciplinary body, the provisions of the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law, applies.

(5) A hearing before a disciplinary body is open to the public except where, in the opinion of the Tribunal President or, as the case may require, the chairperson of a disciplinary committee, any part of the hearing should be held in camera.

(6) On a hearing before a disciplinary body of an allegation which was referred to an investigatory committee under section 26, section 27(4) applies in relation to the disciplinary body as it applies in relation to an investigatory committee.

(7) If the disciplinary body makes a finding of guilt against the person whose alleged conduct is the subject matter of the hearing, the disciplinary body may impose any prescribed punishment in respect of that finding.

### **Costs, publicity and recovery of monetary penalties and costs**

**31.** (1) A disciplinary body which makes a finding of guilt as mentioned in subsection (7) of section 30 shall order any person upon whom any punishment is imposed under that subsection to pay such reasonable costs as have been incurred by an investigatory committee and the disciplinary body in connection with the investigation and hearing in question, or such part thereof as the disciplinary body considers just.

(2) In any case where -

(a) a person whose conduct has been the subject of a hearing under section 30 has not been found guilty of improper conduct, or

(b) on a hearing no punishment has been imposed on the person whose conduct was the subject of the hearing,

the disciplinary body by which the hearing was conducted may nevertheless order that person to pay any costs unnecessarily incurred by the disciplinary body or an investigating committee as a result of the conduct of that person.

(3) In any case where -

(a) any punishment has been imposed on a person by the disciplinary tribunal, or

(b) any punishment has been imposed on a person by a disciplinary committee and the Tribunal President so directs on the grounds that in the circumstances of the case it is appropriate to do so,

the IRBA shall cause to be made known in any journal or other publication such as is referred to in section 5(1)(o) and in at least one national newspaper and such other newspapers (if any) as the IRBA considers appropriate, -

(i) the name of the person concerned and, where that person is an individual who at any relevant time was associated as auditor with a firm, the name of that firm;

(ii) the details of the punishment so imposed; and

(iii) concise details of the finding pursuant to which the punishment was imposed.

(4) Whenever -

(a) any punishment imposed under section 30(7) consists of, or includes, a monetary penalty, or

(b) an order as to costs has been made under subsection (1) or subsection (2),

the amount thereof shall be recoverable by the IRBA from the person concerned, and any amount so recovered shall be paid into the funds of the IRBA.

## CHAPTER VI

### OFFENCES

#### **False statements in connection with audits**

**32.** (1) A registered auditor who, for the purposes of, or in connection with, the audit of any financial statement, knowingly or recklessly expresses any opinion or makes any report or other statement which is false in a material particular shall be guilty of an offence.

(2) Where the auditor conducting an audit is a firm, subsection (1) applies to the member of the firm conducting the audit; but nothing in this subsection prevents the taking of disciplinary action under Chapter V in respect of the firm concerned, in addition to or instead of the individual auditor conducting the audit.

(3) A person convicted of an offence under this section is liable to a fine or to imprisonment for a term not exceeding ten years or both.

### **Offences relating to disciplinary hearings**

**33.** (1) Subject to section **30(4)**, a person is guilty of an offence if -

(a) having been duly summoned under section **30**, the person fails, without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until excused from further attendance by the Tribunal President or, as the case may be, the chairperson of the disciplinary committee; or

(b) having been called under section **30(2)(b)**, the person refuses to be sworn or to affirm as a witness or fails without sufficient cause to answer fully and satisfactorily to the best of the person's knowledge and belief all questions lawfully put concerning the subject of the hearing; or

(c) having been called under section **30(2)(b)** and having possession, custody or control of, any book, document or thing refuses to produce it when required to do so.

(2) A witness before the disciplinary tribunal or a disciplinary committee who, having been duly sworn or having made an affirmation, gives a false answer to any question lawfully put to the witness or makes a false statement on any matter, knowing the answer or statement to be false, is guilty of an offence.

(3) Any person who wilfully hinders any person acting in the capacity of a member of the disciplinary tribunal or of a disciplinary committee in the exercise of any power conferred upon that person by or under section **30**, is guilty of an offence.

(4) A person convicted of an offence under this section is liable to a fine to be prescribed by the Minister by regulation from time to time.

### **Offences relating to practice by auditors**

**34.** (1) Except with the consent of the IRBA, a registered auditor may not knowingly employ in connection with the practice of the auditor -

(a) any person who is for the time being suspended from practice under any provision of this Act; or

(b) any person who is no longer registered as an auditor as a result of the name of the person having been removed from the register or being disqualified from registration by virtue of a finding of misconduct and punishment imposed on the person under section **30(7)**; or

(c) any person who applied for registration under this Act, but whose application was declined by the IRBA under section **9(3) or (4)**.

(2) A registered auditor may not -

(a) practise under a firm name or title unless on every letterhead bearing the firm name or title there appears -

(i) the auditor's present first names, or initials, and surname; or

(ii) in the case of a partnership, at least the present first names, or initials, and surnames of the managing partners or, if there are no managing partners, of the active partners or, where such a letterhead is used only by a branch office of the partnership, at least the present first names, or initials, and surnames of the managing partners at that branch office or, if there are no such resident partners, of the partners assigned to that branch office; or

(iii) in the case of a company, the names of the directors as required by section 171 of the Companies Act 1973 (Act No.61 of 1973);

(b) sign any account, statement, report or other document which purports to represent work performed by the auditor, unless the work was performed by the auditor, or under the personal supervision or direction of the auditor, or by or under the personal supervision or directions of one or more of the partners, co-directors or co-members of the auditor, as the case may be;

(c) perform professional work in connection with any matter which is the subject of a dispute or litigation on condition that payment for the work may be made only if the dispute or litigation ends favourably for the party for whom the work is performed;

(d) engage in practice during any period in respect of which the auditor has been suspended from practice; or

(e) engage in practice without carrying such professional indemnity or fidelity insurance as is determined by the IRBA.

(3) The provisions of subsection (2)(b) do not apply in respect of work -

(a) performed on behalf of a registered auditor by another registered auditor; or

(b) performed by another registered auditor (“the previous auditor”) in a partially completed assignment which the previous auditor was unable to complete as a result of death, disability or other fortuitous cause not under the control of the previous auditor, and which assignment the successor auditor is engaged to complete; or

(c) performed outside the Republic by a member of a professional body of auditors outside the Republic whose status, in the opinion of the IRBA, is at least equal to that demanded by the IRBA for the profession in the Republic.

(4) Nothing in subsection (2)(b) prevents any registered auditor from signing the firm name or title under which the auditor practises.

(5) For the purposes of section 171 of the Companies Act, 1973 (names of directors to be stated on trade catalogues etc.), in relation to such a company as is described in section **12(1)**, it shall be regarded as sufficient if a catalogue, circular or letter to which the said section 171 applies and which emanates from a branch office of any company contains the required particulars in respect of directors attached to that branch office.

(6) Any person who -

(a) contravenes or fails to comply with any provision of this section, or

(b) contravenes subsection (1) or subsection (4) of section **11**,

is guilty of an offence and on conviction liable to a fine or in default of payment, to imprisonment not exceeding five years, or to both such fine and such imprisonment.

(7) Any person who -

(a) contravenes any provision of subsections (3) and (5) of section **24**; or

(b) obstructs or hinders any person in the performance of functions under that section,

is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding one year.

## CHAPTER VII

### PROCEDURAL AND FINANCIAL MATTERS, AND REPORTING

#### Appointment of members of Boards

**35.** (1) Any appointment by the Minister to the IRBA or by the IRBA to the SBE or the SBA must indicate the date on which it takes effect, as well as its duration, but no such appointment may be for a period of more than three years (without prejudice to the possibility of re-appointment for a further period or periods).

(2) Any office-holder entitled to nominate a person to the SBA does so according to the rules and procedures applicable to the office-holder.

(3) When the need for an appointment to the SBA arises and the appointment depends on a nomination, the SBA must provide the IRBA with the name of the nominated person, the name of any nominated alternate and any further relevant information, whereupon the IRBA must in writing appoint the nominated persons within three months of receipt of the nominations.

(4) Where any person's appointment to the SBA is dependent on a nomination, the IRBA may make the duration of the appointment terminable on notice given by the nominating office-holder to the IRBA withdrawing the nomination.

(5) Immediately upon receipt from the Minister of a notice of an appointment, the IRBA must publish a notice in the *Gazette*, containing the name of the appointed person and the person's alternate, the date from which the appointment takes effect and the duration of the appointment.

(6) Immediately upon receipt from the IRBA of a notice of an appointment, the SBE or the SBA, as the case may be, must publish a notice in the *Gazette*, containing the name of the appointed person and the person's alternate, the date from which the appointment takes effect and the duration of the appointment.

(7) A member of a Board whose term has expired continues to serve until a successor has been appointed.

#### Alternate members

**36.** (1) The procedure for the appointment to a Board of an alternate member is the same as that for the appointment of the relevant principal member.

(2) Subject to subsection (3), an alternate member may attend a meeting of a Board only where the principal member is absent, and is at any such meeting entitled to participate in all the proceedings and to vote in such proceedings.

(3) The Chairperson of a Board may, at discretion, allow an alternate member to attend a meeting of the Board even though the principal member is present at the meeting but, in such a case, the alternate may not vote in any of the proceedings.

### **Disqualification from membership**

**37.** No person may serve as a member or alternate member of a Board if the person -

- (a) is an unrehabilitated insolvent;
- (b) has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, corruption, money-laundering, forgery (including uttering a forged document) perjury, or any other offence which involves dishonesty; or
- (c) is for the time being declared by a competent court to be of unsound mind or unable to manage the person's own affairs.

### **Vacancies**

**38 (1)** A member of a Board vacates membership -

- (a) by resigning in writing to the Board;
- (b) by becoming subject to any of the disqualifications referred to in section 37;
- (c) when the member is replaced by the office-holder by whom the member was nominated; or
- (d) when the member has without leave been absent from two consecutive meetings of the Board.

(2) A vacancy is filled by the Minister or, as the case may be, the IRBA in accordance with the procedure set out in section 35.

### **Chairperson and deputy chairperson**

**39. (1)** At the first meeting of the SBE or, as the case may be, the SBA after it is appointed, the members of the Board must elect a chairperson and a deputy chairperson from their own ranks.

(2) If neither the chairperson nor the deputy-chairperson is available at a properly constituted meeting of a Board, the members present must elect from their own ranks a chairperson for the meeting concerned.

### **Meetings**

**40. (1)** A Board meets as often as circumstances require, but at least twice every year, and at such time and place as the Board may from time to time determine.

(2) The chairperson of a Board may at any time convene a special meeting at a time and place determined by the chairperson.

(3) Upon a written request signed by not less than three members of a Board, the chairperson concerned must convene a special meeting to be held within three weeks after the receipt of the request, and the meeting shall take place at a time and place determined by the chairperson.

- (4) A Board must determine rules of procedure for the conduct of its meetings and the meetings of its committees, including rules on the taking of decisions in written form when the relevant members are not gathered at a meeting.
- (5) At any meeting of a Board a majority of the members of the Board constitutes a quorum.
- (6) Every member of a Board, including the chairperson, has one vote.
- (7) In the event of an equality of votes, the chairperson of the meeting has a second or casting vote.

### **Decisions**

- 41.** (1) A decision of a Board requires the support of a majority of the members of the Board at a meeting where a quorum for the meeting is present but, where a meeting is not held, subject to any rules made under section **40(4)**
- (2) No decision taken by or act authorised by a Board is invalid by reason only of –
- (a) a casual vacancy; or
  - (b) the fact that any person not entitled to sit or act as a member of the Board participated in the meeting or the act at the time the decision was taken or the act was authorised, if the members of the Board who were present and acted at the time followed the required procedure for decisions.
- (3) The IRBA may not amend, withdraw or interfere with decisions taken by the SBE or the SBA on issues of standards of professional competence and ethics.

### **Committees**

- 42.** (1) A Board may establish one or more committees to assist it in the performance of its functions and duties, and it may at any time dissolve or reconstitute any such committee.
- (2) A committee consists of as many persons as the Board considers necessary.
- (3) The members of a committee may be appointed from outside the ranks of the Board and the auditing profession.
- (4) A Board may assign to a committee such of its powers as it may deem fit, excluding the power to make rules but, subject to section 5(5), is not divested of any power so assigned, and may amend or withdraw any such power.
- (5) The provisions of sections **36, 37, 39, 40, 41, and 45** relating to alternate members, disqualification from membership, chairperson and deputy chairperson, meetings, decisions and reimbursement for expenses, respectively, shall with the necessary changes apply in respect of any committee.
- (6) Unless clearly inappropriate, any reference in this Act to a Board in relation to the exercise of a power assigned to a committee, shall be construed as including a reference to that committee.

### **Funds and accounting**

- 43.** (1) The funds of the IRBA consist of fees and monies payable and received under this Act.

- (2) All monies received by the IRBA must be paid into one or more accounts kept at one or more registered financial institutions.
- (3) The IRBA must ensure that full and correct account is kept of all amounts received and expended.
- (4) The IRBA must ensure that annual financial statements are prepared in accordance with Statements of Generally Accepted Accounting Practice issued by the Accounting Practices Board or its successor body as at the last day of every calendar year.
- (5) After any such annual financial statements have been audited by a registered auditor appointed by the IRBA, copies of the audited statements must be made available to all members of the IRBA, all accredited professional bodies, and to any other person on request.

### **Funding of committees and related Boards**

**44.** The IRBA must provide funding to its committees and its related Boards, in such a way that the committees and related Boards can perform their functions effectively.

### **Remuneration and re-imburement for expenses**

- 45.** (1) To such extent as may be determined by the Minister, a member and an alternate member of a Board may be reimbursed for expenses reasonably incurred by them.
- (2) A member of a Board who is not in full-time employment of the State shall be paid such remuneration as may be determined by the Minister (in addition to any reimbursement due to the member under subsection (1)).
- (3) Any remuneration or reimbursement payable under this section shall be paid out of funds provided by the IRBA.

## **CHAPTER VIII**

### **OVERSIGHT AND REPORTING**

#### **Oversight by Government through Treasury**

- 46.** (1) The Government of South Africa, acting through the National Treasury, shall have a general oversight of the carrying out by the IRBA of its powers and duties under this Act.
- (2) The Minister may appoint persons to investigate on behalf of the Treasury any matter with respect to the functioning of the IRBA; and the persons so appointed may, if the Minister thinks it appropriate, include persons who are qualified as auditors; but all persons who are so appointed shall be persons who are independent of any Board or committee established by or under this Act.

#### **Reports to Minister**

- 47.** (1) The IRBA must, within three months after the close of its financial year, submit to the Minister a report on its affairs and functions during that financial year, which report must include the following:
- (a) a copy of its audited annual financial statements;



(b) an overview of the activities of the IRBA, of its committees and its related Boards, and

(c) an account of the extent to which the objectives set by this Act had been achieved in that financial year by the IRBA, its committees and related Boards.

(2) The Minister must table the report in Parliament as soon as possible after its receipt.

(3) In addition to the report with respect to a financial year required by subsection (1), the IRBA must, at the end of the third, sixth and ninth month of each of its financial years, submit to the Minister a report giving such information concerning its finances and operations, disciplinary proceedings and other matters as the Minister may determine.

## **CHAPTER IX**

### **MISCELLANEOUS MATTERS**

#### **Temporary control of firm by IRBA**

**48.** (1) Where a firm which is a registered auditor is for any reason whatsoever unable to carry out its professional duties, and -

(a) reasonable attempts have failed to make arrangements with another registered auditor to come to the assistance of the firm, or

(b) where it will not be in the public interest to expect any such arrangements to be made,

the IRBA may take temporary control, or appoint a registered auditor to take temporary control of the firm concerned, and must by notice in the *Gazette* give notice thereof.

(2) The IRBA must determine conditions and set guidelines for the temporary control of a firm under this section and may prescribe any matter relating to that temporary control which it deems necessary or appropriate.

(3) Temporary control of a firm must be terminated as soon as is reasonably practicable, and the IRBA must by notice in the *Gazette* give notice of the termination.

(4) This section applies in relation to a registered auditor who is in practice as an individual practitioner as it applies in relation to a firm and references to a firm shall be construed accordingly.

#### **Indemnity**

**49.** Neither a Board or any member or employee thereof, nor a committee of a Board or any member thereof, nor the Public Accountants' and Auditors' Board or any member thereof, incurs any liability in respect of any act or omission performed in good faith under or by virtue of a provision in this Act, unless that performance was grossly negligent.

#### **Rules and administrative matters**

**50.** (1) With the appropriate consent, the IRBA, the SBE and SBA, may each make rules –

(a) on any matter which is under this Act required or permitted to be prescribed by the relevant Board; and

(b) on any matter which the relevant Board deems necessary or expedient to be prescribed for the better achieving of the objects of the Board and of this Act;

and a Board may make different rules as regards different persons, firms or bodies, or different matters relevant to the functions of the Board under this Act, provided that no such differentiation may amount to unfair discrimination.

(2) The appropriate consent referred to in subsection (1) is –

(a) in the case of the IRBA, the consent of the Minister; and

(b) in the case of the SBE and the SBA, the consent of the IRBA

(3) Rules made under this section must be published in the *Gazette*.

(4) Subject to the provisions of this Act, where a Board takes any decision or any other step of an administrative nature under this Act which affects the rights and duties of any other person, Board or body, the Board concerned must –

(a) publish or otherwise make known the nature and effect thereof in a written, printed or electronic manner to any affected persons, Boards and bodies in a manner designed to ensure that they acquire full knowledge thereof; and

(b) comply with any applicable requirement of just administrative action, including the furnishing of reasons for discretionary decisions imposed by, under or by virtue of any law.

### **Repeal of laws**

**51.** (1) The laws mentioned in the Schedule are hereby, subject to section 52, repealed to the extent set out in the third column of that Schedule.

(2) With effect from the date on which this subsection come into force, and in respect of damages suffered by any person as a result of an act or omission of a registered auditor committed on or after that date, the reference in section 1 of the Apportionment of Damages Act, 1956 (Act No 34 of 1956), to “damage” shall be construed as a reference also to damage caused by a breach, by the auditor, of a term of a contract concluded with the auditor.

### **Transitional provisions**

**52.** (1) For the purposes of constituting the first SBE and SBA, the Minister and the Public Accountants’ and Auditors’ Board are hereby empowered to perform all administrative functions.

(2) Any unfinished business of the Public Accountants’ and Auditors’ Board on the date of promulgation of this Act, including new business to be dealt with after that date, which is dealt with by that Board under a provision of the Public Accountants’ and Auditors’ Act, 1991, and for which no corresponding provision appears in this Act, must be completed by that Board during the period between that date and the commencement date:

Provided –

(a) that proceedings in connection with an application for registration as accountant and auditor still pending on the commencement date shall, with effect from that date, be deemed to be proceedings for registration as an auditor contemplated in this Act and shall further be administered, considered and completed by the IRBA; and

- (b) that in the case of any such proceedings, and in the case of any new applications for registration as an auditor received by the IRBA, the requirements for registration set out in section 15(2) and (4) of the Public Accountants' and Auditors' Act, 1991, shall notwithstanding the repeal of that Act and any inconsistency with a provision of this Act, be deemed to be still applicable until a date notified by the Minister by notice in the *Gazette*.
- (3) Any person who immediately prior to the commencement date was registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991, is deemed to be registered as an auditor under this Act.
- (4) The following provisions shall apply for the purpose of securing continuity -
- (a) The Examination Regulations as contained in the *Manual of Information: Guidelines for Registered Accountants and Auditors*, issued by the Public Accountants' and Auditors' Board as at the commencement date, shall be deemed to have been prescribed by the IRBA in respect of registered auditors.
  - (b) The Disciplinary Regulations as contained in the said *Manual* (excluding paragraphs 2.1 to 2.1.21, inclusive, thereof) shall be deemed to have been prescribed by the IRBA.
  - (c) The Code of Professional Conduct as contained in the said *Manual* (including paragraphs 1 to 2.1.21, inclusive, of the Disciplinary Regulations) shall be deemed to have been prescribed by the ISBE.
  - (d) The Circulars as contained in the said *Manual* shall be deemed to have been issued by the IRBA.
  - (e) The Recognition Model as contained in the said *Manual*, shall be deemed to have been prescribed by the IRBA.
- (5) The Education and Training Committee of the Public Accountants' and Auditors' Board, as it exists immediately prior to the commencement date, is deemed to be a committee established by the IRBA under section 5(4) to determine the requirements for the development and achievement of professional competence.
- (6) Any committee performing, immediately prior to the commencement date, an investigating or disciplinary function under the Public Accountants' and Auditors' Act, 1991, remains validly constituted and must complete its functions after that date as if this Act has not been passed.
- (7) The auditing pronouncements issued by the Public Accountants' and Auditors' Board are, with effect from the commencement date, deemed to have been issued by the SBA.
- (8) Subject to the provisions of this Act, on and after the commencement date, anything which was done under a provision of a law repealed by section 51 and which could be done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision.
- (9) A reference in any of the preceding subsections to the commencement date is a reference to the date that subsection comes into force.

### **Short title and commencement**

**53.** (1) This Act is called the Auditing Profession Act, 2004.

(2) This Act shall come into force on a date to be determined by the President by notice in the *Gazette*; and different dates may be so determined in relation to different provisions and for different purposes.

## SCHEDULE

### LAWS REPEALED

#### (Section 52)

| No and year of Act | Short title   | Extent of repeal  |
|--------------------|---|---|
| Act 80 of 1991     | Public Accountants' and Auditors; Act, 1991                       | The repeal of the whole.  |
| Act 70 of 1993     | Public Accountants' and Auditors' Amendment Act, 1993             | The repeal of the whole.  |
| Act 23 of 1995     | Public Accountants' and Auditors' Amendment Act, 1995             | The repeal of the whole.  |
| Act 88 of 1996     | Abolition of Restrictions on the Jurisdiction of Courts Act, 1996 | The repeal of section 107.  |
| Act 5 of 1997      | Public Accountants' and Auditors' Amendment Act, 1997             | The repeal of the whole.  |
| Act 47 of 1997     | Public Service Laws Amendment Act, 1997                           | The repeal of section 35 to the extent to which it refers to the Public Accountants' and Auditors' Act, 1991. |