



irba

INDEPENDENT REGULATORY BOARD FOR AUDITORS

MANUAL OF INFORMATION

2010

MANUAL OF INFORMATION

2010

Guidelines for Registered Auditors

No part of this book may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, electrostatic, magnetic tape, mechanical photocopying, recording or otherwise, without permission in writing from the Board

**© Independent Regulatory Board
for Auditors**

ISBN 13 : 978-0-620-45401-8

JOHANNESBURG

BUILDING 2, GREENSTONE HILL OFFICE PARK
EMERALD BOULEVARD
MODDERFONTEIN

P O BOX 751595
GARDEN VIEW 2047
TEL: 087 940 8800

FOREWORD TO MANUAL

The Manual of Information: Guidelines for Registered Auditors is issued by the Independent Regulatory Board for Auditors (IRBA).

Your attention is drawn to the following main revisions in the Manual:

- **Section 2: Education, Training and Professional Development**

This section has been revised for changes to the Accreditation Model.

- **Section 5: Practice Review**

- **Section 6: Standards**

- **Fees payable to the Board**

The section on fees has been removed from the Manual and will be published separately.

- **Section 7: General circulars**

This section has been revised to include updated contact details for the various institutes in adjoining countries.

Bernard Peter Agulhas
Chief Executive Officer

2010

INDEPENDENT REGULATORY BOARD FOR AUDITORS

Street address : Building 2, Greenstone Hill Office Park
Emerald Boulevard, Modderfontein

Postal address : PO Box 751595, Garden View, 2047

Telephone number : 087 940 8800

Fax number : 087 940 8873/4/5/6

Website : www.irba.co.za

E-mail : board@irba.co.za

STATUS AND CORPORATE MISSION OF THE INDEPENDENT REGULATORY BOARD FOR AUDITORS

STATUS OF THE BOARD

The Board is the statutory body controlling that part of the accountancy profession involved with public practice in the Republic of South Africa.

It is important to stress that all entrants to the public practice profession are subject to consistent requirements. Following qualification, accountants entering public practice are required to register with the Board and are governed by its regulations. Those qualified accountants entering other disciplines who are members of a provincial society of chartered accountants, are not subject to the jurisdiction of the Board but are subject to the jurisdiction of The South African Institute of Chartered Accountants.

The Board functions in terms of the Auditing Profession Act, 2005 (Act 26 of 2005). Its members are appointed by the Minister of Finance and must consist of not less than six but not more than 10 non-executive members. The Minister must appoint competent persons, who must include registered auditors, to effectively manage and guide the activities of the Regulatory Board, based on their knowledge and experience.

The Board is funded by fees and levies payable by registered auditors, and National Treasury, and reports annually to the Minister of Finance, who then tables the report in Parliament.

VISION AND MISSION

Our vision

To be an internationally recognised and respected regulator of the auditing profession, relevant to the South African environment.

Our mission

To endeavour to protect the financial interest of the South African public and international investors in South Africa through the effective regulation of audits conducted by registered auditors, in accordance with internationally recognised standards and processes.

Our objectives

To create the framework and principles to contribute to the protection of the public who rely on the services of registered auditors and to support registered auditors who carry out their duties competently, fearlessly and in good faith.

Our goal

To:

- Develop and maintain auditing and ethical standards which are internationally comparable;

- Provide an appropriate framework for the education and training of properly qualified auditors, as well as their ongoing competence;
- Register auditors who meet the registration requirements;
- Monitor compliance with reportable irregularities and anti-money laundering;
- Monitor the compliance of registered auditors with professional standards;
- Investigate and take appropriate action against registered auditors in respect of improper conduct;
- Develop and maintain stakeholder relationships to enhance performance, accountability and public confidence;
- Strengthen the IRBA's organisational capability, capacity and performance to deliver on its mandate in an economically efficient and effective manner, in accordance with the relevant regulatory frameworks.

Our values

- Independence
- Integrity
- Objectivity
- Commitment
- Transparency
- Accountability

TABLE OF CONTENTS

1	LEGISLATION	1-1
2	EDUCATION, TRAINING AND PROFESSIONAL DEVELOPMENT	2-1
3	DISCIPLINARY RULES	3-1
4	CODE OF PROFESSIONAL CONDUCT	4-1
5	PRACTICE REVIEW	5-1
6	STANDARDS	6-1
7	GENERAL CIRCULARS	7-1

1
LEGISLATION

Introduction	1-5
AUDITING PROFESSION ACT, 2005 (Act 26 of 2005)	1-7
1 Definitions	1-10
2 Objects of Act	1-13
3 Establishment and legal status	1-13
4 General functions	1-13
5 Functions with regard to accreditation of professional bodies	1-14
6 Functions with regard to registration of auditors	1-15
7 Functions with regard to education, training and professional development	1-15
8 Functions with regard to fees and charges	1-16
9 General powers	1-17
10 Powers to make rules	1-18
11 Appointment of members of Regulatory Board	1-18
12 Term of office of members of Regulatory Board	1-19
13 Disqualification from membership and vacation of office	1-20
14 Chairperson and deputy chairperson	1-21
15 Meetings	1-21
16 Decisions	1-22
17 Duties of members	1-22
18 Chief executive officer	1-22
19 Delegations	1-22
20 Establishment of committees	1-23
21 Committee for auditor ethics	1-24
22 Committee for auditing standards	1-25

23	Matters relating to appointment of members to committees for auditor ethics and for auditing standards	1-26
24	Investigating and Disciplinary committees	1-26
25	Funding	1-27
26	Annual budget and strategic plan	1-27
27	Financial management, financial statements and annual report	1-27
28	Executive authority	1-27
29	Ministerial representatives	1-28
30	Investigations	1-28
31	Information	1-28
32	Application for accreditation	1-29
33	Requirements for accreditation	1-29
34	Retaining accreditation	1-29
35	Termination of accreditation	1-30
36	Effect of termination of accreditation on registered auditors	1-31
37	Registration of individuals as registered auditors	1-31
38	Registration of firms as registered auditors	1-32
39	Termination of registration	1-34
40	Renewal of registration and re-registration	1-35
41	Practice	1-35
42	Compliance with rules	1-37
43	Information to be furnished	1-37
44	Duties in relation to audit	1-38
45	Duty to report on irregularities	1-39
46	Limitation of liability	1-41

47	Inspections	1-42
48	Investigation of charge of improper conduct	1-43
49	Charge of improper conduct	1-45
50	Disciplinary hearing	1-46
51	Proceedings after hearing	1-48
52	Reportable irregularities and false statements in connection with audits	1-50
53	Offences relating to disciplinary hearings	1-50
54	Offences relating to public practice	1-51
55	Powers of Minister	1-51
56	Indemnity	1-51
57	Administrative matters	1-52
58	Repeal and amendment of laws	1-52
59	Transitional provisions	1-52
60	Short title and commencement	1-55

THE AUDITING PROFESSION ACT

The Auditing Profession Act has been published exactly as it was signed by the President. However, there appear to be a number of editorial errors in this version, which we have identified and corrected by means of our own notes in [square brackets and italics]. For an example, see page 1-12, under the definition for "this Act".

AUDITING PROFESSION ACT, 2005 (ACT 26 OF 2005)

ACT

To provide for the establishment of the Independent Regulatory Board for Auditors; to provide for the education, training and professional [development] of registered auditors; to provide for the accreditation of professional bodies; to provide for the registration of auditors; to regulate the conduct of registered auditors; to repeal an Act; and to provide for matters connected therewith.

(English text signed by the President)

(Assented to 12 January 2006.)

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

ARRANGEMENT OF SECTIONS

Sections

CHAPTER I

INTERPRETATION AND OBJECTS OF ACT

1. Definitions
2. Objects of Act

CHAPTER II

INDEPENDENT REGULATORY BOARD FOR AUDITORS

PART I

Establishment and legal status of Regulatory Board

3. Establishment and legal status

PART 2

Functions of Regulatory Board

4. General functions
5. Functions with regard to accreditation of professional bodies
6. Functions with regard to registration of auditors
7. Functions with regard to education, training and professional development
8. Functions with regard to fees and charges

PART 3

Powers of Regulatory Board

9. General powers
10. Powers to make rules

PART 4

Governance of Regulatory Board

11. Appointment of members of Regulatory Board
12. Term of office of members of Regulatory Board
13. Disqualification from membership and vacation of office
14. Chairperson and deputy chairperson
15. Meetings
16. Decisions
17. Duties of members
18. Chief executive officer
19. Delegations

PART 5

Committees of Regulatory Board

20. Establishment of committees
21. Committee for auditor ethics
22. Committee for auditing standards
23. Matters relating to appointment of members to committees for auditor ethics and for auditing standards
24. Investigating and Disciplinary committees

PART 6

Funding and financial management of Regulatory Board

25. Funding
26. Annual budget and strategic plan
27. Financial management, financial statements and annual report

PART 7

National government oversight and executive authority

- 28. Executive authority
- 29. Ministerial representatives
- 30. Investigations
- 31. Information

CHAPTER III

ACCREDITATION AND REGISTRATION

PART I

Accreditation of professional bodies

- 32. Application for accreditation
- 33. Requirements for accreditation
- 34. Retaining accreditation
- 35. Termination of accreditation
- 36. Effect of termination of accreditation on registered auditors

PART 2

Registration of individual auditors and firms

- 37. Registration of individuals as registered auditors
- 38. Registration of firms as registered auditors
- 39. Termination of registration
- 40. Renewal of registration and re-registration

CHAPTER IV

CONDUCT BY AND LIABILITY OF REGISTERED AUDITORS

- 41. Practice
- 42. Compliance with rules
- 43. Information to be furnished
- 44. Duties in relation to audit
- 45. Duty to report on irregularities
- 46. Limitation of liability

CHAPTER V
ACCOUNTABILITY OF REGISTERED AUDITORS

- 47. Inspections
- 48. Investigation of charge of improper conduct
- 49. Charge of improper conduct
- 50. Disciplinary hearing
- 51. Proceedings after hearing

CHAPTER VI
OFFENCES

- 52. Reportable irregularities and false statements in connection with audits
- 53. Offences relating to disciplinary hearings
- 54. Offences relating to public practice

CHAPTER VII
GENERAL MATTERS

- 55. Powers of Minister
- 56. Indemnity
- 57. Administrative matters
- 58. Repeal and amendment of laws
- 59. Transitional provisions
- 60. Short title and commencement

SCHEDULE
LAWS REPEALED

CHAPTER I
INTERPRETATION AND OBJECTS OF ACT

1. DEFINITIONS

In this Act, unless the context indicates otherwise-

“accreditation” means the status afforded to a professional body in accordance with Part 1 of Chapter 111, which status may be granted in full or in part;

“appropriate regulator”, in relation to any entity, means any national government department, registrar, regulator, agency, authority, centre, board or similar institution established, appointed, required or tasked in terms of any law to regulate, oversee or ensure compliance with any legislation, regulation or licence, rule, directive, notice or similar instrument issued in terms of or in compliance with any legislation or regulation, as appears to the Regulatory Board to be appropriate in relation to the entity;

“audit” means the examination of, in accordance with prescribed or applicable auditing standards-

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

“auditing pronouncements” means those standards, practice statements, guidelines and circulars developed, adopted, issued or prescribed by the Regulatory Board which a registered auditor must comply with in the performance of an audit;

“Auditor-General” has the meaning assigned in section 1 of the Public Audit Act, 2004 (Act No. 25 of 2004);

“client” means the person for whom a registered auditor is performing or has performed an audit;

“company” has the meaning assigned to it in the Companies Act, 1973 (Act No. 61 of 1973);

“delegation”, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty;

“ensure” means to take all reasonably necessary and expedient steps in order to achieve the purpose, objective or intention of this Act or a provision of this Act;

“firm” means a partnership, company or sole proprietor referred to in section 40;

“improper conduct” means any non-compliance with this Act or any rules prescribed in terms of this Act or any conduct prescribed as constituting improper conduct;

“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 responsible for the management of the business of the entity;

“Minister” means the Minister of Finance;

“organ of state” has the meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;

“prescribe” means prescribe by notice in the Gazette, and “prescribed” and

“prescribing” have corresponding meanings;

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

“public accountant” means any person who is engaged in public practice;

“public practice” means the practice of a registered auditor who places professional services at the disposal of the public for reward, and “practice” has a similar meaning;

“Public Accountants’ and Auditors’ Board” means the board established under the Public Accountants’ and Auditors’ Act, 1951 (Act 51 of 1951) and which continues to exist under section 2 of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991);

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“publish” means to publish in the Gazette or in any official publication or official website of the Regulatory Board 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 Regulatory Board:

“Regulatory Board” means the Independent Regulatory Board for Auditors established by section 3;

“reportable irregularity” means any unlawful act or omission committed by any person responsible for the management of an entity, which

- (a) has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his, her or its dealings with that entity; or
- (b) is fraudulent or amounts to theft; or
- (c) represents a material breach of any fiduciary duty owed by such person to the entity or any partner, member, shareholder, creditor or investor of the entity under any law applying to the entity or the conduct or management thereof;

“rule” means a rule prescribed by the Regulatory Board under section 10;

“third party” means any person other than a client; and

“this Act” includes an [am any] regulations promulgated under section 55;

“training contract” means a written training contract entered into in the prescribed form and registered with the Regulatory Board whereby a prospective registered auditor is duly bound to serve a registered auditor for a specified period and is entitled to receive training in the practice and profession of a registered auditor.

2. OBJECTS OF ACT

The objects of this Act are

- (a) to protect the public in the Republic by regulating audits performed by registered auditors;
- (b) to provide for the establishment of an Independent Regulatory Board for Auditors;
- (c) to improve [~~improve~~ approve] the development and maintenance of internationally comparable ethical standards and auditing standards for auditors that promote investment and as a consequence employment in the Republic;
- (d) to set out measures to advance the implementation of appropriate standards of competence and good ethics in the auditing profession; and
- (e) to provide for procedures for disciplinary action in respect of improper conduct.

CHAPTER 11

INDEPENDENT REGULATORY BOARD FOR AUDITORS

PART 1

Establishment and legal status of Regulatory Board

3. ESTABLISHMENT AND LEGAL STATUS

- (1) The Independent Regulatory Board for Auditors is hereby established, and
 - (a) is a juristic person; and
 - (b) must exercise its functions in accordance with this Act and any other relevant law.
- (2) The Regulatory Board is subject to the Constitution and the law, specifically, the Public Finance Management Act.

PART 2

Functions of Regulatory Board

4. GENERAL FUNCTIONS

- (1) The Regulatory Board must, in addition to its other functions provided for in this Act
 - (a) take steps to promote the integrity of the auditing profession, including
 - (i) investigating alleged improper conduct;

- (ii) conducting disciplinary hearings;
 - (iii) imposing sanctions for improper conduct; and
 - (iv) conducting practice reviews or inspections;
- (b) take steps it considers necessary to protect the public in their dealings with registered auditors;
- (c) prescribe standards of professional competence, ethics and conduct of registered auditors;
- (d) encourage education in connection with, and research into, any matter affecting the auditing profession; and
- (e) prescribe auditing standards.
- (2) The Regulatory Board may-
- (a) participate in the activities of international bodies whose main purpose is to develop and set auditing standards and to promote the auditing profession;
 - (b) publish a journal or any other publication, and issue newsletters and circulars containing information and guidelines relating to the auditing profession;
 - (c) cooperate with international regulators in respect of matters relating to audits and auditors; and
 - (d) take any measures it considers necessary for the proper performance and exercise of its functions or duties or to achieve the objects of this Act.

5. FUNCTIONS WITH REGARD TO ACCREDITATION OF PROFESSIONAL BODIES

The Regulatory Board must, subject to this Act

- (a) prescribe minimum requirements for accreditation of professional bodies in addition to those provided for in this Act;
- (b) consider and decide on any application for accreditation and grant such accreditation in full or in part;
- (c) prescribe the period of validity of the accreditation;
- (d) keep a register of accredited professional bodies and decide on
 - (i) the register to be kept;
 - (ii) the maintenance of the register; and
 - (iii) the reviewing of the register and the manner in which alterations thereto may be effected; and
- (e) terminate the accreditation of professional bodies in accordance with this Act.

6. FUNCTIONS WITH REGARD TO REGISTRATION OF AUDITORS

- (1) The Regulatory Board must, subject to this Act
 - (a) prescribe minimum qualifications, competency standards and requirements for registration of auditors in addition to those provided for in this Act;
 - (b) consider and decide on any application for registration of auditors;
 - (c) prescribe the period of validity of the registration of a registered auditor;
 - (d) keep a register of registered auditors and decide on
 - (i) the register to be kept;
 - (ii) the maintenance of the register; and
 - (iii) the reviewing of the register and the manner in which alterations thereto may be effected;
 - (e) ensure that the register of registered auditors is at all reasonable times open to inspection by any member of the public;
 - (f) terminate the registration of registered auditors in accordance with this Act; and
 - (g) prescribe minimum requirements for the renewal of registration and re-registration.

7. FUNCTIONS WITH REGARD TO EDUCATION, TRAINING AND PROFESSIONAL DEVELOPMENT

- (1) The Regulatory Board must
 - (a) either in full or in part, recognise or withdraw the recognition of the educational qualifications or programmes or continued education, training and professional development programmes in the auditing profession of educational institutions and accredited professional bodies;
 - (b) recognise or withdraw the recognition of any accredited professional body to conduct any qualifying examination contemplated in section 37 or conduct any such examination for the purposes of section 37;
 - (c) prescribe requirements for and conditions relating to and the nature and extent of continued education, training and professional development;
 - (d) prescribe training requirements, including, but not limited to, the period of training and the form for training contracts;
 - (e) approve and register training contracts entered into by prospective registered auditors;
 - (f) prescribe competency requirements; and

- (g) either conditionally or unconditionally, recognise or withdraw the recognition of registered auditors as training officers.
- (2) The Regulatory Board may-
- (a) establish mechanisms for registered auditors to gain recognition of their qualifications an professional status in other countries;
 - (b) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
 - (c) establish and administer an education fund for the purpose of education, training, professional development and continued education, training and professional development of registered auditors and students in the auditing profession; and
 - (d) give advice to, render assistance to, consult with or interact with any organ of state, statutory body, educational institution, professional body or examining body with regard to educational facilities for and the education, training and professional development of registered auditors and prospective registered auditors.
- (3) (a) The Regulatory Board must, prior to withdrawing of recognition referred to in subsection (1)(a) or (b), give notice in writing to the educational institution or accredited professional body concerned of its intention to withdraw and the reasons on which it is based, and must aff'ord the educational institution or accredited professional body a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with withdrawal.
- (b) If the Regulatory Board considers that withdrawal of recognition would not be in the best interests of the public, the auditing profession or the members of an accredited professional body, it may extend the recognition of the educational institution or accredited professional body concerned on such conditions as it considers appropriate.
- (c) The Regulatory Board must publish the withdrawal of recognition in terms of this subsection.

8. FUNCTIONS WITH REGARD TO FEES AND CHARGES

- (1) The Regulatory Board must prescribe-
- (a) accreditation, registration, registration renewal and re-registration fees;
 - (b) annual fees, or a portion thereof in respect of a part of a year;
 - (c) the date on which any fee is payable; and
 - (d) the fees payable in respect of any examination referred to in section 37, conducted by an accredited professional body or the Regulatory Board.

- (2) The Regulatory Board may prescribe
 - (a) any fees payable for the purposes of the education fund referred to in section 7(2);
 - (b) fees payable for an inspection or review undertaken by the Regulatory Board in terms of section 47; and
 - (c) fees payable for any other service rendered by the Regulatory Board.
- (3) The Regulatory Board may grant exemption from payment of any fees referred to in subsection (1) or (2).

PART 3

Powers of Regulatory Board

9. GENERAL POWERS

The Regulatory Board may

- (a) determine its own staff establishment and may appoint a chief executive officer and employees in posts on the staff establishment on such conditions, including the payment of remuneration and allowances, as it may determine;
- (b) in consultation with the Minister, determine the remuneration and allowances payable to its members or the members of any committee of the Regulatory Board;
- (c) collect fees and invest funds;
- (d) borrow or raise money in accordance with the Public Finance Management Act;
- (e) with a view to the promotion of any matter relating to the auditing profession, grant bursaries or loans to prospective registered auditors;
- (f) finance any publications;
- (g) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
- (h) decide upon the manner in which agreements must be entered into;
- (i) obtain the services of any person, including any organ of state or institution, to perform any specific act or function;
- (j) determine where its head office must be situated;
- (k) confer with any organ of state;
- (l) open and operate its own bank accounts;
- (m) ensure that adequate risk management and internal control practices are in place;

- (n) perform legal acts, or institute or defend any legal action in its own name; and
- (o) do anything that is incidental to the exercise of any of its functions or powers.

10. POWERS TO MAKE RULES

- (1) The Regulatory Board may, by notice in the Gazette, prescribe rules with regard to –
 - (a) any matter that is required or permitted to be prescribed in terms of this Act; and
 - (b) any other matter for the better execution of this Act or a function or power provided for in this Act.
- (2) (a) Before the Regulatory Board prescribes any rule under this section, it must publish a draft of the proposed rule in the Gazette together with a notice calling on the public to comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.
 - (b) If the Regulatory Board alters a draft rule because of any comment, it need not publish the alteration before prescribing the rule.
- (3) The Regulatory Board may, if circumstances necessitate the immediate publication of a rule, publish that rule without the consultation contemplated in subsection (2).

PART 4

Governance of Regulatory Board

11. APPOINTMENT OF MEMBERS OF REGULATORY BOARD

- (1) The Regulatory Board consists of not less than six but not more than 10 non-executive members appointed by the Minister.
- (2) The Minister must appoint competent persons, who must include registered auditors, to effectively manage and guide the activities of the Regulatory Board, based on their knowledge and experience.
- (3) When making the appointments, the Minister must take into consideration, amongst other factors
 - (a) the need for transparency and representivity within the broader demographics of the South African population;
 - (b) any nominations received in terms of subsection (5); and
 - (c) the availability of persons to serve as members of the Regulatory Board.

- (4) Disregarding any vacancy in its membership, not more than 40% of the members of the Regulatory Board may be registered auditors.
- (5) Before the Minister makes the appointments, the Regulatory Board must, by notice in the Gazette and in any national newspaper, invite nominations from members of the public.
- (6) The Minister may appoint an alternate member for every member of the Regulatory Board, and an alternate member may attend and take part in the proceedings at any meeting of the Regulatory Board whenever the member for whom he or she has been appointed as an alternate is absent from that meeting.
- (7) The Regulatory Board, as soon as practicable after the appointment of its members, must publish by notice in the Gazette
 - (a) the name of every person appointed;
 - (b) the date from which the appointment takes effect; and
 - (c) the period for which the appointment is made.

12. TERM OF OFFICE OF MEMBERS OF REGULATORY BOARD

- (1) A member of the Regulatory Board appointed in terms of section 11 holds office for such period, but not exceeding two years, as the Minister may determine at the time of his or her appointment.
- (2) A member of the Regulatory Board may be reappointed, but, subject to subsection (3), may not serve more than two consecutive terms of office.
- (3) Despite subsections (1) and (2), the Minister may, by notice in the Gazette and after consultation with the Regulatory Board, extend the period of office of all the members of the Regulatory Board for a maximum period of 12 months.
- (4) Despite subsection (1), the Minister may, by notice in the Gazette, after consultation with the Regulatory Board, terminate the period of office of a member of the Regulatory Board –
 - (a) if the performance of the member is unsatisfactory;
 - (b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively; or
 - (c) if the member, whilst holding office, has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.
- (5) Despite subsection (1), the Minister may, if the performance of the Regulatory Board is unsatisfactory, terminate the period of office of all the members of the Regulatory Board.

- (6) (a) In the event of the dismissal of all the members of the Regulatory Board, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of section 11.
- (b) The Minister must appoint new members in terms of section 11 within three months of the dismissal referred to in paragraph (a).

13. DISQUALIFICATION FROM MEMBERSHIP AND VACATION OF OFFICE

- (1) A person may not be appointed as a member of the Regulatory Board if that person-
 - (a) is not a South African citizen;
 - (b) is not resident in the Republic;
 - (c) is an unrehabilitated insolvent;
 - (d) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine or, in the case of fraud, to a fine or imprisonment or both;
 - (e) subject to subsection (2), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine or, in the case of fraud, to a fine or imprisonment or both;
 - (f) has, as a result of improper conduct, been removed from an office of trust; or
 - (g) has in terms of this Act been found guilty of improper conduct.
- (2) For the purposes of subsection (1)(d), the Minister must, as far as reasonably possible, take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (3) The membership of a member of the Regulatory Board ceases if he or she
 - (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the Regulatory Board;
 - (b) resigns by written notice addressed to the Regulatory Board;
 - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
 - (d) has, without the leave of the Regulatory Board, been absent from more than two consecutive meetings of the Regulatory Board; or
 - (e) ceases to be permanently resident in the Republic.
- (4) If a member of the Regulatory Board becomes disqualified on a ground mentioned in subsection (1) or (3), such member ceases to be a member of the Regulatory Board from the date of becoming disqualified.

- (5) (a) If a member of the Regulatory Board dies or vacates his or her office before the expiration of his or her term of office, the Minister must consider appointing a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
- (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

14. CHAIRPERSON AND DEPUTY CHAIRPERSON

- (1) (a) The Regulatory Board must elect a chairperson and a deputy chairperson from among its members.
- (b) The chairperson and deputy chairperson each hold office for a period of two years from the date of their appointment.
- (2) If the chairperson is absent or for any reason unable to perform his or her functions as chairperson, the deputy chairperson must act as chairperson, and while he or she so acts he or she has all the powers and must perform all the duties of the chairperson.
- (3) If both the chairperson and deputy chairperson are absent or for any reason unable to preside at a Regulatory Board meeting, the members present must elect another member to act as chairperson at that meeting and while he or she so acts has all the powers and must perform all the duties of the chairperson.

15. MEETINGS

- (1) The Regulatory Board meets as often as circumstances require, but at least four times every year, at such time and place as the Regulatory Board may determine.
- (2) The chairperson may at any time convene a special meeting of the Regulatory Board at a time and place determined by the chairperson.
- (3) Upon a written request signed by not less than three members of the Regulatory Board, the chairperson must convene a special meeting of the Regulatory Board to be held within three weeks after the receipt of the request, and the meeting must take place at a time and place determined by the chairperson.
- (4) A majority of the members of the Regulatory Board constitutes a quorum at a meeting.
- (5) (a) Every member of the Regulatory Board, including the chairperson, has one vote.
- (b) In the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

16. DECISIONS

- (1) A decision of the majority of members present at a duly constituted meeting is a decision of the Regulatory Board.
- (2) No decision taken by or act performed under the authority of the Regulatory Board is invalid only by reason of
 - (a) a casual vacancy on the Regulatory Board; or
 - (b) the fact that any person who was not entitled to sit as a member of the Regulatory Board participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present and acted at the time followed the required procedure for decisions.

17. DUTIES OF MEMBERS

The members of the Regulatory Board form the accounting authority of the Regulatory Board within the meaning of the Public Finance Management Act and must, in addition to the duties and responsibilities provided for in the Public Finance Management Act-

- (a) provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the Regulatory Board;
- (b) comply with all applicable legislation and agreements;
- (c) communicate openly and promptly with the Minister, any ministerial representatives, professional bodies and registered auditors;
- (d) deal with the Minister, any ministerial representatives, professional bodies, registered auditors and all other persons in good faith; and
- (e) at all times act in accordance with the code of conduct for members of the Regulatory Board as may be prescribed by the Minister.

18. CHIEF EXECUTIVE OFFICER

- (1) The chief executive officer is responsible for the day-to-day management of the Regulatory Board and is accountable to the Regulatory Board.
- (2) The chief executive officer must enter into a performance agreement with the Regulatory Board on acceptance of his or her appointment.

19. DELEGATIONS

- (1) The Regulatory Board must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system-

- (a) may -
 - (i) in writing delegate appropriate powers, excluding the power to prescribe rules to a committee, the chief executive officer, an employee or any member of the Regulatory Board; and
 - (ii) assign any committee, the chief executive officer, any employee or member of the Regulatory Board to perform any of its duties; and
- (b) in respect of sections 48, 49, 50 and 51, with due regard to the varying nature and seriousness of matters arising from these sections, in writing delegate or assign appropriate powers or duties, and oblige the investigating and disciplinary committees to delegate or assign appropriate powers or duties to the chief executive officer, any employee or any member of the Regulatory Board.
- (2) A delegation or assignment in terms of subsection (1) -
 - (a) is subject to such limitations and conditions as the Regulatory Board may impose;
 - (b) may authorise subdelegation; and
 - (c) does not divest the Regulatory Board of the delegated power or the performance of the assigned duty.
- (3) The powers and duties of the investigating and disciplinary committees referred to in sections 48, 49 and 50 are deemed delegated and assigned by the Regulatory Board to the committees and are subject to this section.
- (4) The Regulatory Board may confirm, vary or revoke any decision taken by a committee, the chief executive officer, a member of the Regulatory Board or an employee as a result of a delegation or assignment in terms of subsection (1).

PART 5

Committees of Regulatory Board

20. ESTABLISHMENT OF COMMITTEES

- (1) The Regulatory Board, subject to subsection (2), may establish committees to assist it in the performance of its functions and it may at any time dissolve or reconstitute any such committee.
- (2) The Regulatory Board must, at least, establish the following permanent committees:
 - (a) A committee for auditor ethics in accordance with section 21;
 - (b) a committee for auditing standards in accordance with section 22;
 - (c) an education, training and professional development committee;
 - (d) an inspection committee;

- (e) an investigating committee; and
 - (f) a disciplinary committee.
- (3) (a) A committee consists of as many members as the Regulatory Board considers necessary.
- (b) The Regulatory Board, subject to sections 21,22 and 24 and taking into account, amongst other factors, the need for transparency and representivity within the broader demographics of the South African population, may appoint any person as a member of a committee, on such terms and conditions as the Regulatory Board may determine.
- (c) The Regulatory Board may terminate the membership of a member of a committee if
- (i) the performance by the member of the powers and functions of that committee is unsatisfactory;
 - (ii) the member, either through illness or for any other reason, is unable to perform the functions of the committee effectively; or
 - (iii) the member has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.
- (d) If the Regulatory Board does not designate a chairperson for a committee, other than a disciplinary committee, the committee may elect a chairperson from among its members.
- (4) The Regulatory Board must provide funding to its committees in such a way that the committees are able to perform their functions effectively.
- (5) Sections 15 and 16 relating to meetings and decisions of the Regulatory Board, respectively, with the necessary changes apply in respect of any committee, except that the committees must meet at least four times a year.

21. COMMITTEE FOR AUDITOR ETHICS

- (1) The committee for auditor ethics must consist of at least the following members appointed by the Regulatory Board:
- (a) Three registered auditors;
 - (b) three persons representing users of audits;
 - (c) one person representing an exchange which is the holder of a stock exchange licence issued under the Securities Services Act, 2004 (Act No. 36 of 2004); and
 - (d) one advocate or attorney with at least 10 years' experience in the practice of law.

- (2) The committee for auditor ethics must assist the Regulatory Board –
 - (a) to determine what constitutes improper conduct by registered auditors by developing rules and guidelines for professional ethics, including a code of professional conduct;
 - (b) to interact on any matter relating to its functions and powers with professional bodies and any other body or organ of state with an interest in the auditing profession; and
 - (c) to provide advice to registered auditors on matters of professional ethics and conduct.

22. COMMITTEE FOR AUDITING STANDARDS

- (1) The committee for auditing standards must consist of at least the following members appointed by the Regulatory Board:
 - (a) Five registered auditors;
 - (b) one person with experience of business;
 - (c) an incumbent of the office of the Auditor-General, or a person nominated by that incumbent;
 - (d) an incumbent of the office of the 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);
 - (f) one person nominated by any stock exchange licensed under the Securities Services Act, 2004 (Act No. 36 of 2004);
 - (g) the Commissioner of the South African Revenue Services established in terms of the South African Revenue Services Act, 1997 (Act No. 34 of 1997), or a person nominated by the Commissioner; and
 - (h) an incumbent of the office of the Registrar of Banks, or a person nominated by that incumbent.
- (2) The committee for auditing standards must assist the Regulatory Board
 - (a) to develop, maintain, adopt, issue or prescribe auditing pronouncements;
 - (b) to consider relevant international changes by monitoring developments by other auditing standard-setting bodies and sharing information where requested; and
 - (c) to promote and ensure the relevance of auditing pronouncements by –
 - (i) considering the needs of users of audit reports;

- (ii) liaising with the other committees of the Regulatory Board on standards to be maintained by registered auditors and by receiving feedback from such committees on areas where auditing pronouncements are needed;
 - (iii) ensuring the greatest possible consistency between auditing pronouncements and accepted international pronouncements; and
 - (iv) consulting with professional bodies on the direction and appropriateness of auditing pronouncements.
- (3) The committee for auditing standards may assist the Regulatory Board to influence the nature of international auditing pronouncements by –
- (a) preparing comment on exposure drafts or discussion papers and replies to questionnaires prepared by the International Auditing and Assurance Standards Board or a successor body; and
 - (b) nominating representatives to committees of the International Auditing and Assurance Standards Board or a successor body when requested to do so by the Regulatory Board.

23. MATTERS RELATING TO APPOINTMENT OF MEMBERS TO COMMITTEES FOR AUDITOR ETHICS AND FOR AUDITING STANDARDS

- (1) When the need for an appointment to the committees for auditor ethics or for auditing standards arises and the appointment depends on a nomination referred to in section 22, the committees for auditor ethics or for auditing standards must provide the Regulatory Board with the name of the nominated person, the name of any nominated alternate and any further relevant information, whereupon the Regulatory Board must in writing appoint the nominated persons within three months of receipt of the nominations.
- (2) Where any person's appointment to the committees for auditor ethics or for auditing standards is dependent on a nomination referred to in section 22, the Regulatory Board may make the duration of the appointment terminable on notice given by the nominating office-holder to the Regulatory Board that the nominated person has left its employment.
- (3) A member of the committees for auditor ethics or for auditing standards whose term has expired continues to serve until a successor has been appointed.

24. INVESTIGATING AND DISCIPLINARY COMMITTEES

- (1) The investigating committee must include individuals with significant legal experience.
- (2) The disciplinary committee-

- (a) must be chaired by a retired judge or senior advocate;
- (b) must consist of a majority of persons not registered as auditors in terms of this Act, but must include registered auditors; and
- (c) may include other suitably qualified persons.

PART 6

Funding and financial management of Regulatory Board

25. FUNDING

The Regulatory Board is funded from

- (a) the collection of prescribed fees;
- (b) all other monies which may accrue to the Regulatory Board from any other legal source, including sanctions imposed by the Regulatory Board; and
- (c) moneys appropriated for that purpose by Parliament.

26. ANNUAL BUDGET AND STRATEGIC PLAN

The annual budget and strategic plan of the Regulatory Board must be submitted to the Minister in terms of the Public Finance Management Act.

27. FINANCIAL MANAGEMENT, FINANCIAL STATEMENTS AND ANNUAL REPORT

The financial management and the preparation and submission of financial statements and annual reports must be in accordance with the Public Finance Management Act.

PART 7

National government oversight and executive authority

28. EXECUTIVE AUTHORITY

- (1) The Minister is the executive authority for the Regulatory Board in terms of the Public Finance Management Act and the Regulatory Board is accountable to the Minister.
- (2) The Minister must-
 - (a) ensure that the Regulatory Board complies with this Act, the Public Finance Management Act and any other applicable legislation;
 - (b) ensure that the Regulatory Board is managed responsibly and transparently and meets its contractual and other obligations;

- (c) establish and maintain clear channels of communication between him or her and the Regulatory Board; and
- (d) monitor and annually review the performance of the Regulatory Board.

29. MINISTERIAL REPRESENTATIVES

- (1) The Minister may designate officials of the National Treasury as his or her representatives to the Regulatory Board.
- (2) Ministerial representatives designated in terms of subsection (1) represent the Minister as participating observers at meetings of the Regulatory Board.
- (3) The Minister or his or her designated representative or representatives may at any time call or convene a meeting of the Regulatory Board in order for the Regulatory Board to give account for actions taken by it.
- (4) (a) A ministerial representative must represent the Minister faithfully at meetings of and with the Regulatory Board, without consideration of personal interest or gain, and must keep the Minister informed of what transpired at meetings of the Regulatory Board.

(b) A ministerial representative must act in accordance with the instructions of the Minister and may be reimbursed by the Minister for expenses in connection with his or her duties as a ministerial representative, but may not receive any additional compensation or salary for such duties.

30. INVESTIGATIONS

- (1) The Minister may at any time request the Regulatory Board to investigate any matter at its own cost or against full or partial payment.
- (2) The Minister, at any time, may investigate the affairs or financial position of the Regulatory Board and may recover from the Regulatory Board reasonable costs incurred as a result of an investigation.

31. INFORMATION

The Regulatory Board must provide the Minister or his or her ministerial representative with access to any information as may be reasonably requested.

CHAPTER III
ACCREDITATION AND REGISTRATION
PART I

Accreditation of professional bodies

32. APPLICATION FOR ACCREDITATION

- (1) A professional body must apply, on the prescribed application form, to the Regulatory Board for accreditation in terms of Section 33 or 34.
- (2) If the Regulatory Board is satisfied that the professional body complies with its requirements for accreditation, it must grant the application on payment of the prescribed fee.

33. REQUIREMENTS FOR ACCREDITATION

In order to qualify for accreditation, a professional body must demonstrate, to the satisfaction of the Regulatory Board that-

- (a) it complies with the prescribed requirements for professional development and achievement of professional competence;
- (b) it has appropriate mechanisms for ensuring that its members participate in continuing professional development as recognised or prescribed by the Regulatory Board;
- (c) it has mechanisms to ensure that its members are disciplined where appropriate;
- (d) it is, and is likely to continue to be, financially and operationally viable for the foreseeable future;
- (e) it keeps a register of its members in the form prescribed by the Regulatory Board;
- (f) 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
- (g) it meets any other requirement prescribed by the Regulatory Board from time to time.

34. RETAINING ACCREDITATION

In order to retain its accreditation, an accredited professional body must at least once a year at a time prescribed by the Regulatory Board, satisfy the Regulatory Board in the prescribed manner that it continues to comply with the requirements for accreditation listed in section 33.

35. TERMINATION OF ACCREDITATION

- (1) The accreditation of a professional body lapses automatically if
 - (a) it ceases to exist; or
 - (b) it fails to pay any prescribed fee or portion thereof within such period as may be prescribed by the Regulatory Board.
- (2) (a) The Regulatory Board, subject to subsection (3), must cancel the accreditation by it of a professional body if that body ceases to comply with any requirement for accreditation.
 - (b) The Regulatory Board must, prior to cancelling of accreditation, give notice in writing to the professional body concerned of its intention to cancel and the reasons on which it is based, and must 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 with cancellation.
 - (c) The Regulatory Board, pending the outcome of the process referred to in paragraph (b), may suspend the accreditation of a professional body if it considers it in the best interests of the public or the auditing profession and may make such alternative arrangements to accommodate the needs of the members of such body during the period of suspension as it may consider necessary.
 - (d) If the Regulatory Board considers that cancellation of accreditation would not be in the best interests of the public, the auditing profession or the members of a professional body referred to in subsection (3), it may extend the accreditation of the professional body concerned on such conditions as it considers appropriate.
- (3) A professional body may by written notice to the Regulatory Board renounce its accreditation.
- (4) (a) On the termination of the accreditation of a professional body, the professional body must inform all the registered auditors who were its members at the time of the termination
 - (i) of the termination of its accreditation; and
 - (ii) of their duty to provide the Regulatory Board with the written proof referred to in section 36(2).
- (b) On the termination of the accreditation of a professional body, the Regulatory Board must publish a notice informing all the registered auditors who were members of the professional body at the time of the termination-
 - (i) of the termination of its accreditation; and
 - (ii) of their duty to provide the Regulatory Board with the written proof referred to in section 36.

- (5) A professional body which is no longer accredited is not relieved of any outstanding financial obligation towards the Regulatory Board.

36. EFFECT OF TERMINATION OF ACCREDITATION ON REGISTERED AUDITORS

- (1) The fact that the accreditation of a professional body has ended in terms of section 35 does not affect the registration under this Act of any registered auditor who was a member of the professional body at the time of the termination.
- (2) Registered auditors referred to in subsection (1) who were members of the professional body referred to in subsection (1) must, within six months of the termination of the accreditation of the professional body or within such other period as may be prescribed by the Regulatory Board, provide written proof to the satisfaction of the Regulatory Board that they
 - (a) have become members of another accredited professional body; or
 - (b) have made arrangements for their continuing professional development as recognised or prescribed by the Regulatory Board.
- (3) Where a registered auditor referred to in subsection (1) fails to comply with the requirements of subsection (2), the Regulatory Board, subject to subsection (4), may cancel the registration of the registered auditor under this Act.
- (4) The Regulatory Board must, prior to the cancelling of the registration of a registered auditor, give notice in writing to the registered auditor concerned of its intention to cancel and the reasons on which it is based, and must afford the registered 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.

PART 2

Registration of individual auditors and firms

37. REGISTRATION OF INDIVIDUALS AS REGISTERED AUDITORS

- (1) An individual must apply on the prescribed application form to the Regulatory Board for registration.
- (2) If, after considering an application, the Regulatory Board is satisfied that the applicant
 - (a) has complied with the prescribed education, training and competency requirements for a registered auditor;
 - (b) has arranged for his or her continuing professional development if the applicant is not a member of an accredited professional body;

- (c) is resident within the Republic;
 - (d) is a fit and proper person to practise the profession; and
 - (e) has met any additional requirements for registration as prescribed under section 6, the Regulatory Board must, subject to subsections (3) and (5), register the applicant, enter the applicant's name in the register and issue to the applicant a certificate of registration on payment of the prescribed fee.
- (3) The Regulatory Board may not register an individual if that individual-
- (a) has at any time been removed from an office of trust because of misconduct related to a discharge of that office;
 - (b) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery, uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty, other than theft, fraud or forgery, committed prior to 27 April 1994 associated with political objectives, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding such an amount as may be prescribed by the Minister;
 - (c) is for the time being declared by a competent court to be of unsound mind or unable to manage his or her own affairs; or
 - (d) is disqualified from registration under a sanction imposed under this Act.
- (4) For the purposes of subsection (3)(b), the Regulatory Board must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (5) The Regulatory Board may decline to register an individual who is an unrehabilitated insolvent, has entered into a compromise with creditors or has been provisionally sequestered.

38. REGISTRATION OF FIRMS AS REGISTERED AUDITORS

- (1) The only firms that may become registered auditors are-
- (a) partnerships of which all the partners are individuals who are themselves registered auditors;
 - (b) sole proprietors where the proprietor is a registered auditor; and
 - (c) companies which comply with subsection (3).
- (2) On application by a firm which is a partnership fulfilling the conditions in subsection (1)(a) or a sole proprietor, on the prescribed application form, the Regulatory Board must register the firm as a registered auditor on payment of the prescribed fee.
- (3) The Regulatory Board must register a company as a registered auditor on the payment of the prescribed fee if-

- (a) the company is incorporated and registered as a company under the Companies Act, 1973 (Act No.61 of 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 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 Regulatory Board 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 Regulatory Board may approve, and provided that
 - (aa) no voting rights attach to any share contemplated in paragraph (c)(i) and (ii); and
 - (bb) 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 or profits earned by the company in its business; and
 - (d) the articles of association of the company provide that
 - (i) the company may, without confirmation by a court, purchase on such terms as it may consider expedient any shares held in it and the shares purchased are available for allotment in accordance with the company's articles of association; and
 - (ii) despite any provision to the contrary in any other law, a member of the company may not appoint a person who is not a member of the company to attend, speak or vote on behalf of the member at any meeting of the company.
- (4) In its application to a company which is a registered auditor, section 20 of the Companies Act, 1973 (Act No. 61 of 1973), has effect with the exception of subsection (1)(b).

39. TERMINATION OF REGISTRATION

- (1) Subject to subsection (3), the Regulatory Board must cancel the registration of any registered auditor that is an individual and-
 - (a) who subsequent to registration becomes subject to any of the disqualifications mentioned in section 37(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 improper conduct because of which the registered auditor is in the opinion of the Regulatory Board not a fit and proper person to be registered.
- (2) Subject to subsection (3), the Regulatory Board may cancel the registration of any registered auditor that is an individual and-
 - (a) whose estate is sequestrated or provisionally sequestrated or who enters into a compromise with creditors; or
 - (b) who ceases to be a member of an accredited professional body and does not within six months of such cessation provide written proof to the satisfaction of the Regulatory Board that such auditor has made arrangements for his or her continuing professional development.
- (3) Prior to canceling a registration, the Regulatory Board must give notice in writing to the registered auditor concerned of its intention to cancel and the reasons on which it is based, and afford the registered auditor a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with cancellation.
- (4) The registration of a registered auditor that is a partnership, sole proprietor or company automatically lapses if it no longer complies with section 38(1).
- (5) The registration of a registered auditor automatically lapses if such auditor fails to pay a prescribed fee or portion thereof within the period prescribed by the Regulatory Board.
- (6) At the written request of a registered auditor, the Regulatory Board must remove the registered auditor's name from the register, but the removal does not affect any liability incurred by the registered auditor prior to the date of the removal.
- (7) The fact that a registered auditor's registration has been cancelled or removed does not prevent the Regulatory Board from instituting disciplinary proceedings for conduct committed prior to the cancellation or removal.
- (8) As soon as practicable after a registered auditor's registration has been cancelled or removed the Regulatory Board must publish a notice of the cancellation or removal, specifying the registered auditor's name.

40. RENEWAL OF REGISTRATION AND RE-REGISTRATION

- (1) A registered auditor must apply in the prescribed manner to the Regulatory Board for the renewal of his or her registration.
- (2) A registered auditor whose registration was terminated in terms of section 39 or cancelled in terms of section 51(3)(a)(iv) may apply for re-registration in the prescribed manner to the Regulatory Board.

CHAPTER IV

CONDUCT BY AND LIABILITY OF REGISTERED AUDITORS

41. PRACTICE

- (1) Only a registered auditor may engage in public practice or hold out as an [an a] registered auditor in public practice or use the registered auditor [registered auditor] description [*“registered auditor”*] *“public accountant”*, *“certified public accountant”*, *“registered accountant and auditor”*, *“accountant and auditor in public practice”* or any other designation or description likely to create the impression of being a registered auditor in public practice.
- (2) (a) A person who is not registered in terms of this Act may not:
 - (i) perform any audit;
 - (ii) pretend to be, or in any manner hold or allow himself or herself to be held out as, a person registered in terms of this Act;
 - (iii) use the name of any registered auditor or any name or title referred to in subsection (1); or
 - (iv) perform any act indicating or calculated to lead persons to believe that he or she is registered in terms of this Act.(b) Paragraph (a)(i) may not be construed as prohibiting any individual from performing an audit if such audit [services] are performed in the service of or by order of and under the direction, control, supervision of or in association with a registered auditor entitled to perform the audit identified and who must assume responsibility for any audit so performed.
- (3) Nothing in this section prohibits:
 - (a) any person from using [the] description *“internal auditor”* or *“accountant”*;
 - (b) any member of a not-for-profit club, institution or association from acting as auditor for that club, institution or association if he or she receives no fee or other consideration for such audit; or
 - (c) the Auditor-General from appointing any person who is not a registered auditor to carry out on his or her behalf any audit which he or she is in

terms of the Public Audit Act, 2004 (Act No. 25 of 2004), required to undertake.

- (4) Except with the consent of the Regulatory Board, a registered auditor may not knowingly employ-
 - (a) any person who is for the time being suspended from public practice under any provision of this Act; or
 - (b) any person [~~person~~ individual] who is no longer registered as a registered auditor as a result of the termination of his or her registration in terms of section 39(1)(c) or the cancellation of his or her registration in terms of section 51(3)(a)(iv); or
 - (c) any person who applied for registration under section 37(3), but whose application the Regulatory Board declined.
- (5) A registered auditor who is not in public practice as an individual practitioner may practise as a member of a firm only if, by virtue of section 40, the firm is itself a registered auditor.
- (6) 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 registered 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 an audit performed by that registered auditor, unless the audit were performed by that registered auditor, under the personal supervision or direction of that registered auditor or by or under the personal supervision or directions of that registered auditor and one or more of the partners, co-directors or co-members of the registered auditor, as the case may be, in accordance with prescribed auditing standards;
 - (c) perform audits unless adequate risk management practices and procedures are in place;
 - (d) engage in public practice during any period in respect of which the registered auditor has been suspended from public practice; or

- (e) share any profit derived from performing an audit with a person that is not a registered auditor.
- (7) The provisions of subsection (6)(b) do not apply in respect of an audit performed by another registered auditor in a partially completed assignment which the previous registered auditor was unable to complete as a result of death, disability or other unforeseen cause not under the control of the previous registered auditor, and which assignment the successor registered auditor is engaged to complete.
- (8) Nothing in subsection (6)(b) prevents any registered auditor from signing the firm name or title under which the registered auditor practises.
- (9) For the purposes of section 171 of the Companies Act, 1973 (Act No. 61 of 1973), in relation to such a company as is described in section 40, it must 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.
- (10) In order to engage in public practice, a registered auditor must have paid all applicable prescribed fees.

42. COMPLIANCE WITH RULES

All registered auditors must comply with rules prescribed by the Regulatory Board.

43. INFORMATION TO BE FURNISHED

- (1) Every firm that is a registered auditor must notify the Regulatory Board 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 14 days of the receipt of a written request from any client for whom a registered auditor acts as auditor or person who proposes to appoint the registered auditor as its auditor, the registered auditor must furnish the following information:
 - (a) Every firm's name or title under which the registered auditor practises;
 - (b) the place or places of business of all firms in which the registered auditor is in public practice as a partner, director or member;
 - (c) the full names of all (if any) of the registered auditor's partners, co-directors or co-members; and
 - (d) the registered auditor's first names or initials, surname, ordinary business address and ordinary residential address.

- (3) In subsection (2) 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 must be a sufficient compliance with the obligation of the individual registered auditor.

44. DUTIES IN RELATION TO AUDIT

- (1)
 - (a) Where a registered auditor that is a firm is appointed by an entity to perform an audit, that firm must immediately after the appointment is made, take a decision as to the individual registered auditor or registered auditors within the firm that is responsible and accountable for that audit.
 - (b) The first name and surname of the individual registered auditor referred to in paragraph (a) must be made available to the entity on taking of the decision and to the Regulatory Board on request.
- (2) The registered auditor may not, without such qualifications as may be appropriate in the circumstances, express an opinion to the effect that any financial statement or any supplementary information attached thereto which relates to the entity-
 - (a) fairly presents in all material respects the financial position of the entity and the results of its operations and cash flow; and
 - (b) are properly prepared in all material aspects in accordance with the basis of the accounting and financial reporting framework as disclosed in the relevant financial statements, unless a registered auditor who is conducting the audit of an entity is satisfied about the criteria specified in subsection (3).
- (3) The criteria referred to in subsection (2) are-
 - (a) that the registered auditor has carried out the audit free from any restrictions whatsoever and in compliance, so far as applicable, with auditing pronouncements relating to the conduct of the audit;
 - (b) that the registered auditor has by means of such methods as are reasonably appropriate having regard to the nature of the entity satisfied himself or herself of the existence of all assets and liabilities shown on the financial statements;
 - (c) that proper accounting records in at least 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;
 - (d) that the registered auditor has obtained all information, vouchers and other documents which in the registered auditor's opinion were necessary for the proper performance of the registered auditor's duties;

- (e) that the registered auditor has not had occasion, in the course of the audit or otherwise during the period to which the auditing services relate, to send a report to the Regulatory Board under section 45 relating to a reportable irregularity or that, if such a report was so sent, the registered auditor has been able, prior to expressing the opinion referred to in subsection (1), to send to the Regulatory Board a notification under section 45 that the registered auditor has become satisfied that no reportable irregularity has taken place or is taking place;
 - (f) that the registered auditor has complied with all laws relating to the audit of that entity; and
 - (g) that the registered auditor is satisfied, as far as is reasonably practicable having regard to the nature of the entity and of the audit carried out as to the fairness or the correctness, as the case may be, of the financial statements.
- (4) 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 registered auditor must, in reporting on anything in connection with the business or financial affairs of the entity, indicate that the registered auditor or that other member of the firm was responsible for keeping those accounting records.
 - (5) For the purpose of subsection (4), a person must not be regarded as responsible for keeping the books, records or accounts of an entity by reason only of that person making closing entries, assisting with any adjusting entries or framing any financial statements or other document from existing records.
 - (6) A registered auditor may not conduct the audit of any financial statements of an entity, whether as an individual registered auditor or as a member of a firm, if, the registered auditor has or had a conflict of interest in respect of that entity, as prescribed by the Regulatory Board.

45. DUTY TO REPORT ON IRREGULARITIES

- (1) (a) An individual registered auditor referred to in section 44(1)(a) of an entity that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that entity must, without delay, send a written report to the Regulatory Board.
- (b) The report must give particulars of the reportable irregularity referred to in subsection (1)(a) and must include such other information and particulars as the registered auditor considers appropriate.
- (2) (a) The registered auditor must within three days of sending the report to the Regulatory Board notify the members of the management board of the entity in writing of the sending of the report referred to in subsection (1) and the provisions of this section.

- (b) A copy of the report to the Regulatory Board must accompany the notice.
- (3) The registered auditor must as soon as reasonably possible but no later than 30 days from the date on which the report referred to in subsection (1) was sent to the Regulatory Board
- (a) take all reasonable measures to discuss the report referred to in subsection (1) with the members of the management board of the entity;
 - (b) afford the members of the management board of the entity an opportunity to make representations in respect of the report; and
 - (c) send another report to the Regulatory Board, which report must include:
 - (i) a statement that the registered auditor is of the opinion that:
 - (aa) no reportable irregularity has taken place or is taking place; or
 - (bb) the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant; or
 - (cc) the reportable irregularity is continuing; and
 - (ii) detailed particulars and information supporting the statement referred to in subparagraph (i).
- (4) The Regulatory Board must as soon as possible after receipt of a report containing a statement referred to in paragraph (b)(i)(cc) of subsection (3), notify any appropriate regulator in writing of the details of the reportable irregularity to which the report relates and provide it with a copy of the report.
- (5) For the purpose of the reports referred to in subsections (1) and (3) a registered auditor may carry out such investigations as the registered auditor may consider necessary and, in performing any duty referred to in the preceding provisions of this section, the registered auditor must have regard to all the information which comes to the knowledge of the registered auditor from any source.
- (6) Where any entity is sequestered or liquidated, whether provisionally or finally, and a registered auditor referred to in section 44(1)(a) at the time of the sequestration or liquidation-
- (a) has sent or is about to send a report referred to in subsection (1) or (3), the report must also be submitted to a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, at the same time as the report is sent to the Regulatory Board or as soon as reasonably possible after his or her appointment; or
 - (b) has not sent a report referred to in subsection (1) or (3), and is requested by a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, to send a report, the registered auditor must as soon as reasonably possible-

- (i) send the report together with a motivation as to why a report was not sent; or
- (ii) submit a notice that in the registered auditor's opinion no report needed to be submitted, together with a justification of the opinion.

46. LIMITATION OF LIABILITY

- (1) (a) The application of this section is limited to an audit performed within the meaning of paragraph (a) of the definition of "audit" in section (1).
(b) Despite section 44(1)(a), for purposes of this section registered auditor means both the individual registered auditor and the firm referred to in that section.
- (2) In respect of any opinion expressed or report or statement made by a registered auditor in the ordinary course of duties the registered auditor does not incur any liability to a client or any third party, unless it is proved that the opinion was expressed, or the report or statement made, maliciously, fraudulently or pursuant to a negligent performance of the registered auditor's duties.
- (3) Despite subsection (2), a registered auditor incurs liability to third parties who have relied on an opinion, report or statement of that registered auditor for financial loss suffered as a result of having relied thereon, only if it is proved that the opinion was expressed, or the report or statement was made, pursuant to a negligent performance of the registered auditor's duties and the registered 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 registered 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.

- (4) Nothing in subsections (2) or (3) confers upon any person a right of action against a registered auditor which, but for the provisions of those subsections, the person would not have had.
- (5) For the purposes of subsection (3) the fact that a registered auditor performed the functions of a registered auditor is not in itself proof that the registered 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 paragraph (a)(ii) or paragraph (b) of that subsection.
- (6) Subsections (2) or (3) do not affect any additional or other liability of a registered auditor arising from
 - (a) a contract between a third party and the registered auditor; or
 - (b) any other statutory provision or the common law.
- (7) A registered auditor may incur liability to any partner, member, shareholder, creditor or investor of an entity if the registered auditor fails to report a reportable irregularity in accordance with section 45.
- (8) A registered auditor may not through an agreement or in any other way limit or reduce the liability that such auditor may incur in terms of this section.

CHAPTER V

ACCOUNTABILITY OF REGISTERED AUDITORS

47. INSPECTIONS

- (1)
 - (a) The Regulatory Board, or any person authorised by it, may at any time inspect or review the practice of a registered auditor and the effective implementation of any training contracts and may for these purposes inspect and make copies of any information, including but not limited to any working papers, statements, correspondence, books or other documents, in the possession or under the control of a registered auditor.
 - (b) Despite the generality of paragraph (a), the Regulatory Board, or any person authorised by it, must at least every three years inspect or review the practice of a registered auditor that audits a public interest company as defined in the Companies Act, 1973 (Act No. 61 of 1973).

- (2) The Regulatory Board may recover the costs of an inspection under this section from the registered auditor concerned.
- (3) A registered auditor must, at the request of the Regulatory Board or the person authorised by it, produce any information, including but not limited to any working papers, statements, correspondence, books or other documents, and, subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) or any other law, may not refuse to produce such information even though the registered auditor is of the opinion that the information contains confidential information about ~~about~~ of a client.
- (4) A registered auditor who acts in good faith during an inspection of the public practice of the registered auditor and who produces information under subsection (3) may not be held liable criminally or under civil law because of the production of the information.
- (5) Subject to the Constitution and any other law, 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 this Chapter;
 - (b) if the person of necessity supplies it in the performance of functions under this Act;
 - (c) when required to do so by order of a court of law;
 - (d) at the written request of, and to, any appropriate regulator which requires it for the institution, or an investigation with a view to the institution, of any disciplinary action or criminal prosecution; or
 - (e) at the written request of, and to, any appropriate international regulator of audits and auditors, that requires such for the purpose of inspection with the consent of the registered auditor.
- (6) A registered auditor must annually submit to the Regulatory Board such information or returns as may be requested by the Regulatory Board.

48. INVESTIGATION OF CHARGE OF IMPROPER CONDUCT

- (1) The Regulatory Board must refer a matter brought against a registered [auditor] to the investigating committee appointed under section 20 if the Regulatory Board-
 - (a) on reasonable grounds suspects that a registered auditor has committed an act which may render him or her guilty of improper conduct; or
 - (b) is of the opinion that a complaint or allegation of improper conduct, whether prescribed or not, which has been made against a registered auditor by any person appears to be justified.

- (2) (a) 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 a registered auditor the court must direct a copy of the record of the proceedings, or such part thereof as relates to that conduct, to be sent to the Regulatory Board.
- (b) Despite the provisions of any other law, whenever it appears to an appropriate regulator 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 Regulatory Board.
- (c) The Regulatory Board must refer to an investigating committee any record or report received by it under this subsection.
- (3) At the request of the Regulatory Board, the investigating committee must-
- (a) investigate the matter; and
- (b) obtain evidence to determine whether or not in its opinion the registered auditor concerned should be charged and, if so, recommend to the Regulatory Board the charge or charges that may be preferred against that registered auditor.
- (4) The investigating committee may not question the registered auditor concerned unless the investigating committee informs the registered auditor that he or she-
- (a) has the right to be assisted or represented by another person; and
- (b) is not obliged to make any statement and that any statement made may be used in evidence against the registered auditor.
- (5) (a) In investigating a charge of improper conduct the investigating committee may-
- (i) require the registered auditor to whom the charge relates or any other person to produce to the committee any information, including but not limited to any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that registered auditor or other person and which relates to the subject matter of the charge, including specifically, but without limitation, any working papers of the registered auditor;
- (ii) inspect and, if the investigating committee considers it appropriate, retain any such information for the purposes of its investigations; and
- (iii) make copies of and take extracts from such information.
- (b) The provisions of this subsection apply regardless of whether the registered auditor is of the opinion that such information contains confidential information about a client.

- (6) Nothing in this section limits or affects the right of any professional body to take disciplinary or other action against any of its members in accordance with its constitution and rules.
- (7) The investigating committee must, after the conclusion of the investigation, submit a report stating its recommendations to the Regulatory Board regarding any matter referred to it in terms of this section.
- (8) The Regulatory Board and investigating committee must in exercising their powers or performing their duties in terms of this section consider the delegation or assignment of such powers and duties in accordance with section 19.

49. CHARGE OF IMPROPER CONDUCT

- (1) The Regulatory Board must charge a registered auditor with improper conduct if the investigating committee recommends that sufficient grounds exist for a charge to be preferred against such a registered auditor.
- (2) The Regulatory Board must furnish a charge sheet to the registered auditor concerned by hand or registered mail.
- (3) A charge sheet must inform the registered auditor charged-
 - (a) of the details and nature of the charge;
 - (b) that the registered auditor, in writing, admit or deny the charge;
 - (c) that the registered auditor [may], together with the admission or denial, submit a written explanation regarding the improper conduct with which charged; and
 - (d) of the period, which must be reasonable but may not exceed 60 days, within which the plea in terms of paragraph (b) must be submitted to the Regulatory Board.
- (4) If a registered auditor charged admits guilt to the charge, the registered auditor is considered to have been found guilty as charged.
- (5) The Regulatory Board must on the expiry of the period referred to in subsection (3)(d) refer the charge sheet and any plea received to the disciplinary committee to be dealt with in accordance with section 50, or, where the registered auditor admitted is guilty [~~is guilty~~ *guilt*] to the charge, to be dealt with in accordance with section 51.
- (6) The acquittal or the conviction of a registered auditor by a court of law on a criminal charge is not a bar to proceedings against the registered auditor under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which the registered auditor was acquitted or convicted or any other offence of which the registered auditor might have been acquitted or convicted at the trial on the criminal charge.

50. DISCIPLINARY HEARING

- (1) A disciplinary hearing must be conducted by the disciplinary committee constituted in accordance with section 24.
- (2) (a) The disciplinary committee, for the purposes of this section, must appoint a person to present the charge to the disciplinary committee, which person may be a member of the investigating committee.
(b) The disciplinary committee may at any time prior to or during the disciplinary hearing terminate and replace a person referred to in paragraph (a), if the committee is of the opinion that that person is not fulfilling the obligations.
- (3) The disciplinary committee may at any time prior to the conclusion of a disciplinary hearing amend the charge sheet or a charge on the grounds that an error exists in its formulation or that a charge is not properly articulated in the original charge sheet.
- (4) A hearing before the disciplinary committee is open to the public except where, in the opinion of the chairperson of the disciplinary committee, any part of the hearing should be held in camera.
- (5) (a) The disciplinary committee may, for the purposes of a hearing, subpoena any person-
 - (i) who may be able to give material information concerning the subject of the hearing; or
 - (ii) who it suspects or believes has in his or her possession or custody or under such person's control any information, including but not limited to any working papers, statements, correspondence, books or other documents, which has any bearing on the subject of the hearing, to appear before the disciplinary committee at the time and place specified in the subpoena, to be questioned or to produce any information, including but not limited to any working papers, Statements, correspondence, books or other documents.
(b) A subpoena issued in terms of paragraph (a) must-
 - (i) be in the prescribed form;
 - (ii) be signed by the chairperson of the disciplinary committee or, in that person's absence, by any member of the disciplinary committee; and
 - (iii) be served on the registered auditor concerned personally or by sending it by registered mail.
- (6) The disciplinary committee may retain any information, including but not limited to any working papers, statements, correspondence, books or other documents produced in terms of subsection (5), for the duration of the hearing.

- (7) The chairperson of the disciplinary committee may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (5).
- (8) At a hearing the registered auditor charged-
- (a) (i) may be assisted or represented by another person in conducting the proceedings;
 - (ii) has the right to be heard;
 - (iii) may call witnesses;
 - (iv) may cross-examine any person called as a witness in support of the charge; and
 - (v) may have access to documents produced in evidence; and
- (b) (i) may admit at any time before the conclusion of the disciplinary hearing that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 49(3)(b) or (c); or
- (ii) may, in the case where the person makes an admission in terms of subparagraph (i), be regarded as guilty of improper conduct as charged.
- (9) The person referred to in subsection (2) may during a hearing-
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
 - (b) question any person who was subpoenaed in terms of subsection (5); or
 - (c) call anyone to give evidence or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which such person suspects or believes to have a bearing on the subject of the hearing.
- (10) (a) A witness who has been subpoenaed may not-
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her: or
 - (iv) fail to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which he or she has been required to produce.

- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary committee from further attendance.
 - (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary committee be made available to him or her.
 - (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of any information, including but not limited to any working papers, statements, correspondence, books or other documents, or to the production of such information to the disciplinary committee by any person called in terms of this section as a witness.
 - (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
 - (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing any information, including but not limited to any working papers, statements, correspondence, books or other documents, which he or she is in terms of this section required to give or produce.
- (11) The record of evidence which has a bearing on the charge before the disciplinary committee, and which was presented before any committee which investigated an event or conduct, is admissible without further evidence being led if-
- (a) the record is accompanied by a certificate from the chairperson; and
 - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (12) If the improper conduct with which the registered auditor is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered auditor as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.
- (13) In exercising its powers or performing its duties in terms of this section, the disciplinary committee must consider the delegation or assignment of such powers and duties in accordance with section 19.

51. PROCEEDINGS AFTER HEARING

- (1) After the conclusion of the hearing the disciplinary committee must, within 30 days-
- (a) decide whether or not the registered auditor is guilty as charged of improper conduct;

- (b) if the disciplinary committee finds that the registered auditor charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances; and
 - (c) inform the registered auditor charged and the Regulatory Board of the finding.
- (2) A registered auditor found guilty of improper conduct in terms of this section may-
- (a) address the disciplinary committee in mitigation of sentence; and
 - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered auditor charged is found guilty of improper conduct, or if the registered auditor admits to the charge, the disciplinary committee must either-
- (i) caution or reprimand the registered auditor;
 - (ii) impose on the registered auditor a fine not exceeding the amount calculated according to the ratio for five year's imprisonment prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
 - (iii) suspend the right to practice as a registered auditor for a specific period: or
 - (iv) cancel the registration of the registered auditor concerned and remove his or her name from the register referred to in section 6.
- (b) The disciplinary committee may impose more than one of the sanctions referred to in paragraph ((1).
- (4) A disciplinary committee may order any person-
- (a) who admitted guilt in terms of section 49(4); or
 - (b) whose conduct was the subject of a hearing under section 50,
to pay such reasonable costs as have been incurred by an investigating committee and the disciplinary committee in connection with the investigation and hearing in question, or such part thereof as the disciplinary committee considers just.
- (5) The Regulatory Board may, if it deems it appropriate, publish the finding and the sanction imposed in terms of subsection (3).
- (6) (a) The Regulatory Board must give effect to the decision of the disciplinary committee.
- (b) Where an order as to costs has been made under subsection (4), the amount thereof shall be recoverable by the Regulatory Board from the person concerned, and any amount so recovered must be paid into the funds of the Regulatory Board.

CHAPTER VI

OFFENCES

52. REPORTABLE IRREGULARITIES AND FALSE STATEMENTS IN CONNECTION WITH AUDITS

- (1) A registered auditor who-
 - (a) fails to report a reportable irregularity in accordance with section 45; or
 - (b) for the purposes of, or in connection with, the audit of any financial statement knowingly or recklessly expresses an opinion or makes a report or other statement which is false in a material respect, shall be guilty of an offence.
- (2) Where the registered auditor failing to report a reportable irregularity or conducting the audit is a firm, subsection (1) applies to [the] individual registered auditor referred to in section 44(1)(a), 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 registered auditor referred to in section 44(1)(a).
- (3) A person convicted of an offence in a court of law under this section is liable to a fine or to imprisonment for a term not exceeding 10 years or to both a fine and such imprisonment.

53. OFFENCES RELATING TO DISCIPLINARY HEARINGS

- (1) Subject to section 50(4), a person is guilty of an offence if-
 - (a) having been duly summoned under section 50, 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 chairperson of the disciplinary committee;
 - (b) having been called under section 50, 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 50 and having possession, custody or control of any information, including but not limited to any working papers, statements, correspondence, books or other documents, refuses to produce it when required to do so.
- (2) A witness before 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 a disciplinary committee in the exercise of any power conferred upon that person by or under section 51 [~~57~~ 50] is guilty of an offence.
- (4) A person convicted of an offence in a court of law under this section is liable to a fine or to imprisonment for a period of five years or to both a fine and such imprisonment.

54. OFFENCES RELATING TO PUBLIC PRACTICE

- (1) A person who contravenes sections 41,47 or 44 is guilty of an offence and is liable to a fine or in default of payment to imprisonment not exceeding five years or to both fine and such imprisonment.
- (2) Any person who-
 - (a) contravenes any provision of section 47; 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 GENERAL MATTERS

55. POWERS OF MINISTER

- (1) The Minister may, by notice in the Gazette, make regulations regarding-
 - (a) any matter relating to the functioning of the Regulatory Board that is necessary to ensure the Regulatory Board's efficiency or to promote good order; and
 - (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to make such [~~such~~] regulations and the power to appoint the members of the Regulatory Board, to the Director-General or any other official of the National Treasury.

56. INDEMNITY

Neither the Regulatory Board or any member or employee or chief executive thereof, nor a committee of the Regulatory 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.

57. ADMINISTRATIVE MATTERS

Subject to the provisions of this Act, where the Regulatory Board takes a decision or any other step of an administrative nature under this Act that affects the rights and duties of another person, the Regulatory Board must-

- (a) publish or otherwise make known the nature and effect thereof in a written, printed or electronic manner to any affected persons 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.

58. REPEAL AND AMENDMENT OF LAWS

- (1) Subject to section 60, the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of that Schedule.
- (2) With effect from the date on which this Act comes 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" must be construed as a reference also to damage caused by a breach, by the registered auditor, of a term of a contract concluded with the registered auditor.

59. TRANSITIONAL PROVISIONS

- (1) (a) From the date of commencement of this Act, the Regulatory Board must be regarded as the successor to the Public Accountants' and Auditors' Board.
- (b) In order to give effect to that succession-
 - (i) any board members of the Public Accountants' and Auditors' Board who immediately prior to the commencement of this Act were members of that Board, must be deemed to have been appointed members of the Regulatory Board for the remainder of the period for which each member was appointed as a board member under the Public Accountants' and Auditors' Act, 1991;
 - (ii) all property which immediately before the date this Act comes into force was property of the Public Accountants' and Auditors' Board shall, by

- virtue of this Act, without any assignment or other form of transfer or the need for any consent become on that date property of the Regulatory Board;
- (iii) all rights or obligations of the Public Accountants' and Auditors' Board, whether contractual or otherwise, which were in existence immediately before the date this Act comes into force and do not fall within subparagraph (ii) shall become, on that date, rights or obligations of the Regulatory Board and, in their application or construction, be treated for all purposes as if the Public Accountants' and Auditors' Board and the Regulatory Board were the same person in law;
 - (iv) regarding anything done or falling to be done, or any other event occurring, on or after the date this Act comes into force, any reference in an existing document to the Public Accountants' and Auditors' Board must be construed as or, as the case may require, as including a reference to the Regulatory Board; and
 - (v) for the purposes only of section 197 of the Labour Relations Act, 1995 (Act No. 6 of 1995), the provisions of this subsection must be regarded as the transfer of a business from the Public Accountants' and Auditors' Board to the Regulatory Board.
- (c) The Registrar of Deeds concerned must, at the request of the Regulatory Board and on submission of the relevant title deeds and other documents, make the necessary entries and endorsements in respect of his or her registers and other documents in order to give effect to a transfer in terms of subsection (1).
- (d) No transfer duty, stamp duty or other fees shall be payable in respect of such transfer, entry or endorsement.
- (2) Subject to subsection (3), any unfinished business of the Public Accountants' and Auditors' Board on the date this Act comes into force, 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 as if this Act had not been passed.
- (3) (a) Any proceedings in connection with an application for registration as accountant and auditor still pending on the commencement date must, with effect from that date, be deemed to be proceedings for registration as an auditor contemplated in this Act and must further be administered, considered and completed by the Regulatory Board.
- (b) In the case of any such proceedings, and in the case of any new applications for registration as an auditor received by the Regulatory Board, the requirements for registration set out in section 15(2) and (4) of the Public Accountants' and Auditors' Act, 1991, must despite the repeal of that

Act and any inconsistency with a provision of this Act be deemed to be still applicable until a date determined by the Minister by notice in the Gazette.

- (4) The Education and Training Committee of the Public Accountants' and Auditors' Board, as it existed immediately prior to the commencement date, is deemed to be a committee established by the Regulatory Board under section 20 to determine the requirements for the professional development and achievement of professional competence.
- (5) 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 had not been passed.
- (6) 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.
- (7) Any training contract registered, any recognition of educational institutions or recognition of training officers under the Public Accountants' and Auditors' Act, 1991, is deemed to be a registration or recognition under this Act.
- (8)
 - (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, must be deemed to have been prescribed by the Regulatory Board 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) must be deemed to have been prescribed by the Regulatory Board, to the extent that the Disciplinary Regulations are consistent with this Act.
 - (c) The Code of Professional Conduct as contained in the said Manual (including paragraphs 1 to 2.1.21, inclusive, of the Disciplinary Regulations) must be deemed to have been prescribed by the Regulatory Board.
 - (d) The Circulars as contained in the said Manual must be deemed to have been issued by the Regulatory Board.
 - (e) The Recognition Model as contained in the said Manual must be deemed to have 2G been prescribed by the Regulatory Board.
 - (f) 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 Regulatory Board.
- (9) 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

58 and which could be done under a corresponding provision of this Act is deemed to have been done under that corresponding provision.

- (10) A reference in any of the preceding subsections to the commencement date is a reference to the date that subsection comes into force.

60. SHORT TITLE AND COMMENCEMENT

This Act is called the Auditing Profession Act, 2005, and comes into operation on a date determined by the Minister by notice in the Gazette.

2

EDUCATION, TRAINING AND PROFESSIONAL DEVELOPMENT

1	Foreword	2-3
2	Registration as a Registered Auditor (RA)	2-4
3	Competency requirements for registration	2-4
4	The Accreditation Model	2-5
5	Prescribed accreditation requirements	2-7
6	Accreditation philosophy	2-8
7	Responsibilities implicit in accreditation	2-10
8	Continuing Professional Development	2-12

1 FOREWORD

The accreditation and recognition process provides a common reference point for the quality of academic, education, training and assessment programmes that lead to registration as a Registered Auditor (RA).

It challenges all professional bodies that are accredited by the IRBA, to pursue continuous improvement by constantly evaluating stated objectives.

The recognition process tolerates and encourages diverse paths in the achievement of high quality accountancy education. For this reason, the focus of the recognition process is on fostering high quality programmes, rather than on prescribing specific and consistent quantitative measures in approaches to education.

The IRBA aspires to a commonality of goals amongst diverse education programmes: to prepare individuals for entry into the auditing profession and to contribute to societal and economic growth objectives specifically within South Africa as well as within an internationally competitive environment.

The IRBA encourages all who are responsible for programmes that lead to registration as an RA, to demonstrate a commitment to the recognition process, to high standards of education and to the formation of a highly respected auditing profession.

2 REGISTRATION AS A REGISTERED AUDITOR (RA)

In terms of section 37(2) of the Auditing Profession Act, 2005, ("the Act") it is a requirement for registration as an RA that the applicant has complied with the prescribed education, training and competency requirements of the IRBA.

3 EDUCATION, TRAINING AND COMPETENCY REQUIREMENTS FOR REGISTRATION

- 3.1 The Independent Regulatory Board for Auditors (IRBA) has, in terms of section 7(1)(b) determined that passing the Public Practice Examination (PPE) as demonstrating competence at entry point to the profession by those persons wishing to qualify for registration as an RA.
- 3.2 The IRBA has determined the following admission requirements to the PPE in terms of the Act:

Successful completion of:

1. a recognised academic programme. The only academic programme currently recognised by the IRBA is the Certificate in the Theory of Accountancy (CTA), or equivalent, offered by providers accredited by SAICA.
2. a recognised core assessment programme. The only core assessment programme that currently meets the recognition standards of the IRBA is Part I of the Qualifying Examination of SAICA.
3. a minimum of 18 months' practical training under a recognised training programme registered with the IRBA. The 18-month period should be completed prior to the first day of the month in which the examination is to be conducted in a specific year. In the case of trainee accountants who participate in the Academic Traineeship Programme (ATP) and who fail a recognised core assessment programme during the first year of their training contract, a minimum of 15 months' practical training is required under a recognised training programme that is registered with the IRBA. The 15-month period should be completed prior to the first day of the month in which the examination is to be conducted in a specific year. The only training programme currently recognised by the IRBA is the training contracts in public practice administered by SAICA and registered with the IRBA; and
4. a recognised education programme. The only education programme that currently meets the recognition standards of the IRBA is the auditing specialism course or equivalent, accredited by SAICA. This education programme will remain valid for admission purposes for a period of five calendar years, commencing after the calendar year in which the education programme was successfully completed.

4 THE ACCREDITATION MODEL

The primary objective of the IRBA as established in terms of section 3 of the Act is to protect the public in the Republic through regulation of the auditing profession. In terms of section 2 of the Act, such regulation is intended to advance the development and maintenance of internationally comparable ethical and auditing standards and to advance the implementation of appropriate standards of competence and good ethics. These objectives seek to advance the economic well-being of South Africa by promoting investment and ultimately employment. The Act provides for various statutory mechanisms necessary to achieve these objectives, one of which is the accreditation of professional bodies.

The reputation, relevance and value of the auditing profession depends on the ability of its members to continually meet the expectations of stakeholders and provide a service appropriate to the needs of the South African economy within the global context. The IRBA therefore has a duty to ensure that all RAs:

- have the necessary professional competence on entering the auditing profession to serve the public interest and the needs of the economy;
- further develop and maintain their professional competence after registration; and
- are subject to appropriate ethical requirements and disciplined where appropriate.

Supporting the realisation of the IRBA's objectives for the development, assessment and maintenance of the professional competence of auditors demands more than high-quality education, training, assessment and continuing professional development (CPD) programmes. What is required is high-quality governance and management of these programmes by professional bodies devoted to providing relevant, effective and efficient services to members and other stakeholders. For this reason, the accreditation of a professional body must address the institutional effectiveness and efficiency as well as the quality of programmes that develop and assess professional competence. In terms of section 33 of the Act, in order to qualify for accreditation a professional body must demonstrate, to the satisfaction of the IRBA, that -

Programme accreditation requirements

- a. It complies with the prescribed requirements for professional development and the achievement of professional competence;

Institutional accreditation requirements

- b. It has appropriate mechanisms for ensuring that its members participate in CPD as recognised or prescribed by the Regulatory Board;
- c. It has mechanisms to ensure that its members are disciplined where appropriate;

- d. It is, and is likely to continue to be, financially and operationally viable for the foreseeable future;
 - e. It keeps a register of its members in the form prescribed by the Regulatory Board;
 - f. 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
 - g. It meets any other requirement prescribed by the IRBA from time to time.
- In this regard the professional body must have appropriate technical support and guidance available to its members who are registered auditors.

4.1 Structure of the Accreditation Model

Institutional accreditation [Section 33 (b) to (g)]		Programme accreditation [Section 33(a)]
All accredited professional bodies are required to comply with the following institutional accreditation requirements		All accredited professional bodies must comply with the programme requirements for the development and assessment of core competence
<ul style="list-style-type: none"> • Continuing Professional Development; • Discipline of members where appropriate; • Financial and operational viability; • Maintaining a register of members in a prescribed form; • Programmes endeavouring to achieve representative sectors; and • Other requirements <ul style="list-style-type: none"> o Appropriate technical support and guidance available to all its members who are RAs. 		Develop and assess core competence: <ul style="list-style-type: none"> • Recognised academic programmes; and • Recognised core assessment programmes; <p>In order to be fully accredited, a professional body must comply with the requirements for the development of professional competence:</p> <ul style="list-style-type: none"> • Recognised education programmes; and • Recognised training programmes.

5 PRESCRIBED ACCREDITATION REQUIREMENTS

5.1 Institutional and programme objectives

The IRBA must, in terms of section 5(a), prescribe minimum requirements for accreditation in addition to those provided for in the Act. This is achieved firstly through the definition of objectives (institutional and programme) that relate to each of the accreditation requirements specified in the Act. The objectives are a broad statement of the IRBA's minimum expectations and requirements at the institutional and programme levels.

5.2 Accreditation standards

- Accreditation standards describe the fundamental characteristics that should be present either at an institutional or programme level to realise the stated objectives. It should be noted, however, that the mere existence of such characteristics is not an assurance that the required standards will be achieved, but rather that the institution or its programme contains the necessary resources that, if effectively applied, are likely to achieve the stated objectives.
- Accreditation standards describe the minimum institutional and/or programme requirements that must be complied with and it is likely that professional bodies may exceed these requirements for their own purposes.
- The IRBA will seek to define its accreditation standards on the basis of appropriate experience and research and, where appropriate, after consultation with already accredited professional bodies. Standards will be periodically reviewed and revised so as to remain relevant to changed circumstances.
- While the accreditation standards are intentionally general, the assessment thereof is based upon careful and detailed examination of the specific circumstances of the professional body. Their generality enables the IRBA to focus on the particular circumstances relevant to a specific professional body, rather than on establishing measures of conformity. The widely diverse purposes and scope of professional bodies demand that the accreditation standards be sufficiently broad to encompass this diversity, and thereby support innovation. At the same time, the accreditation standards must be sufficiently clear so as to promote quality.
- The IRBA has articulated the following six principles that underpin the interpretation and application of accreditation standards:
 - o The accreditation standards are statements of good practice and are not intended to seek uniformity or conformity that may be applicable to a limited set of circumstances.

- o The diversity and range of professional bodies in South Africa must be respected and accommodated, thus emphasising that good practice may be manifested in a wide range of practices
- o Accreditation standards focus on inputs and outcomes, thereby embracing a model of accreditation that requires the assessment of resources, processes and outcomes at both the institutional and programme level.
- o The standards strive towards economy and clarity and avoid redundancy and ambiguity.
- o No single accreditation standard is considered to have overriding importance for the purposes of granting or maintaining accreditation. Rather, standards are viewed as an interdependent set of requirements that, collectively, enable the institutional and programme objectives to be met.
- o The standards recognise that the IRBA is a statutory regulatory body charged with protecting public interest within the Republic, and therefore must advance the best interests of the profession in this regard.

5.3 Indicators of standards

- In determining the extent to which an accreditation standard has been met, certain indicators that provide guidance on how the standard may be achieved in practice are included in the accreditation model.
- The inability to adhere to a specific indicator will not be viewed in isolation in the accreditation and monitoring process. It is accepted that the standard may also be realised through alternative means not referred to in the indicators.
- The indicators elaborate upon the accreditation standards defined by the IRBA. While they identify practices that the IRBA considers characteristic of the standard, they do not demand specific application nor carry any endorsements of particular practices. The indicators address major components of the accreditation standards but they are not designed to cover every aspect of the standard. Professional bodies are, however, encouraged to address each indicator, and to include, where appropriate, alternative or additional indicators where doing so would provide greater depth or more applicability to the individual institution.

6 ACCREDITATION PHILOSOPHY

The accreditation of professional bodies is intended to give rise to long-term partnerships between the regulator and relevant professional bodies that share an interest in advancing an appropriate standard within the auditing profession. No

assurance is given or implied that every accredited professional body manifests all the accreditation standards to the same degree. Accredited bodies are expected to demonstrate these standards in a substantial measure and always to be in the process of striving toward improvement. The IRBA will base its accreditation processes and procedures upon the following broad principles:

- Objectivity

Accreditation by the IRBA is an expression of confidence in a professional body's institutional and programme quality. Accreditation attests to the judgement of the IRBA that a professional body complies with certain minimum accreditation requirements. Such judgement is based, as far as possible, on an objective decision supported by evidence that arises both from a self-evaluation process conducted by the professional body, and an external validation process carried out by the IRBA.

- Public assurance

Given the statutory objectives of the IRBA, accreditation must provide public assurance that a professional body has the resources that render it capable of delivering high-quality academic, education and core assessment programmes of an appropriate standard, supported by a high-quality institution. Accreditation cannot, however, provide assurance as to the quality of actual delivery, as this is a function of the extent to which available resources are actually applied.

- Continual improvement

Accreditation seeks to achieve and maintain and constantly enhance high standards of programme delivery within the profession. It must therefore provide an opportunity for accredited professional bodies to continually evaluate stated objectives, and through innovation and change seek continuous improvement in quality. Thus, the accreditation process involves more than an examination of static requirements against predetermined criteria. It rather involves an elaborate and interactive process to evaluate the extent to which a professional body is able to support the realisation of the objectives of the IRBA.

- Forum for consultation

The IRBA recognises that its statutory objectives are to be partly achieved through the mechanism of the accreditation of professional bodies. To this end, therefore, accreditation should provide a forum for consultation between the IRBA, accredited bodies and identified stakeholders that share a common interest in enhancing the development, assessment and maintenance of high standards of competence within the auditing profession.

- Diversity and innovation

The accreditation process tolerates and encourages diverse and innovative means of achieving common objectives. For this reason, the focus of the

accreditation process is on fostering a commitment to quality, rather than on prescribing specific quantitative measures of consistency in policies and procedures among professional bodies.

- Access to the profession

The accreditation process is intended to provide access to the auditing profession to all who have the ability and desire to qualify, register and practise as RAs. It is, however, not the policy of the IRBA to establish academic, core assessment, education and training programmes required for registration purposes. The IRBA believes that this function is best fulfilled by professional bodies that seek accreditation, either in full or in part. Given that the IRBA is to conduct the assessment of professional competence for those persons wishing to register and practice as RAs, it is in the interests of the broader profession that programmes that prepare individuals for this assessment be conducted by accredited professional bodies. In this manner, access to the auditing profession through accredited professional bodies will be encouraged. The roles to be played by the providers (accredited professional bodies) and the assessor (the IRBA) will also be appropriately differentiated.

- Appropriate standards

Given the status of the IRBA as a statutory regulatory body, the accreditation process must promote appropriate standards of professional competence that will ensure that only those persons who have demonstrated the prescribed degree of professional competence are able to register and practise as auditors. Accreditation must also ensure that, as South Africa continues to participate in a competitive global economy, standards of professional qualification and continuing professional development are on par with international standards.

7 RESPONSIBILITIES IMPLICIT IN ACCREDITATION

Accreditation establishes a partnership relationship between the IRBA and the professional bodies that gives rise to certain responsibilities.

7.1 Responsibilities undertaken by the IRBA

In granting accreditation to professional bodies, the IRBA undertakes to:

- Constantly evaluate its own policies and practices to ensure that they represent best international accreditation practices that promote the autonomy of accredited professional bodies.
- Ensure that its accreditation policies and procedures are appropriate within South African circumstances, are responsive to the particular needs of the profession, and contribute towards achieving the objectives of the IRBA as defined in the Act.

- Provide opportunities whereby partially accredited professional bodies that appear to be capable of achieving full accreditation within a reasonable period are able to learn from the accreditation process and thereby enhance their programmes so as to make them capable over time, of full accreditation.
- Honour the relationships between accredited professional bodies and the providers of their various programmes to strengthen the relationships between the profession and those responsible for the development, assessment and training of individuals for the profession.
- Co-operate, where appropriate, with other statutory bodies and organs of state and other professional institutes that share the objectives of advancing the standards of competence of RAs within South Africa.

7.2 Responsibilities undertaken by an accredited professional body

The accreditation process is intended to strengthen and sustain the quality and integrity of the auditing profession, making it worthy of public confidence. The extent to which each accredited body accepts and fulfils the responsibilities inherent in the process is a measure of its concern for the quality of auditing and its commitment to striving for and achieving excellence in its own endeavours. The IRBA accredits a professional body only after it is satisfied that its accreditation standards have been complied with. The process of accreditation provides an opportunity for critical self-analysis by the professional body, leading to improvements in quality. With the granting of accreditation status to a professional body, the body should undertake to:

- Co-operate fully with the IRBA in the monitoring activities carried out by the IRBA in respect of the accreditation standards;
- Inform the IRBA timeously of any anticipated changes in the professional body that might affect the extent to which it continues to meet accreditation standards;
- Inform the IRBA of any anticipated intention to renounce its accreditation;
- Bring to the attention of the IRBA, any circumstances that may affect the accreditation or continued accreditation of the professional body;
- Respond to correspondence from the IRBA in matters relating to accreditation within a reasonable period;
- Demonstrate a commitment to the accreditation process by remaining informed about the process and by participating in the process to improve it through co-operation; and
- Demonstrate commitment to a continuous improvement process by performing regular self-evaluations against stated objectives.

8 CONTINUING PROFESSIONAL DEVELOPMENT

Continuing Professional Development (CPD) is the means by which members of a profession maintain, improve and broaden their knowledge and skills and develop the personal qualities required in their professional lives to achieve excellence. The International Federation of Accountants' (IFAC) International Education Standard (IES) 7 emphasises the profession's commitment to serving the worldwide public interest and presents CPD as a key means of meeting this commitment. IES 7 prescribes mandatory CPD for all members of the profession, including those in public practice. It also calls on IFAC member bodies to facilitate access to CPD opportunities and resources to assist professional accountants in meeting their responsibility for life long learning. Further, IES 8 prescribes competency requirements for audit professionals including those working in specific environments and industries. According to IFAC, the responsibility for the development and assessment of the required competence is shared by IFAC member bodies, audit organisations, regulatory authorities and other third parties.

Although the IRBA is not an IFAC member body, it takes cognisance of the IFAC standards in its policies.

All RAs are required to undertake CPD and report on their CPD activities annually to the IRBA.

3

DISCIPLINARY RULES

Introduction - new disciplinary rules	3-3
1 Definitions	3-3
2 Commencement of an inquiry into alleged improper conduct	3-5
3 Investigation of a complaint or allegations of improper conduct	3-6
4 Decision whether to charge a registered auditor with improper conduct	3-8
5 The plea and consequences of an admission or denial of guilt	3-11
6 The hearing on the merits	3-12
7 Hearing on sentencing	3-17
8 Competent sentences, publication, costs and notice to the board	3-21
Old disciplinary rules 2.1 - 2.1.21	3-23

DISCIPLINARY RULES

On 7 June 2007 in accordance with the provisions of section 10(1) and section 59(8)(b) of the Auditing Profession Act 26 of 2005 the IRBA adopted new Disciplinary Rules and repealed the old Disciplinary Rules made under the Public Accountants' and Auditors' Act 80 of 1991 with the exception of paragraphs 2.1. to 2.1.21, inclusive thereof, which still remain in operation.

The IRBA will refer to the previous Rules as the "Old Disciplinary Rules" insofar as they relate to paragraphs 2.1. to 2.1.21.

The "Old Disciplinary Rules" (Rules 2.1 to 2.1.21) are included at the end of this section of the manual.

REPEAL OF THE DISCIPLINARY RULES MADE UNDER THE PUBLIC ACCOUNTANTS' AND AUDITORS' ACT, 80 OF 1991 AND ADOPTION OF NEW DISCIPLINARY RULES ON 7 JUNE 2007

Having published its intention to do so for comment in the *Government Gazette* on 26 April 2007, the Board now resolves under section 10(1) of the Auditing Profession Act, 26 of 2005 ("**the Act**") read with section 4(1)(a)(i), (ii) and (iii) of the Act to (i) the repeal of the Disciplinary Regulations referred to in section 59(8)(b) of the Act and (ii) the prescription by the Board of the following Disciplinary Rules:

1. DEFINITIONS

- 1.1 1.1.1 "**the Act**" means the Auditing Profession Act, 26 of 2005 and any expression used in these Rules which is defined in the Act bears, unless the context indicates the contrary, the meaning assigned to it in the Act;
- 1.1.2 "**the Board**" means the Independent Regulatory Board for Auditors established by section 3;
- 1.1.3 "**the CEO**" means the person appointed by the Board as Chief Executive Officer under section 9(a) or any person acting in that capacity;
- 1.1.4 "**the chairperson of the Disciplinary Committee**" means the retired judge or senior advocate who is appointed by the Board as such and includes a deputy chairperson of the Disciplinary Committee acting as chairperson at a meeting of the Disciplinary Committee where the

chairperson is absent or for any reason unable to perform his or her functions;¹

- 1.1.5 **“the Code”** means the *Code of Professional Conduct* prescribed by the Board under section 4(1)(c) and includes the *Code of Professional Conduct* referred to in section 59(8)(c), until it has been repealed by the Board;
- 1.1.6 **“the Director: Legal”** means the person designated as such, who is an employee of the Board, or any person acting in that capacity, or any employee of the Board, notwithstanding his or her designation, who is appointed or charged by the Board to perform the functions performed by the Director: Legal as at the promulgation of these rules;
- 1.1.7 **“the Disciplinary Advisory Committee”** means a sub-committee of the Board established by the Board on 20 June 2006 under section 20(1);
- 1.1.8 **“the Disciplinary Committee”** means the committee established by the Board under section 20(2)(f);
- 1.1.9 **“firm”**, in the context of these Rules, means a partnership, company or sole proprietor referred to in section 38;²
- 1.1.10 **“the Investigating Committee”** means the committee established by the Board under section 20(2)(e);
- 1.1.11 **“pro forma complainant”** means the person appointed under section 50(2)(a) to present the charge to the Disciplinary Committee;
- 1.1.12 **“registered auditor”**, in the context of these Rules, means an individual or firm registered as an auditor with the Board or who was so registered at the time that the alleged improper conduct took place, whether that registered auditor is or was in public practice or not, and includes the duly authorised representative of the registered auditor if the registered auditor concerned is a firm;
- 1.1.13 **“the respondent”** means a registered auditor whose conduct is the subject of any proceedings (of whatsoever nature, including a complaint or a decision whether or not to refer such conduct to investigation) under these Rules as well as the legal representative of such a registered auditor, if any; and
- 1.1.14 **“these Rules”** means the *Disciplinary Rules* prescribed under section 10(1) and includes these definitions; and

¹ Section 24(2)(a) read with the resolutions by the Board on 20 June 2006

² Section 1 v. “firm”

- 1.2 any reference to any section in these Rules is a reference to the corresponding section of the Act;
- 1.3 these Rules shall, wherever possible, be construed in conformity with the Act; and
- 1.4 the headings to and any footnotes in these Rules shall be taken into account in the interpretation of these Rules.

2. COMMENCEMENT OF AN INQUIRY INTO ALLEGED IMPROPER CONDUCT

- 2.1 If an allegation of improper conduct against a registered auditor comes to the attention of the Director: Legal or the CEO, he or she must refer it to the Investigating Committee if -
 - 2.1.1 the allegations are in the public domain and he or she on reasonable grounds (including a report from a foreign regulator) suspects that a respondent has committed an act which may render such respondent guilty of improper conduct; or
 - 2.1.2 the allegations are referred to him or her by the Inspection Committee established under section 20(2)(d); or
 - 2.1.3 a court or appropriate regulator sends (or directs to be sent) a record or report under section 48(2); or
 - 2.1.4 a member of the public lodges a complaint with him or her and he or she:
 - 2.1.4.1 establishes that the person or firm complained about is a registered auditor;
 - 2.1.4.2 establishes that the complaint falls within the jurisdiction of the Board; and
 - 2.1.4.3 is of the opinion that the complaint of improper conduct appears to be justified.³
- 2.2 Members of the public who wish to lodge a complaint of improper conduct against a registered auditor shall do so on affidavit, unless the Director: Legal or the CEO decides otherwise. A complaint shall set out clearly and concisely the specific acts or failures to act giving rise to the complaint of improper conduct.
- 2.3 In order to establish whether the grounds for referral to the Investigating Committee referred to in 2.1.1 or 2.1.4 are present, the Director: Legal or the CEO may, in his or her discretion:

³ Section 48(1) and (2)

- 2.3.1 notify the respondent in writing of the nature of the complaint and call upon that respondent to furnish a written explanation in answer to the complaint within 30 days of such notice; and
- 2.3.2 request a complainant to provide further particulars on any aspect of the complaint.

3. INVESTIGATION OF A COMPLAINT OR ALLEGATIONS OF IMPROPER CONDUCT

- 3.1 When a complaint or allegation of improper conduct against a respondent is referred to the Investigating Committee, the Investigating Committee must investigate such complaint or allegation⁴ and may:
 - 3.1.1 take any steps which are not prohibited by law to gather information with regard to the complaint or allegation⁵;
 - 3.1.2 request a complainant to provide further particulars on any aspect of the complaint;
 - 3.1.3 request the respondent to appear before the Investigating Committee⁶ in order to assist it to formulate its recommendations to the Board⁷ by notice specifying the time and place of the meeting of the Investigating Committee, provided that the notice shall inform the respondent:
 - 3.1.3.1 that the respondent has the right to be assisted or represented by another person;⁸
 - 3.1.3.2 that any statement made by the respondent to the Investigating Committee may be used in evidence⁹ and that the proceedings of the Investigating Committee will be recorded; and
 - 3.1.3.3 that section 51(4) of the Act provides that a respondent may be ordered to pay the reasonable costs incurred by the Investigating Committee and the Disciplinary Committee in connection with an investigation and hearing, if appropriate, and that a failure to appear before the Investigating Committee may increase the costs likely to be incurred by the Investigating Committee and the Disciplinary Committee;
 - 3.1.4 require, by notice in writing, the registered auditor to whom the complaint or allegation of improper conduct relates or any other person to produce to the Investigating Committee at a time and place

⁴ Section 48(3)

⁵ Section 48(3)(b)

⁶ Section 48(4)

⁷ Section 48(7)

⁸ Section 48(4)(a)

⁹ Section 48(4)(b)

stipulated in the notice any information including, but not limited to, any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that registered auditor or other person and which relates to the subject matter of the charge(s), including specifically, but without limitation, any working papers of the registered auditor;¹⁰

- 3.1.5 request the CEO to institute legal action¹¹ against any person who fails to produce to the Investigating Committee the information referred to in 3.1.4 at the time and place stipulated in the notice; and
 - 3.1.6 inspect and, if the Investigating Committee considers it appropriate, retain any information obtained pursuant to 3.1.4 and 3.1.5 and make copies of and take extracts from such information.¹²
- 3.2 Notwithstanding the provisions in 3.1.3.1 and 3.1.3.2, the Investigating Committee and the respondent may agree to declare any appearance or part of an appearance of the respondent before the Committee to be “without prejudice”. In such a case:
- 3.2.1 The evidence presented or the discussions at such appearance or part of the appearance will not be recorded;
 - 3.2.2 the discussions between the Investigating Committee and the respondent will not be used in evidence against the respondent; and
 - 3.2.3 the respondent and the Investigating Committee may agree that the respondent would not be assisted or represented by any other person.
- 3.3 The Investigating Committee shall not be obliged to disclose the source of a complaint.
- 3.4 If, in the course of its investigations, the respondent admits to the Investigating Committee that the respondent is guilty of improper conduct and the Investigating Committee and the respondent agree on a punishment to be imposed for such improper conduct, or if it appears to the Investigating Committee be appropriate, the Investigating Committee may recommend to the Board that a specific sanction is imposed on, and the payment of a specific amount in costs is required from, the respondent and that the name of, charge(s) against and finding in respect of the respondent is published by the Board or not.

RECOMMENDATION TO DAC

- 3.5 After investigating the allegations of improper conduct against the respondent, the Investigating Committee:

¹⁰ Section 48(5)(a)(i)

¹¹ Section 9(n) read with the Board’s resolutions on 20 June 2006

¹² Section 48(5)(a)(ii) and (iii)

- 3.5.1 shall report and recommend to the Disciplinary Advisory Committee whether or not the respondent should be charged with improper conduct.¹³ If the Investigating Committee recommends to the Disciplinary Advisory Committee that the respondent should not be charged with improper conduct, it should state its finding whether:
 - 3.5.1.1 the respondent is not guilty of improper conduct; or
 - 3.5.1.2 there is a reasonable explanation for the respondent's conduct; or
 - 3.5.1.3 the conduct of which the respondent may be guilty is of negligible nature or consequence; or
 - 3.5.1.4 there are no reasonable prospects of success to succeed with a charge of improper conduct against the respondent; or
 - 3.5.1.5 in all the circumstances it is not appropriate to charge the respondent with improper conduct; and
- 3.5.2 may make a recommendation under 3.4 to the Disciplinary Advisory Committee.

4. DECISION WHETHER TO CHARGE A REGISTERED AUDITOR WITH IMPROPER CONDUCT

- 4.1 When the Disciplinary Advisory Committee receives a recommendation under 3.5 from the Investigating Committee, it shall consider this and:
 - 4.1.1 if the Investigating Committee recommended that the respondent should be charged, shall formally charge the respondent;¹⁴
 - 4.1.2 if the Investigating Committee recommended that the respondent should not be charged, the Disciplinary Advisory Committee may:
 - 4.1.2.1 refer the recommendation to be considered by the Board;
or
 - 4.1.2.2 decline to prefer any charge(s) against the respondent.
- 4.2 Should the Disciplinary Advisory Committee refer the matter to the Board, the Board may:
 - 4.2.1 formally charge the respondent with such charge(s) as it may formulate in its discretion;¹⁵ or
 - 4.2.2 decline to prefer any charge(s) against the respondent.
- 4.3 If the Disciplinary Advisory Committee or the Board, as the case may be, decides not to charge a respondent whose conduct was the subject of an

¹³ Section 48(7) read with the Board's resolutions on 20 June 2006

¹⁴ Section 49(1) read with the Board's resolutions on 20 June 2006

¹⁵ Section 49(1) read with section 19(4) and the Board's resolutions on 20 June 2006

investigation with improper conduct, the Director: Legal or the CEO must notify the respondent, and may notify the complainant, in writing of this decision.

- 4.4 If a respondent is formally charged with any charge(s) of improper conduct, the Disciplinary Advisory Committee shall cause a notification (if applicable) and a charge sheet to be furnished to the respondent by hand (whether by service by sheriff or on the respondent's legal representatives or otherwise) or by registered mail to the respondent's address or last known address.¹⁶

THE NOTIFICATION

- 4.5 When a respondent is formally charged with any charge(s) of improper conduct, such respondent shall receive a notice of the time and place at which a hearing of the charges under Rule 6 and Rule 7 (if applicable) will be conducted, unless the Investigating Committee made a recommendation under 3.4.
- 4.6 Subject to 6.3.11, 6.3.12 and 6.4, a hearing under Rule 6 and / or Rule 7 is conducted at such time and place as is determined by the Director: Legal or the CEO.
- 4.7 The notice shall state:
- 4.7.1 that, at the hearing under Rule 6 and Rule 7 (if applicable), the respondent:
- 4.7.1.1 may be assisted or represented by another person in conducting a defence;
 - 4.7.1.2 has the right to be heard;
 - 4.7.1.3 may call witnesses;
 - 4.7.1.4 may cross-examine any person called as a witness by the *pro forma* complainant;
 - 4.7.1.5 may have access to documents produced in evidence; and
 - 4.7.1.6 may admit at any time before the conclusion of the disciplinary hearing under Rule 6 that the respondent is guilty of the charge(s) referred to the Disciplinary Committee despite the fact that the respondent denied such charge(s) or failed to admit or deny such charge(s); and
 - 4.7.1.7 will be regarded as guilty of the charge(s) to which the respondent admitted guilt under 4.7.1.6;
- 4.7.2 that the respondent must inform the Director: Legal or the CEO at least one (1) month before the date for the hearing under Rule 6 and Rule 7 (if applicable) is determined under 4.6, or on good cause shown, such shorter period as the Director: Legal or CEO may determine, of

¹⁶ Section 49(2)

the names, physical addresses and postal addresses of any witness(es) that the respondent wishes to give evidence at the hearing under Rule 6 and Rule 7 (if applicable).

SUBPOENAS

4.8 The Director: Legal or the CEO must cause subpoenas in the prescribed form to be served on the witness(es), if any, nominated by the respondent and may cause such subpoenas to be served on such witness(es), if any, whom the *pro forma* complainant and the Disciplinary Committee wish to call.

THE CHARGE SHEET

4.9 A charge sheet may contain more than one charge of improper conduct, whether formulated cumulatively or in the alternative.

4.10 The charge sheet shall:

4.10.1 set out the nature of the charge(s);¹⁷

4.10.2 set out the relevant facts upon which the charge(s) are based with sufficient particularity as to allow the respondent to plead;

4.10.3 inform the respondent that the respondent may, in writing, admit or deny the charge(s);¹⁸

4.10.4 inform the respondent that the respondent may, together with the admission or denial referred to in 4.10.3, submit a written explanation regarding the charge(s);¹⁹

4.10.5 inform the respondent of the date by which the respondent must admit or deny the charge(s), which date must give the respondent a reasonable time (but not exceeding 60 days) to respond;²⁰

4.10.6 inform the respondent that:

4.10.6.1 should the respondent not admit or deny the charge(s) by the date referred to in 4.10.5, the respondent would be considered to have denied those charge(s) and that those charge(s) would be referred to a disciplinary hearing under Rule 6; or

4.10.6.2 should the respondent deny the charge(s), but fail to submit a written explanation, together with the denial, the charge(s) would be referred to a disciplinary hearing under Rule 6 without such an explanation;

4.10.7 inform the respondent that section 51(4) of the Act provides that a respondent may be ordered to pay the reasonable costs incurred by the

¹⁷ Section 49(3)(a)

¹⁸ Section 49(3)(b)

¹⁹ Section 49(3)(c)

²⁰ Section 49(3)(d)

Investigating Committee and the Disciplinary Committee in connection with an investigation and hearing and that a failure to submit a plea under 4.10.3 or a written explanation under 4.10.4 may increase the costs likely to be incurred by the Disciplinary Committee.

AMENDMENT OF CHARGE SHEET PRIOR TO HEARING

- 4.11 The Disciplinary Advisory Committee may at any time after a charge sheet or amended charge sheet was furnished to a respondent under 4.4 and before the commencement of a hearing under Rule 6 further amend such charge sheet or amended charge sheet.²¹ Amendments may include, but are not limited to, the addition or deletion of charges.
- 4.12 The amendment shall be effected by furnishing an amended charge sheet which meets the requirements set out in 4.10 to the respondent under 4.4.
- 4.13 The provisions of Rule 5 apply mutatis mutandis to a respondent after receipt of an amended charge sheet even if the respondent has pleaded to the original charge sheet.

5. THE PLEA AND CONSEQUENCES OF AN ADMISSION OR DENIAL OF GUILT

- 5.1 A respondent that is formally charged must in writing plead to all of the charges before or on the date referred to in 4.10.5.
- 5.2 Should the respondent not plead to the charge(s) before or on the date referred to in 4.10.5, the respondent will be considered to have denied the charge(s) and such charge(s) will be referred to a hearing on the merits under Rule 6.
- 5.3 If a respondent pleads guilty to the charge (should there be only one), or all the charges (should there be more than one), contained in the charge sheet, the respondent must notify the Director: Legal or the CEO. In such a case, the respondent is considered to be guilty of that charge(s)²² and:
 - 5.3.1 if the Investigating Committee has recommended that a specific sanction is imposed on, the payment of a specific amount in costs is required from, and a specific arrangement regarding publication is made with respect to, a respondent, the Director: Legal or the CEO will automatically impose that sanction on the respondent, order the respondent to pay that amount in costs and implement that arrangement with regard to publication²³;

²¹ The powers of the Disciplinary Committee to amend a charge sheet is dealt with in 6.3.8

²² Section 49(4)

²³ See the Board's Resolutions on 20 June 2006 and the resolution of the Disciplinary Committee on 16 September 2006

- 5.3.2 if the Investigating Committee did not recommend that a specific sanction is imposed on, and the payment of a specific amount in costs is required from, a respondent, the matter will be referred to the Disciplinary Committee to act under Rule 7 at the hearing determined under 4.6.
- 5.4 If a respondent pleads guilty to one or more, but not all, of the charges in the charge sheet (should there have been more), the respondent must notify the Director: Legal or the CEO, clearly indicating in respect of which charge(s) the respondent admits and denies guilt.
- 5.5 If a respondent denies guilt to one or more of the charges in a charge sheet, and the Investigating Committee has made no recommendation under 3.4, that charge(s) to which such respondent has denied guilt will be referred to the Disciplinary Committee for a hearing on the merits under Rule 6, unless the charge sheet is amended by the DAC under 4.11 to remove the charge(s) to which the respondent denied guilt. The respondent will be considered to be guilty of those charges to which the respondent admitted guilt, which will be referred to the Disciplinary Committee to act under Rule 7.
- 5.6 If a respondent denies guilt to one or more of the charges in a charge sheet, and the Investigating Committee has made a recommendation under 3.4:
- 5.6.1 the Disciplinary Advisory Committee may exercise its powers under 4.11, in which case 4.12 and 4.13 will apply *mutatis mutandis*. Should there be no charges in the charge sheet, as amended, to which the respondent pleads not guilty, the charges to which the respondent pleaded guilty are referred to the CEO or the Director: Legal to act in terms of 5.3.1;
- 5.6.2 if the Disciplinary Advisory Committee does not exercise its powers under 4.11, or if – despite its exercise of its powers under 4.11 – there are charges in the charge sheet as amended to which the respondent pleads not guilty, 4.5 to 4.8 will apply *mutatis mutandis* and all charge(s) in the charge sheet will be referred to the Disciplinary Committee. That charge(s) to which the respondent denied guilt will be referred for a hearing on the merits under Rule 6. The respondent will be considered to be guilty of those charges to which the respondent admitted guilt, which will be referred to the Disciplinary Committee to act under Rule 7.

6. THE HEARING ON THE MERITS

6.1 General matters

- 6.1.1 The Disciplinary Committee may upon good cause shown and in the interests of justice sanction or condone any departure from these Rules

or from the strict rules of evidence which is not prohibited by the Act. Unless any departure from these Rules or from the strict rules of evidence is raised at a hearing, it shall not be necessary for the Disciplinary Committee formally to sanction or condone such departure and such departure shall not in and of itself invalidate any action or decision taken, or purportedly taken, under these Rules.

- 6.1.2 If a respondent who is formally charged with any charge(s) of improper conduct under 4.1.1 or 4.2.1, does not in writing admit or deny the charge(s) before or on the date referred to in 4.10.5 or should that respondent deny the charge (if there is only one or) or one or more of the charges (if there are more than one), the Director: Legal or the CEO shall refer the charge(s) which were denied or to which the respondent did not plead, together with the plea and written explanation (if any) to the Disciplinary Committee for a hearing under this Rule, subject to 5.5 and 5.6.
- 6.1.3 Pursuant to a referral under 6.1.2, the Director: Legal or the CEO shall appoint any person ("the *pro forma* complainant"), in his or her discretion, to present the charge(s) to the Disciplinary Committee at the hearing under this Rule and under Rule 7 (if any). The *pro forma* complainant may be assisted by one or more persons with legal or auditing experience.

6.2 Documents to be adduced in evidence

- 6.2.1 The Director: Legal or the CEO shall cause bundles of documents to be adduced in evidence in the hearing under this Rule and under Rule 7 (if any) to be distributed to such members of the Disciplinary Committee who indicated that they would attend the hearing under this Rule, to the respondent and to the *pro forma complainant*.
- 6.2.2 The bundles shall comprise:
 - 6.2.2.1 the notice and charge sheet(s) sent to the respondent under 4.4;
 - 6.2.2.2 any plea(s) and written explanation(s) furnished by the respondent;
 - 6.2.2.3 any documents which the *pro forma* complainant and the respondent may agree are admissible in evidence;
 - 6.2.2.4 at the discretion of the *pro forma* complainant, a certified copy of the record of the trial and conviction of the respondent if the respondent is charged with improper conduct which amounts to the offence of which the respondent was convicted, unless the conviction has been set aside by a superior court.

6.2.3 Nothing in 6.2 shall prevent any evidence not included in any bundle referred to in those sub-rules from being adduced at the hearing under this Rule or Rule 7.

6.3 The conduct of the hearing

6.3.1 Should the respondent not be present at the place and time for the hearing determined under 4.6 and still not be present within thirty (30) minutes from the time set for the start of the hearing, the hearing under this Rule and Rule 7 (if any) may proceed in the respondent's absence if the Disciplinary Committee is satisfied that the notice under 4.4 was served on the respondent by hand (whether by service by sheriff or otherwise) or by registered mail.

6.3.2 This Rule shall apply *mutatis mutandis* to the situation where a hearing proceeds in a respondent's absence.

6.3.3 If a registered auditor is not present at a hearing, a registered auditor may only be represented by another person at the hearing if the registered auditor has authorised such person in writing to do so.

6.3.4 Any application for the hearing under this Rule, or any part of the hearing, to be held *in camera* shall be brought at the outset of the hearing unless the chairperson of the Disciplinary Committee determines otherwise.²⁴

6.3.5 Any witness at a hearing shall give evidence after the chairperson of the Disciplinary Committee or a person designated by him or her administered an oath or affirmation to such witness.

6.3.6 The order of procedure at a hearing under this Rule shall be as follows:

6.3.6.1 The chairperson of the Disciplinary Committee shall read the notice and charge sheet referred to in 4.4 to the respondent, unless the respondent agrees to dispense with the reading of such notice and charge sheet.

6.3.6.2 The chairperson of the Disciplinary Committee shall ask the respondent to confirm which of the charges set out in the charge sheet (or in the charge sheet as amended) the respondent admits or denies, provided that the Disciplinary Committee shall not ask such confirmation with respect to any charge(s) that the respondent may have admitted under 5.3.

²⁴ Section 50(4) provides that a hearing before the Disciplinary Committee is open to the public except where, in the opinion of the chairperson of the Disciplinary Committee, any part of the hearing should be held *in camera*.

- 6.3.6.3 The respondent will be considered to be guilty as charged to any charge(s) to which such respondent admits guilt under 6.3.6.2 and such charge(s) will be heard by the Disciplinary Committee under Rule 7.
- 6.3.6.4 Should the respondent not admit or deny the charge(s) when asked to do under 6.3.6.2 or should it appear to the Chairperson that the respondent may admit the facts but may not admit the charge(s) or should the respondent not be present at the hearing under this Rule, the respondent will be considered to have denied the charge(s).
- 6.3.6.5 The *pro forma* complainant shall state his or her case with regard to the charge(s) denied under 6.3.6.2 and 6.3.6.4 and produce evidence in support of it.
- 6.3.6.6 The respondent may cross-examine any witnesses produced by the *pro forma* complainant and may have access to any documents adduced in evidence by the *pro forma* complainant.
- 6.3.6.7 The *pro forma* complainant may re-examine any witnesses cross-examined by the respondent.
- 6.3.6.8 At the conclusion of the case presented by the *pro forma* complainant, the respondent shall state the case with regard to the charge(s) denied under 6.3.6.2 and 6.3.6.4 and produce evidence in support of it.
- 6.3.6.9 The *pro forma* complainant may cross-examine any witnesses produced on behalf of the respondent (including the respondent registered auditor if that registered auditor has elected to give evidence) and may have access to any documents adduced in evidence by the respondent.
- 6.3.6.10 The respondent may re-examine any witnesses cross-examined by the *pro forma* complainant.
- 6.3.6.11 At the conclusion of the case presented by the respondent,
 - (i) the *pro forma* complainant may address the Disciplinary Committee on the case generally;
 - (ii) the respondent may reply to the *pro forma* complainant; and
 - (iii) the *pro forma* complainant may reply to any new matter raised by the respondent.
- 6.3.7 The Disciplinary Committee shall not hear any further evidence from the *pro forma* complainant or from the respondent after the conclusion

of their case unless the interests of justice so dictates, in which case 6.3.6.5 to 6.3.6.11 shall apply *mutatis mutandis*.

- 6.3.8 The Disciplinary Committee may at any time after the *pro forma* complainant started to state his or her case and prior to the conclusion of the hearing under this Rule amend the charge sheet in accordance with section 50(3) after which it may regulate its proceedings as it deems fit in the interests of justice.²⁵
- 6.3.9 The respondent may at any time after the *pro forma* complainant started to state his or her case and prior to the conclusion of the hearing under this Rule admit guilt to any charge(s) which has not previously been admitted, upon which such respondent will be considered to be guilty of such charge(s). Such charge(s) will be heard by the Disciplinary Committee under Rule 7. The Disciplinary Committee may regulate its proceedings with respect to any remaining charge(s) to which guilt has not been admitted as it deems fit in the interests of justice.
- 6.3.10 The *pro forma* complainant may, with the leave of the Disciplinary Committee, at any time after he or she started to state his or her case and prior to the conclusion of the hearing withdraw any charge(s) against the respondent. The Disciplinary Committee may regulate its proceedings with respect to any remaining charge(s) as it deems fit in the interests of justice.
- 6.3.11 If the Disciplinary Committee is not seized of any further charge(s) as a result of an admission under 6.3.9 or a withdrawal under 6.3.10, and if the respondent is guilty of any charge(s) under section 49(4)²⁶ or section 50(8)(b)(ii)²⁷, the Disciplinary Committee shall proceed to hear such charge(s) of which the respondent is guilty under Rule 7, or, in exceptional circumstances, shall determine anew a place and time (not more than 30 days from the date of the announcement) at which the Disciplinary committee will hear such charge(s) under Rule 7.
- 6.3.12 The Disciplinary Committee may at any time after the commencement and before the conclusion of the hearing order the postponement of the remainder of the hearing under this Rule to a time and place determined or to be determined in its discretion, provided that only members present at the commencement of the hearing under this Rule may take part in the remainder of the hearing under this Rule.

²⁵ See also 4.11

²⁶ This is the case when a registered auditor admitted guilt to one or more charges in a reply to the charge sheet before a hearing.

²⁷ This is the case when a registered auditor admitted guilt to one or more charges at a hearing on the merits of the matter.

- 6.3.13 The Disciplinary Committee may at any time after the commencement and before the conclusion of the hearing under this Rule call as a witness any person the evidence of whom it considers material and who has not been called by the *pro forma* complainant or the respondent. The Disciplinary Committee may regulate its proceedings with respect to the cross-examination of such witness and the right to address the Disciplinary Committee on the evidence given by such witness as it deems fit in the interests of justice.
- 6.3.14 Any member of the Disciplinary Committee taking part in the hearing under this Rule may, with the permission of the chairperson of the Disciplinary Committee, put a question to any witness, to the respondent registered auditor (if such registered auditor elected to give evidence), to the *pro forma* complainant and to the legal representative of the respondent registered auditor (if any).
- 6.3.15 The Disciplinary Committee may make any decision with regard to any matter arising in connection with, or in the course of a hearing under this Rule, *in camera*.

6.4 Conclusion of hearing under this Rule

At the conclusion of a hearing under this Rule, the chairperson of the Disciplinary Committee shall announce when and in which manner the Disciplinary Committee will inform the respondent of its finding as to the guilt or innocence of the respondent on the charge(s) with which the Disciplinary Committee is still seized at the conclusion of the hearing under this Rule. The Disciplinary Committee may inform the respondent of its finding on the day of the hearing under this Rule or, in exceptional circumstances, later, but in any event not more than 30 days²⁸ after the conclusion of the hearing under this Rule.

7. HEARING ON SENTENCING²⁹

7.1 Application of this rule

7.1.1 This rule does not apply when a respondent admitted guilt to the charge (should there be only one), or all the charges (should there be more than one), contained in the charge sheet, and the Director: Legal or the CEO automatically imposed a sanction on the respondent under 5.3.1.³⁰

²⁸ See section 51(1)

²⁹ It is envisaged that a hearing on the merits and on sentencing would normally take place at the same time. In exceptional circumstances, however, the Disciplinary Committee may determine otherwise: see 6.3.11, 6.3.12 and 6.4

³⁰ See the Board's Resolutions on 20 June 2006 and the resolution of the Disciplinary Committee on 16 September 2006

7.1.2 Subject to 7.1.1, this rule applies when a respondent is found guilty of any charge(s) under section 49(4)³¹, 50(8)(b)(ii)³² or 51(1)(a)³³ regardless of whether a hearing under Rule 6 took place.

7.2 Hearing under this Rule when a hearing under Rule 6 took place

If a respondent is found guilty of a charge(s) under section 49(4)³⁴, 50(8)(b)(ii)³⁵ or 51(1)(a)³⁶ and a hearing under Rule 6 took place, the Disciplinary Committee will hold a hearing under this Rule:

7.2.1 at the time and place appointed by the chairperson of the Disciplinary Committee under 6.3.11 or 6.4;

7.2.2 as a continuation of the hearing under Rule 6; and

7.2.3 with only such members of the Disciplinary Committee as took part in the hearing under Rule 6 taking part in the hearing under this Rule.

7.3 Hearing under this Rule when a hearing under Rule 6 did not take place³⁷

The provisions of this sub-Rule 7.3 apply only if a respondent is guilty of a charge(s) and a hearing under Rule 6 did not take place. In such a case,

7.3.1 the Director: Legal or the CEO may appoint a *pro forma* complainant, in his or her discretion, to present any aggravating or mitigating circumstances to the Disciplinary Committee at the hearing under this Rule. The *pro forma* complainant may be assisted by one or more persons with legal or auditing experience;

7.3.2 the Disciplinary Committee conducts the hearing under this Rule at such time and place as is determined by the Director: Legal or the CEO under 4.6.

7.4 General power relating to hearing under Rule 7

The Disciplinary Committee may upon good cause shown and in the interests of justice sanction or condone any departure from these Rules or from the strict rules of evidence which is not prohibited by the Act. Unless any departure from

³¹ This is the case when a registered auditor admitted guilt to one or more charges in a reply to the charge sheet before a hearing.

³² This is the case when a registered auditor admitted guilt to one or more charges at a hearing on the merits of the matter.

³³ This is the case when the Disciplinary Committee finds a registered auditor guilty after a hearing on the merits of the matter.

³⁴ See fn 31 above.

³⁵ See fn 32 above.

³⁶ See fn 33 above.

³⁷ This is the case when a registered auditor admits guilt to the charge (should there be only one), or all the charges (should there be more than one), contained in the charge sheet and the Investigating Committee did not recommend that a specific sanction is imposed.

these Rules or from the strict rules of evidence is raised at a hearing, it shall not be necessary for the Disciplinary Committee formally to sanction or condone such departure and such departure shall not in and of itself invalidate any action or decision taken, or purportedly taken, under these Rules.

7.5 The conduct of the hearing

- 7.5.1 Should the respondent not be present at the place and time for the hearing determined under 6.3.11, 6.4 or 7.3.2 and still not be present within thirty (30) minutes from the time set for the start of the hearing, the hearing under this Rule may proceed in the respondent's absence, provided that if the place and time for the hearing was determined under 7.3.2, the hearing under this Rule may only proceed in the respondent's absence if the Disciplinary Committee is satisfied that the notice under 4.4 was served on the respondent by hand (whether by service by sheriff or otherwise) or by registered mail.
- 7.5.2 This Rule shall apply *mutatis mutandis* to the situation where a hearing proceeds in a respondent's absence.
- 7.5.3 If a registered auditor is not present at a hearing, a registered auditor may only be represented by another person at the hearing, if the registered auditor has authorised such person in writing to do so.
- 7.5.4 Any application for the hearing under this Rule, or any part of the hearing, to be held *in camera* shall be brought at the outset of the hearing unless good cause, in the opinion of the chairperson of the Disciplinary Committee, is shown.³⁸
- 7.5.5 Any witness at a hearing shall give evidence after the chairperson of the Disciplinary Committee or a person designated by him or her administered an oath or affirmation to such witness.
- 7.5.6 The order of procedure at a hearing under this Rule shall be as follows:
- 7.5.6.1 The chairperson of the Disciplinary Committee shall read the charge(s) of which the respondent are guilty, unless the respondent agrees to dispense with the reading of the charge(s).
- 7.5.6.2 The *pro forma* complainant shall state his or her case with regard to mitigating or aggravating circumstances in respect of the charge(s) of which the respondent are guilty and produce evidence in support of it (if any).

³⁸ Section 50(4) provides that a hearing before the Disciplinary Committee is open to the public except where, in the opinion of the chairperson of the Disciplinary Committee, any part of the hearing should be held *in camera*.

- 7.5.6.3 The respondent may cross-examine any witnesses produced by the *pro forma* complainant and may have access to any documents adduced in evidence by the *pro forma* complainant.
- 7.5.6.4 The *pro forma* complainant may re-examine any witnesses cross-examined by the respondent.
- 7.5.6.5 At the conclusion of the case presented by the *pro forma* complainant, the respondent shall state the case with regard to mitigating or aggravating circumstances in respect of the charge(s) of which the respondent are guilty and produce evidence in support of it (if any).
- 7.5.6.6 The *pro forma* complainant may cross-examine any witnesses produced on behalf of the respondent (including the respondent registered auditor if that registered auditor has elected to give evidence) and may have access to any documents adduced in evidence by the respondent.
- 7.5.6.7 The respondent may re-examine any witnesses cross-examined by the *pro forma* complainant.
- 7.5.6.8 At the conclusion of the case presented by the respondent,
- (i) the *pro forma* complainant may address the Disciplinary Committee with respect to mitigating or aggravating circumstances;
 - (ii) the respondent may reply to the *pro forma* complainant; and
 - (iii) the *pro forma* complainant may reply to any new matter raised by the respondent.
- 7.5.7 The Disciplinary Committee shall not hear any further evidence from the *pro forma* complainant or from the respondent after the conclusion of their case on mitigating or aggravating circumstances unless the interests of justice so dictate, in which case 7.5.6.2 to 7.5.6.8 shall apply *mutatis mutandis*.
- 7.5.8 The Disciplinary Committee may at any time after the commencement and before the conclusion of the hearing under this Rule order the postponement of the remainder of the hearing under this Rule to a time and place determined or to be determined in its discretion, provided that only members present at the commencement of the hearing under this Rule may take part in the remainder of the hearing under this Rule.

- 7.5.9 The Disciplinary Committee may at any time after the commencement and before the conclusion of the hearing under this Rule call as a witness any person the evidence of whom it considers material and who has not been called by the *pro forma* complainant or the respondent. The Disciplinary Committee may regulate its proceedings with respect to the cross-examination of such witness and the right to address the Disciplinary Committee on the evidence given by such witness as it deems fit in the interests of justice.
- 7.5.10 Any member of the Disciplinary Committee taking part in the hearing under this Rule may, with the permission of the chairperson of the Disciplinary Committee, put a question to any witness, to the respondent registered auditor (if such registered auditor elected to give evidence), to the *pro forma* complainant and to the representative of the respondent registered auditor (if any).
- 7.5.11 The Disciplinary Committee may make any decision with regard to any matter arising in connection with, or in the course of a hearing under this Rule, *in camera*.

7.6 Conclusion of hearing under this Rule

At the conclusion of a hearing under this Rule, the chairperson of the Disciplinary Committee shall announce when and in which manner the Disciplinary Committee will inform the respondent of its finding as to the sentence of the respondent. The Disciplinary Committee may inform the respondent of its finding on the day of the hearing under this Rule or, in exceptional circumstances, later, but in any event not more than 30 days after the conclusion of the hearing under Rule 6 (if any) or more than 30 days after the conclusion of the hearing under this Rule, whichever is the earlier.³⁹

8. COMPETENT SENTENCES, PUBLICATION, COSTS AND NOTICE TO THE BOARD

- 8.1 If a respondent is found guilty of a charge of improper conduct, one or more of the following sentences may be imposed under 5.3.1 or 7.6 with respect to each charge of which the respondent is found guilty⁴⁰:
- 8.1.1 a caution or reprimand; and
 - 8.1.2 a fine which shall not exceed either R100 000 or such higher amount as may be applicable from time to time under section 51(3)(a)(ii); and

³⁹ See section 51(1)

⁴⁰ See section 51(3)(a)

- 8.1.3 a suspension of the right to practice as a registered auditor for a specific period; and
 - 8.1.4 the cancellation of the registration of the respondent with the Board and the removal of the name of the respondent from the register referred to in section 6.
- 8.2 A sentence under 8.1 may be suspended for a specific period and / or made subject to any lawful conditions set in the sentence.
- 8.3 If a respondent is found guilty of a charge of improper conduct, an order made under 5.3.1 or 7.6 may include:
- 8.3.1 that the name of the respondent; and / or
 - 8.3.2 the name of the respondent's firm (if applicable); and / or
 - 8.3.3 the charge against and finding in respect of the respondent; and / or
 - 8.3.4 any other information that is considered appropriate is published by the Board or not, as the case may be.⁴¹
- 8.4 A respondent:
- 8.4.1 upon whom a sanction was imposed under 5.3.1; or;
 - 8.4.2 whose conduct was the subject of a hearing under Rule 6,
- may be ordered to pay such reasonable costs as have been incurred by the Investigating Committee and the Disciplinary Committee in connection with the investigation and hearing in question, or such part thereof as may be considered just.

⁴¹ Section 51(5)

OLD DISCIPLINARY RULES

2 IMPROPER CONDUCT AND PUNISHMENT

- 2.1 On the understanding that the Board is empowered by section 23 of the Act to enquire into and deal with any complaint, charge or allegation which may be laid before it, and to impose any of the punishments hereinafter set forth in respect of any improper conduct, and on the understanding further that the acts or omissions specified in the sub-paragraphs of this rule are not intended to be a complete list of acts or omissions which may constitute improper conduct on the part of the practitioner and which are punishable in accordance with the provisions of this rule, any practitioner shall be guilty of improper conduct if he/she –
- 2.1.1 contravenes or fails to comply with any provision of the Act with which it is his/her duty to comply;
 - 2.1.2 contravenes or fails to comply with any provision of any other Act with which it is his/her duty to comply in his/her capacity as accountant and auditor to an undertaking or in doing work of a type commonly performed by a registered accountant and auditor;
 - 2.1.3 commits any offence involving dishonesty, and in particular (but without prejudice to the generality of the foregoing) theft, fraud, forgery or uttering a forged document, perjury, bribery or corruption;
 - 2.1.4 is dishonest in the performance of any work or duties devolving upon him/her in relation to –
 - 2.1.4.1 any work of a type commonly performed by a practitioner;
or
 - 2.1.4.2 any office of trust which he/she has undertaken or accepted;
 - 2.1.5 without reasonable cause or excuse, and subject to the proviso to section 20(8) of the Act, fails to perform any work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or fails to perform the work or duties at all;
 - 2.1.6 with intent to evade or to assist any other person to evade any tax, duty, levy or rate whatsoever (whether the same be payable to the Government or to a provincial government or to a local authority or to any other body or authority in the Republic) –
 - 2.1.6.1 knowingly or recklessly prepares or makes, or assists any other person to prepare or make, any false statement (whether such statement be oral or in writing); or

- 2.1.6.2 signs any false statement in relation thereto recklessly or knowing it to be false; or
- 2.1.6.3 knowingly or recklessly prepares or maintains any false books of accounts or other records;
- 2.1.7 fails
 - 2.1.7.1 to maintain in an account or accounts with an institution or institutions registered in terms of the Banks Act, 1990 (Act 94 of 1990), separate from his/her own account and appropriately designated (which account or accounts may be a general account in his/her name or specific accounts operated in the names of the relevant clients or any other person to whom he/she is accountable), all moneys which shall come into his/her possession or under his/her control in the course of his/her professional practice and for which he/she is liable to account to a client or any other person; or
 - 2.1.7.2 in the case of property other than money which shall come into his/her possession or under his/her control in the course of his/her professional practice and for which he/she is liable to account to a client or to any other person (including, but without limitation, trust property which is expressly registered in the name of an accountant and auditor in public practice, or jointly in the name of an accountant and auditor in public practice and any other person, in his/her or their capacity as administrator, trustee, curator or agent, as the case may be), to maintain such records as in the opinion of the Board may be reasonably expected to ensure that the property can readily be identified as being the property of such client or other person;
- 2.1.8 divulges to any third party, whether orally, in writing or otherwise, any confidential information which he/she may have obtained in the course of his/her professional relations with any client or employer including any information obtained by him/her as to the business affairs, the trade secrets or the technical methods or processes of such client or employer, unless such client or employer (or, in the case where such client or employer is deceased, the executor of his/her estate) has expressly consented to such information being divulged, or unless the accountant and auditor is obliged by law to divulge it, or unless the accountant and auditor in good faith divulges it to the Board in order that the Board may consider whether it should exercise any of the powers, duties or functions vested in it by the Act or these rules;

- 2.1.9 makes or fixes, or attempts to make, fix or recover, or enters into an agreement or associates him/herself in any way with any other person for the purpose of making, fixing or recovering any fee, charge or other consideration for professional service of a type commonly performed by a registered accountant and auditor which have been or are to be rendered by him/her, which, whether wholly or in part, is in any way contingent upon the results of such services: Provided that this rule shall not apply to the following:
- 2.1.9.1 Fees fixed or taxed by the proper authority in respect of the compulsory liquidation or the judicial management of any company or the administration of the estate of a deceased or insolvent person or person under other legal disability and fees fixed by a registered accountant and auditor in respect of the voluntary liquidation of any company on the basis of the fees which would have been recoverable had the liquidation been a compulsory liquidation;
 - 2.1.9.2 Commission paid to an executor, trustee, administrator or agent, the amount of which is based on the income collected by him/her;
 - 2.1.9.3 Fees paid to a director of a company, the amount of which is based on the dividends declared or the profits earned by such company;
 - 2.1.9.4 Remuneration paid to a manager of a business, the amount of which is based on a percentage of the earnings or profits of such business;
 - 2.1.9.5 Commission paid in respect of any type of insurance business or in respect of the sale of movable or immovable property or in respect of the collection of debts or in respect of the raising of loans;
 - 2.1.9.6 The charging of fees which are contingent upon the result of a professional service where the charging of such fees is permitted by the Code and is otherwise in accordance with any limitations imposed by the Code;
- 2.1.10 except with the knowledge of his/her client, directly or indirectly stipulates for or receives from any third party (other than a person registered as an accountant and auditor under the Act and engaged in public practice or a person practising as an accountant and auditor outside the Republic) any regard for anything done by him/her in the course of or in connection with the services rendered by him/her to such client;

- 2.1.11 permits his/her name to be used in connection with any estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he/she vouches for the accuracy of the estimate;
- 2.1.12 seeks either before or during the period of training of a trainee accountant to impose any restraint whatever on the trainee accountant concerned which will apply after the date of termination of the training period, or threatens or attempts to enforce any such restraints after such date. The provisions of this rule will not, however, apply so as to prohibit a practitioner from seeking to restrain a trainee accountant, for a period of not longer than one year from the date of the trainee's ceasing to be employed by the practitioner-
 - 2.1.12.1 *from soliciting for professional work from an existing client of the practitioner or from accepting an engagement of any kind from an existing client of the practitioner in circumstances in which the practitioner has confirmed in writing that there are no professional or other reasons why he should not accept the engagement;*⁴
- 2.1.13 directly or indirectly stipulates or receives from a trainee accountant who is or has been serving under a training contract or from any other person any payment, reward, compensation or consideration for agreeing to the cancellation of such training contract: Provided that it shall not be deemed a breach of this rule if a practitioner requires to be or is reimbursed in respect of disbursements actually made by him/her to the Board in connection with a training contract which is subsequently cancelled and of which disbursements he/she is able to produce proof to the satisfaction of the Board;
- 2.1.14 fails to answer or to deal with appropriately within a reasonable time any correspondence or other communication from the Board or any other person which requires a reply or other response;
- 2.1.15 fails to comply within a reasonable time with an order, requirement or request of the Board;
- 2.1.16 without reasonable cause fails to resign from a professional appointment when requested by the client to do so;
- 2.1.17 fails after demand to pay any subscription or any fee, levy or other charge payable to the Board;
- 2.1.18 abandons his/her practice without previous notice to his/her clients and without arranging with them for the despatch of their business or the care of their property in his/her possession or under his/her control;

- 2.1.19 solicits or advertises or canvasses for work in any manner not permitted by the Code;
- 2.1.20 without reasonable cause or excuse, contravenes or fails to observe any of the provisions of the Code; or
- 2.1.21 conducts him/herself in a manner which is improper or discreditable or unprofessional or dishonourable or unworthy on the part of a practitioner or which tends to bring the profession of accounting into disrepute.

4
CODE OF
PROFESSIONAL CONDUCT

PREAMBLE TO IRBA CODE

THE PAAB CODE

The South African Institute of Chartered Accountants (SAICA) issued a new Code of Professional Conduct (the SAICA Code) that became effective from January 2003.

In the preamble to its Code, SAICA states that it is consistent in all material respects with the Code of Ethics for Professional Accountants issued by the International Federation of Accountants (the IFAC Code).

The PAAB considered doing the same, because traditionally the PAAB Code has been fairly similar to the SAICA Code. However, after serious debate, the PAAB decided that it is not appropriate to revise the Code at this stage. The reasons for this decision are discussed below.

The IFAC Code is intended to serve as a model for member countries on which to base national ethical guidance. It recognises that national regulatory standards may be more stringent than those of the IFAC Code.

The independence section of the IFAC Code, and therefore, the SAICA Code, requires the practitioner to identify and evaluate circumstances and relationships that create threats to independence and to take appropriate action to eliminate these threats or to reduce them to an acceptable level by the application of safeguards. The Codes then go on to provide numerous examples of specific situations where these principles may be applied. The Codes are not prescriptive as to the nature or scale of non-assurance services that can be provided to assurance clients, which is a subject of intense debate and consideration globally.

In all the circumstances, the PAAB believed that its current principles-based Code of Professional Conduct should be retained. The Code is not in conflict with the SAICA Code, other than in the instance of contingency fees for tax work discussed below.

The SAICA Code will provide useful guidance on identifying the possible threats to independence, being those of self-interest, self-review, advocacy, familiarity and intimidation and possible safeguards to overcome them. The PAAB did, however, advise RAAs to proceed with caution before retaining or accepting assurance assignments where there are fundamental threats to independence that require to be overcome by the application of safeguards. The essence of independence is both independence of mind and in appearance and the practitioner must be certain that this can be demonstrated and defended.

One area where the Board's Code of Professional Conduct is more stringent than SAICA's Code of Conduct relates to that of contingent fees for certain tax related work. Paragraph 11.15 of the Board's Code outlaws certain work, but the SAICA Code appears to permit this, subject to certain safeguards.

TRANSITIONAL PROVISIONS

The transitional provisions of the Auditing Profession Act, 2005, provide as follows: "59(8) (c) The Code of Professional Conduct as contained in the said Manual (including paragraphs 1 to 2.1.21, inclusive, of the Disciplinary Regulations, must be deemed to have been prescribed by the Regulatory Board."

Sections 20 & 21 of the Auditing Profession Act provide for the establishment of a Committee for Auditor Ethics. Section 21(2) includes, as part of the Committee functions, that it must assist the Regulatory Board to determine what constitutes improper conduct by registered auditors by developing rules and guidelines for professional ethics, including a code of professional conduct.

The Committee for Auditor Ethics has been duly established and is in the process of developing a code of professional conduct for the IRBA. Until such time as the code has been developed and issued, the PAAB Code remains effective in terms of the transitional provisions of the Auditing Profession Act.

1	Status of the Code	4-5
2	Definitions	4-5
3	Joint and vicarious liability	4-7
4	Fundamental principles	4-8
5	Integrity and objectivity	4-9
6	Conflicts of interest	4-10
7	Independence	4-10
8	Professional competence	4-16
9	Confidentiality	4-16
10	Practice matters	4-17
11	Fees for professional services	4-23
12	Publicity, advertising and solicitation	4-26
13	Inclusion of the name of a practitioner in a document issued by a client	4-27
14	Recruiting	4-28
15	Responsibility to colleagues	4-28

1 STATUS OF THE CODE

- 1.1 In terms of the powers granted to it by sections 13 and 23 of the *Public Accountants' and Auditors' Act, 1991* (Act 80 of 1991) the Public Accountants' and Auditors' Board has published this *Code of professional conduct* as a guide to registered accountants and auditors. It replaces the previous *Code of conduct* with effect from 1 January 1997. This Code is not intended to contain an exhaustive list of all matters affecting the conduct of registered accountants and auditors and neither does it restrict the scope of the Act or of the *Disciplinary rules* published in terms of the Act.
- 1.2 The spirit of this Code is at least as important as the letter and a breach of, or a failure to observe any of the provisions of the Code may be considered as improper conduct within the ambit of section 23 of the Act, or of rule 2.1 of the Board's *Disciplinary rules*, and as such will be dealt with in terms of the Act or the *Disciplinary rules*.
- 1.3 Except where otherwise indicated, this Code is a guide for all persons registered with the Board.

2 DEFINITIONS

For the purposes of this Code the terms below have the following meanings assigned to them. These definitions serve only as guidance and are not intended to be complete or exhaustive.

- 2.1 "Act", is the *Public Accountants' and Auditors' Act, 1991* (Act 80 of 1991).
- 2.2 "Advertising" is the communication to the public of information as to the services or skills provided by a practitioner with a view to procuring professional business.
- 2.3 "Board" is the Public Accountants' and Auditors' Board.
- 2.4 "Client" is a person or an undertaking with whom a practitioner has or can reasonably expect to have a continuing professional relationship. A client for whom a practitioner carries out a single professional task which has been completed, or who has terminated a previously existing professional relationship, will not be regarded as a client for the purposes of this Code.
- 2.5 "Client account" is any bank account which is used solely for the banking of clients' monies.
- 2.6 "Clients' monies" is any monies, including documents of title to money such as bills of exchange and promissory notes, as well as documents of title which can be converted into money such as bearer bonds, received by a practitioner to be held or paid out on the instruction of the person from whom or on whose behalf they are received.

- 2.7 “Existing accountant” is a practitioner currently engaged by the client to render professional services to him.
- 2.8 “Investee” is a subsidiary or an entity subject to the significant influence of an investor.
- 2.9 “Investor” is a parent company, general partner or natural person or corporation that has the ability to exercise significant influence on an investee.
- 2.10 “Practice” is a sole practitioner, a partnership, or a company referred to in section 21(2) of the Act.
- 2.11 “Practitioner” is an accountant and auditor registered as such in terms of the Act, whether or not he/she is in public practice.
- 2.12 “Professional work, professional services and professional business” are regarded as relating to the following:
- 2.12.1 *The attest function* (audit services)
- (a) The examination, in accordance with generally accepted auditing standards, of financial statements with the objective of expressing an opinion as to their fairness and as to their compliance with the requirements of applicable statutes.
 - (b) The audit of other reports and representations of a financial nature.
- 2.12.2 *The financial reporting function* (accounting services)
- (a) External financial reports: The preparation of financial statements in accordance with generally accepted accounting practice and applicable statutes and the interpretation of those financial statements.
 - (b) Internal financial systems and reports: The design and operation of internal accounting systems to provide management with information which will enable it to plan, monitor and control its business.
- 2.12.3 *The advising function* (advisory and fiduciary services)
- (a) Taxation services: The interpretation and application of revenue laws and procedures and of tax planning.
 - (b) Management consulting services: The provision of consulting services to management of enterprises. These services include advisory services relating to planning, control, cost accounting, financial management and reporting, data processing and related systems.

- (c) Other services: These services include investigations, valuations, secretarial services, trusteeships, the planning and administration of estates, judicial management and liquidation and insolvency work.
- 2.13 “Proposed accountant” is a practitioner whom the client proposes to engage in place of or in addition to the existing accountant.
- 2.14 “Publicity” is the communication to the public of information about a practitioner or his firm or bringing his name or the name of his firm to the notice of the public.
- 2.15 “Receiving accountant” is a practitioner to whom the existing accountant or client of the existing accountant has referred audit, accounting, taxation, consulting or similar appointments, or who is consulted in order to meet the needs of the client.
- 2.16 “Reporting assignment” is an engagement which requires the expression of an opinion by a practitioner.
- 2.17 “Solicitation” is the direct or indirect approach to a potential client for the purpose of offering to perform professional work. *Direct mailing and cold calling* are forms of solicitation. Direct mailing includes sending a brochure to a non-client who did not request it. Cold calling includes the direct or indirect approach to a potential client in person or by telephone.

3 JOINT AND VICARIOUS LIABILITY

- 3.1 A practitioner may be held responsible for a breach of, or failure to comply with this Code on the part of all persons who are –
 - 3.1.1 his employees; or
 - 3.1.2 under his supervision; or
 - 3.1.3 his partners; or
 - 3.1.4 fellow shareholders in, or directors or employees of, a company controlled by the practitioner or the practitioner and his partners and offering professional services to the public. (For purposes of this Code a company will be deemed to be controlled by practitioners if practitioners between them hold, directly or indirectly, more than half of the voting rights attached to the shares of the company or directly or indirectly and either alone or together with anyone else are entitled to exercise the *de facto* right to control the manner in which the business of the company is carried on (including, but without limitation, the right to appoint the majority of the persons entitled to exercise control over its management and affairs); or

- 3.1.5 fellow practitioners in or employees of a close corporation controlled by the practitioner or the practitioner and his partners and offering to do professional work for members of the public. (For purposes of this Code a close corporation will be deemed to be controlled by practitioners if practitioners between them hold an interest in the corporation which would entitle them to a majority vote at a meeting of members of the corporation, or would otherwise entitle them to exercise the *de facto* right to control the manner in which the business of the corporation is carried on.)
- 3.2 A practitioner may not, under the guise or through the medium of a partnership, company, close corporation or any other entity, do anything or allow anything to be done which he/she would not be permitted to do as an individual.
- 3.3 A practitioner may not permit others to carry out on his/her behalf, either with or without remuneration, acts which if carried out by him/herself would constitute a contravention of this Code.

4 FUNDAMENTAL PRINCIPLES

In order to achieve the objectives of the accountancy profession, practitioners have to observe a number of prerequisites or fundamental principles. The fundamental principles may be defined as follows:

4.1 Integrity

Integrity is an attitude of mind. Adherence to certain standards of conduct and moral behaviour consistently practised will ensure integrity. A practitioner should be straightforward and honest in performing professional services.

4.2 Objectivity

Objectivity is the quality of being able to maintain an impartial attitude. It requires a practitioner to be fair and not to allow prejudice or bias or influence of others to override objectivity.

4.3 Independence

Practitioners, when undertaking a reporting assignment, should be independent in fact and appearance. Independence is an essential quality, concomitant with integrity and objectivity, in a practitioner undertaking a reporting assignment.

Independence is a quality which enables a practitioner to apply unbiased judgement and objective considerations to establish facts and arrive at an opinion or decision. To be recognised as independent, the practitioner must be free from any obligation to, or interest in the client, its management or its owners.

4.4 Professional competence and due care

In agreeing to provide professional services, a practitioner implies that some level of competence is necessary to perform professional services and that the knowledge, skill and experience of the practitioner will be applied with reasonable care and diligence. Practitioners should therefore refrain from performing any services which they are not competent to carry out unless advice and assistance are obtained to ensure that the services are performed satisfactorily.

A practitioner has a continuing duty to maintain professional knowledge and skill at the required level which will ensure that a client receives the advantage of competent professional service based on up-to-date developments in practice, legislation and techniques.

4.5 Confidentiality

A practitioner should respect the confidentiality of information acquired during the course of performing professional services and should not use or disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose.

4.6 Professional behaviour

A practitioner should act in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession. A practitioner should conduct himself with courtesy and consideration towards clients, third parties, other practitioners of the accountancy profession, staff, employers and the general public.

A practitioner should not practise discrimination against any person based on race, colour, religion, sex, marital status, age or origin in engagement, promotion, dismissal, salary, transfer, training or other practices relating to employment.

5 INTEGRITY AND OBJECTIVITY

5.1 The principles of integrity and objectivity impose the obligation on all practitioners to be fair, honest and free of conflicts of interest, prejudice and bias. Relationships or interests, whether direct or indirect, which could adversely influence, impair or threaten their capacity to act with integrity and objectivity, should be avoided.

5.2 Practitioners will be exposed to situations which involve the possibility of pressures being exerted on them. These pressures may impair their integrity and objectivity. It is impracticable to define and prescribe all such situations where these possible pressures exist, but reasonableness should prevail in

identifying relationships that are likely to, or appear to, impair a practitioner's integrity and objectivity.

6 CONFLICTS OF INTEREST

- 6.1 A practitioner should be free and be seen to be free from any influence, interest or relationship, whether direct or indirect, which might be regarded, whatever its actual effect, as being incompatible with integrity, objectivity and independence.
- 6.2 Where a practitioner has reason to believe that his/her or his/her employee's involvement in an assignment would possibly cause a conflict of interest, he/she should immediately disclose this fact.
- 6.3 Where it is clear that a material conflict of interest exists, a practitioner should decline to act.
- 6.4 Where a conflict exists but a practitioner considers that it would be possible to act objectively, the engagement may be accepted provided –
 - 6.4.1 the nature of the conflict is fully explained to each party for whom the practitioner will be acting; and
 - 6.4.2 the parties agree in writing that the practitioner may act.

7 INDEPENDENCE

The following paragraphs indicate some situations which, because of the actual or apparent lack of independence, would give a reasonable observer grounds for doubting the practitioner's independence.

- 7.1 Fiduciary or financial involvement with or in the affairs of clients.
- 7.2 Financial involvement with a client on whose affairs a practitioner has a responsibility to report, may affect his objectivity and may lead an observer to conclude that objectivity has been impaired. Such an involvement can arise in a number of ways, such as by –
 - 7.2.1 a direct or indirect financial interest in the client;
 - 7.2.2 a fiduciary interest in a client;
 - 7.2.3 loans to or from the client or any officer, director or principal shareholder of a client company;
 - 7.2.4 holding a financial interest in a joint venture with a client or employee(s) of a client; and
 - 7.2.5 having a financial interest in a non-client that has an investor or investee relationship with the client.

Commentary

- 7.3 Independence might be impaired when a practitioner has or is committed to acquire a direct or indirect financial interest in a company for which he/she provides professional services requiring independence. A direct financial interest includes an interest held by the spouse or dependent child of the practitioner.
- 7.4 When the practitioner holds or advises on investing in shares in an audit client on behalf of a third party, such as a trust, the appearance of independence is at risk. This is because responsibilities to the third party may conflict with responsibilities to the audit client.
- 7.5 Because of the need to be seen to be independent in any reporting assignment, in fact and in appearance, a practitioner should avoid the appointment as a trustee in any situation where the absence of a conflict of interest cannot be clearly demonstrated. A trustee should therefore not be involved personally in the audit of the trust. He/she should also not be involved personally in the audit of a company in which the trust has a material shareholding. Where the practitioner is requested to be a trustee, he/she should be a minority trustee.
- 7.6 Shares in a client may be involuntarily acquired as when a practitioner inherits such shares or marries a shareholder or in a take-over situation. In these cases the practitioner should either dispose of the shares at the earliest practicable date or decline any further reporting assignment on that company.
- 7.7 Neither a practitioner nor his/her spouse or dependent child should make a loan to a client or guarantee a client's borrowing or accept a loan from a client or have a borrowing guaranteed by a client. The latter prescription does not apply to loans to or from banks or other similar financial institutions when made under normal lending procedures, terms and requirements, to home mortgages or to current or deposit accounts with banks, etc.
- 7.8 When a non-client investee is material to a client investor, any direct or material indirect financial interest of the practitioner in the non-client investee would be considered to impair the practitioner's independence with respect to the client. Likewise, where a client investee is material to a non-client investor, any direct or material indirect financial interest of the practitioner in the non-client investor would be considered to impair the practitioner's independence with respect to the client.
- 7.9 Other relationships, such as client/non-client joint ventures, may affect the appearance of independence. In general, in a joint venture situation, an immaterial financial interest of the practitioner in the non-client investor would not impair the independence of the practitioner with respect to the client investor, provided that the practitioner could not significantly influence the non-client investor. If the practitioner does not and could not reasonably

be expected to have knowledge of the financial interests or relationships involving the joint ventures, the practitioner's independence would not be considered to be impaired.

- 7.10 Generally, the practitioner should be independent of a client and all its parent, subsidiary and affiliated companies.
- 7.11 The following, however, would not ordinarily be considered to impair a practitioner's independence:
 - 7.11.1 Holding of securities in a public company in which the securities are widely held, provided that the holding is not material either in relation to the total number of securities issued by the company or in relation to the assets of the practitioner, or his/her professional staff, or his/her spouse or dependents;
 - 7.11.2 Making deposits with, or accepting loans from clients which are registered as financial institutions on the same terms as are available to the general public;
 - 7.11.3 Making investments in loan stock of public utility corporation clients or municipal clients;
 - 7.11.4 Making indirect investments in clients through the holding of units in mutual funds, insurance policies or retirement funding investments; and
 - 7.11.5 Indebtedness arising out of normal trading transactions on the same terms as are available to the general public.
- 7.12 Appointments in companies: When a practitioner is or was, within the period under current review or immediately preceding an assignment
 - 7.12.1 a member of the board or an officer or an employee of a company,
 - 7.12.2 a partner of, or in the employment of, a member of the board or an officer or an employee of a company, he/she would be regarded as having an interest which could detract from independence when reporting on that company.

Commentary

- 7.13 Practitioners in such situations should not be appointed as auditors of the companies concerned. It is also clearly desirable that they should not be personally appointed or involved in other assignments on which an opinion is required. It is suggested that the period immediately preceding the assignment should be no less than two years.

Provision of other services to audit clients

- 7.14 When a practitioner, in addition to carrying out the attest function, provides other services to a client, he/she should take care not to perform any management

function or make management decisions. All management decisions remain the responsibility of the board of directors and management.

Commentary

- 7.15 It is appropriate in terms of skill and effort for practitioners to be able to offer other financial and management consultancy services to their clients, since they already have a close familiarity with the client's businesses. Many companies (particularly the smaller ones) would be adversely affected if they were denied the right to obtain other services from their auditors. In the course of performing their professional services, practitioners frequently offer advice to their clients. This happens particularly in the case of smaller businesses, where the audit of the financial statements and advice on for example the provision to be made for taxes, are often so inextricably linked that they cannot be separated. Moreover, one key concept in auditing involves examination of the system of internal control which necessarily involves suggestions for improvement. For these reasons it is impracticable to define the limitations on the advice which a practitioner may give.
- 7.16 The services provided by the practitioner in the fields of management consultancy and taxation are advisory services. Such services should not usurp the management functions of client companies. The independence of a practitioner is not impaired by offering advisory services, provided there is no involvement in or responsibility assumed for management decisions. The provision of other professional services is not in principle a factor in determining whether the practitioner is independent. Nevertheless, the practitioner should be careful not to go beyond the advisory function into the management sphere.
- 7.17 The preparation of accounting records is a service which is frequently requested of a practitioner, particularly by smaller clients whose businesses are not large enough to justify the employment of sufficient full-time internal accounting staff. It is unlikely that larger clients will need this service other than in exceptional circumstances. In all cases in which independence is required and in which a practitioner is concerned in the preparation of accounting records for a client, the following requirements should be observed:
- 7.17.1 The practitioner should not have any relationship or combination of relationships with the client or any conflict of interest which would impair integrity or independence.
 - 7.17.2 The client should accept responsibility for the statements.
 - 7.17.3 The practitioner should not assume the role of employee or of management conducting the operations of an enterprise.
 - 7.17.4 Staff assigned to the preparation of accounting records ideally should not participate in the examination of such records. The fact

that the practitioner has processed or maintained certain records does not eliminate the need for audit tests.

Family and personal relationships

7.18 Personal and family relationships can affect independence. There is a particular need to ensure that an independent approach to any assignment is not endangered as a consequence of any personal or family relationship.

Commentary

7.19 It is recognised that it would be impracticable to attempt to prescribe in detail the ethical requirements for the permissible extent of a personal relationship between a practitioner in public practice and a client or those occupying responsible executive positions (e.g. director, chief executive, financial officer or another employee in a similar position) with a client. The kinds of situations which can give rise to the possibility of pressures being exerted upon practitioners may arise, for example, when a practitioner has a mutual business interest with an officer or employee of a client or has a material interest in a joint venture with a client.

7.20 With respect to family relationships it is important to ensure that the degree of the relationship with a client should not be too close, otherwise it will be to the detriment of an independent approach to professional services for that client.

7.21 Family relationships which always pose an unacceptable threat to independence are those in which a sole practitioner or a partner in a practice, or an employee engaged on the assignment relating to the client, is the spouse, dependent child or relative living in a common household, of the client.

Independence in relation to fees

7.22 When the receipt of recurring fees from a client or group of connected clients represents a large proportion of the total gross fees of a practitioner in public practice or the practice as a whole, the dependence on the client or group of clients should inevitably come under scrutiny and could raise doubts as to independence.

Commentary

7.23 It is not possible to state precisely what constitutes an unacceptable proportion of total fees emanating from one client or group of connected clients. However, if such fees are the only or a substantial part of the gross income, the practitioner in public practice should carefully assess whether independence has been impaired. A similar situation may arise if fees due from a client for professional services remain unpaid for an extended period of time, especially if a substantial part is not paid before the issue of the report

of the practitioner in public practice for the following year. Allowances will be made for new practices seeking to establish themselves or practices which are planning to cease operations. Exemptions will be made for a branch office which is reliant upon one client or group of connected clients. This might for example arise where the branch office is auditing the financial statements of a client of the practice as a whole and that client forms a major part of the business of the branch office. In such circumstances professional services for that client or group should be the subject of review by a partner from another office.

Goods and services

7.24 Acceptance of goods and services from a client may be a threat to independence. Acceptance of undue hospitality poses a similar threat.

Commentary

7.25 Goods and services should not be accepted by practitioners in public practice, their spouses or dependent children except on business terms no more favourable than those generally available to others. Hospitality and gifts on a scale which are not commensurate with the normal courtesies of social life should not be accepted.

Former partners

7.26 A partner in a practice may leave the practice by resignation, termination, retirement, or sale of the practice. Such a partner may accept an appointment with a client of the practice of which he/she is a former partner, when an audit or other reporting function is being performed by that practice. In such circumstances, the independence of the practice would not be impaired in the following cases:

7.26.1 Payments of the amounts due to a former partner for his/her interest in the practice and for unfunded, vested retirement benefits made in accordance with a schedule that is fixed as to both payment dates and amounts. In addition the amounts owed should be such that they do not cause a substantial doubt about the practice's ability to continue as a going concern.

7.26.2 The former partner does not participate or appear to participate in the practice's business or professional activities, whether compensated for or not. Indications of participation include the provision of office space and related amenities to the former partner by the practice.

Actual or threatened litigation

7.27 Litigation involving the practitioner in public practice and a client may cause concern that the normal relationship with the client is affected to the extent that the practitioner's independence and objectivity may be impaired.

Commentary

- 7.28 The commencement by a client or others of proceedings against the practitioner, or the commencement of litigation by the practitioner alleging for example fraud or deceit by the officers of a company, or substandard performance of the client's audit by the practitioner, may impair independence. Such commencement or a credible threat to commence or a declared intention to commence legal action against a practitioner in public practice relating to the affairs of the company, or *vice versa*, may cause the practitioner in public practice and the company to be placed in positions which may affect the objectivity of the practitioner in public practice. Thus, the ability to report fairly and impartially on the company's financial statements may be affected. At the same time, the existence of such action (or threat of action) may affect the willingness of the management of the company to disclose relevant information to the practitioner in public practice.
- 7.29 It is not possible to specify precisely the point at which it would become improper for the practitioner to continue to report. However, the practitioner should have regard to circumstances when litigation might be perceived by the public as likely to affect the accountant's independence.

8 PROFESSIONAL COMPETENCE

- 8.1 A practitioner should not undertake or continue with any assignment which he/she is not competent to carry out unless he/she obtains advice and assistance which will enable him/her to carry it out satisfactorily. A client is entitled to assume that the practitioner is professionally competent to perform any particular engagement which he/she has undertaken.
- 8.2 A practitioner should maintain his/her professional knowledge and skill. This requires a continuing awareness of developments in the accountancy profession, including relevant national and international pronouncements on accounting, auditing and other regulations and statutory requirements pertaining to the profession, and practitioners should adopt a programme of continuing professional education.

9 CONFIDENTIALITY

- 9.1 A practitioner must respect the confidentiality of information acquired by him/her in the course of work, and may not use or disclose that information without proper and specific authority unless there is a legal or professional duty on him/her to do so.
- 9.2 Practitioners have an obligation to ensure that staff under their control and persons from whom advice and assistance is obtained respect the principle of confidentiality.

- 9.3 A practitioner may not make improper use of confidential information which has been acquired in the course of work, either for personal advantage or for the advantage of a third party. The duty of confidentiality continues after the completion of an assignment.
- 9.4 These restrictions do not apply to the disclosure of information in order to discharge a practitioner's duties under any law including, but not limited to-
- 9.4.1 reporting material irregularities;
 - 9.4.2 giving evidence in the course of legal proceedings, or necessarily disclosing information in the course of preparing for legal proceedings; and
 - 9.4.3 giving information called for in terms of the income tax legislation in connection with inspections carried out by the Department of Inland Revenue.
- 9.5 This Code does not prohibit the disclosure of information which is required to enable the practitioner to comply with technical standards and ethical requirements including, but not limited to -
- 9.5.1 qualifications in audit reports;
 - 9.5.2 reports laid before the investigation or disciplinary committees; and
 - 9.5.3 disclosure made in connection with a practice review conducted in terms of the Act.
- 9.6 In the case of legal proceedings, a practitioner may disclose information to protect his professional interest.
- 9.7 Where a practitioner is required to disclose information about a client's affairs, he/she should inform the client that this is the case. He/she should take care to ensure that no more information than is strictly necessary is made available.

10 PRACTICE MATTERS

Form of practice

- 10.1 A practitioner who performs audit work may practise as a sole practitioner or in partnership or in any other form which may be permitted from time to time.
- 10.2 A practitioner may carry out non-audit work as a sole practitioner or through a partnership, company, close corporation or other entity, subject to the provisions of paragraph 3.2.

Tax practice

- 10.3 A practitioner rendering professional tax services is entitled to put forward the best position in favour of a client, provided the service is rendered with

- professional competence, does not in any way impair integrity and objectivity, and is in the opinion of the practitioner consistent with the law. Doubt may be resolved in favour of the client if there is reasonable support for the position.
- 10.4 A practitioner should not hold out to a client the assurance that the tax return prepared and the tax advice offered are beyond challenge. Instead, he/she should ensure that the client is aware of the limitations attaching to tax advice and services so that he/she does not misinterpret an expression of opinion as an assertion of fact.
- 10.5 A practitioner who undertakes or assists in the preparation of a tax return should advise the client that the responsibility for the content of the return rests primarily with the client. The practitioner should take the necessary steps to ensure that the tax return is properly prepared on the basis of the information received.
- 10.6 Tax advice or opinions of material consequence given to a client should be recorded, either in the form of a letter or in a memorandum for the files.
- 10.7 A practitioner should not be associated with any return or communication which he/she has reason to believe –
- 10.7.1 contains a false or misleading statement;
 - 10.7.2 contains statements or information furnished recklessly or without any real knowledge of whether they are true or false; or
 - 10.7.3 omits or obscures information required to be submitted and such omission or obscurity would mislead the revenue authorities.
- 10.8 For the purpose of this section of the Code, “associated” has the following meaning: “A practitioner, or in the case of a practice, his/her practice, is ‘associated’ with a return or with a financial statement to be submitted with a return or with a submission on behalf of a client, when he/she has consented to the use of his/her or his/her practice’s name in that return or statement or submission or when he/she has submitted to the taxation authorities, with or without a covering letter, a return or financial statement or submission which he/she or his/her practice has prepared or assisted in preparing. The fact that the return or financial statement or submission may be typed or otherwise reproduced on plain paper, or that the name of the practitioner or his/her practice is not appended to them, does not itself negate such association.”
- 10.9 A practitioner may prepare tax returns involving the use of estimates if such use is generally acceptable or if it is impractical under the circumstances to obtain exact data. When estimates are used, they should be presented in a manner which will avoid the implication of greater accuracy than exists. The practitioner should be satisfied that estimated amounts are reasonable under the circumstances.

- 10.10 In preparing a tax return, a practitioner ordinarily may rely on information furnished by the client, provided that the information appears reasonable. Although the examination or review of documents or other evidence in support of the information is not required, the practitioner should encourage, when appropriate, the provision of such supporting data.
- 10.11 In addition, the practitioner –
- 10.11.1 should make use of the client’s returns for prior years whenever feasible;
 - 10.11.2 is required to make reasonable inquiries when the information presented appears to be incorrect or incomplete; and
 - 10.11.3 is encouraged to make reference to the books and records of the business operations.
- 10.12 When a practitioner learns of a material error or omission in a tax return of a prior year (with which he/she might or might not have been associated), or of the failure to file a required tax return, he/she has a responsibility promptly to advise the client of the error or omission and recommend that disclosure be made to the revenue authorities. The practitioner is not obliged to inform the revenue authorities, nor may this be done without permission. If the client does not correct the error within a reasonable time, the practitioner –
- 10.12.1 should inform the client that he/she cannot act for them in connection with that return or other related information submitted to the authorities; and
 - 10.12.2 should consider whether continued association with the client in any capacity is consistent with professional responsibilities.
- 10.13 If the practitioner concludes that his/her professional relationship with the client can be continued, he/she should take all reasonable steps to ensure that the error, or similar errors, are not repeated in subsequent tax returns.

Clients’ monies

- 10.14 A practitioner should not hold clients’ monies if there is reason to believe that they were obtained from, or are being used for, illegal activities.
- 10.15 A practitioner entrusted with monies belonging to others, in the course of professional work, should –
- 10.15.1 keep such monies separate from personal or firm monies;
 - 10.15.2 use such monies only for the purpose for which they are intended; and
 - 10.15.3 at all times be ready to account for those monies to any person entitled to such accounting.
- 10.16 A practitioner should maintain one or more appropriately designated bank accounts for clients’ monies.

- 10.17 Clients' monies received by a practitioner should be deposited without delay to the credit of a client account, or – if in the form of documents of title to money or documents of title which can be converted into money – be safeguarded against unauthorised use.
- 10.18 Monies may only be drawn from the client account on the instructions of the client.
- 10.19 Fees due from a client may be drawn from clients' monies provided that the client, after being notified of such fees, has agreed to such withdrawal.
- 10.20 Payments from a client account shall not exceed the balance standing to the credit of the client.
- 10.21 When it seems likely that the client's monies will remain on the client account for a significant period of time, the practitioner should, with the concurrence of the client, place such monies in an interest-bearing account within a reasonable time.
- 10.22 All interest earned on the clients' monies should be credited to the client account.
- 10.23 Practitioners should keep such books of account as will enable them, at any time, to establish clearly their dealings with clients' monies in general, and the monies of each individual client in particular. A statement of account should be provided to the client at least once a year.

Foreign assignments

- 10.24 Practitioners working in other countries where the profession is controlled by a reputable body or by law should adhere to local ethical requirements even though to do so may not be in accordance with this Code. Practitioners working in a country where the profession is not so controlled, should follow the guidance of this Code unless recognised, well established and reputable local standards are being applied.

Firm names

- 10.25 Subject to the following guidance, practitioners may practise under whatever name or title they see fit, once this has been approved by the PAAB. Save where the name of a firm is based on the names of past or present members of the firm itself or of a firm with which it has merged or amalgamated, practitioners are advised to consult the PAAB about the acceptability of any 'non-personal' name before registering such a name with the Registrar of Companies (if applicable) or having stationery printed.
- 10.26 The philosophy behind the PAAB's name prohibitions is to obviate names which could in any way be offensive to the average person, or which attempt to secure an unfair competitive advantage.

- 10.27 It follows that a firm name should be consistent with the dignity of the profession in the sense that it should not project an image inconsistent with that of a professional practice bound to high ethical and technical standards.
- 10.28 It has been the custom of the profession for practitioners to practise under a firm name based on the names of past or present members of the firm itself, or of a firm with which it has merged or amalgamated. A firm name so derived will usually be in conformity with this guidance.
- 10.29 In general, non-personal firm names will be approved unless they are misleading or not in professional good taste.
- 10.30 Accordingly, when considering a firm name, practitioners may assume that it will be approved by the PAAB for registration, unless there are significant, identifiable concerns that the name is –
- misleading
 - self laudatory or descriptive or comparative with the view to obtain a competitive advantage
 - profane, vulgar, immorally suggestive or of similar poor taste; or
 - such that the good reputation of the profession may be impaired or compromised.

A firm name should not be misleading

- 10.31 It would be misleading for a firm with very few offices to describe itself as ‘international’ merely on the grounds that one of them was overseas.
- 10.32 A firm name would be misleading if in all the circumstances there was a real risk that it could be confused with the name of an existing firm, even if the members of the new firm could lay justifiable claim to the name.

Practitioners are encouraged to address such issues in their partnership agreement.

Use of ‘& Associates’, ‘& Co’ or ‘& Partners’

- 10.33 The name or description of a firm which implies a greater number of members than is, in fact, the case, is permissible as long as the name(s) of the member(s) is/are displayed with the name of the firm on all firm stationery.

Use of the Designations ‘Chartered Accountant’ and ‘Registered Accountant & Auditor’

- 10.34 The designation ‘Chartered Accountants’, ‘Registered Accountants and Auditors’ or any other descriptive narrative such as ‘Consulting Services’ or ‘Financial and Advisory Services’ should not form part of the name of a firm. The PAAB does however expect all practitioners to reflect on their professional stationery the fact that they are registered accountants and auditors and, if this is the case, that they are chartered accountants as well. It

also expects practitioners to reflect the designation 'Registered Accountants and Auditors' underneath their name on the signature line of any professional correspondence and, particularly, audit reports.

- 10.35 Should practitioners wish to reflect on their stationery that they are also business advisors, consultants, and the like, this is perfectly in order, but the PAAB will no longer register those appellations as part of the firm name. Practitioners should carry out a review of the descriptions they use from time to time, to ensure the use of those description can be justified.

Multiple firms

- 10.36 It is permissible to be a member of more than one audit firm, or of an audit firm and some other type of professional firm. It is also permissible to practise under different names from different offices, provided this does not mislead.
- 10.37 RAAs who are members of audit firms as well as being members of other accounting or similar type firms, (such as CFA firms), must ensure there is a clear distinction between the different firms and the members thereof, and that they do not unwittingly contravene section 14 of the PAA Act, or cause it to be contravened by the non RAA members of these other firms.

Stationery

- 10.38 Practitioners' stationery should be of an acceptable professional standard.
- 10.39 Apart from the name of the firm, its logo (if any) and the customary details regarding its addresses and telephone, and telefax numbers and e-mail addresses, practitioners' professional stationery may also contain the following information:
- The names of all partners, specified as such;
 - The names of all professional assistants who are RAAs, specified as such;
 - The names of other employees or consultants (whether of "partner status" or not) provided it is clear that such employees or consultants are not partners or RAAs; and
 - The names of persons, firms or organisations including those not registered with the PAAB, with whom the practitioner is associated.

[In reading this section of the Code, practitioners should have regard to the constraints contained in sections 14 and 27(1) of the PAA Act, section 83 of the Attorney's Act, (Act 53 of 1979) and sections 3, 4 and 5 of the Business Names Act (Act 27 of 1960)]

Signing of reports or certificates

- 10.40 A practitioner may not delegate to any person who is not a partner, his/her power to sign audit or other reports or certificates. In specific cases

where emergencies of sufficient gravity arise, however, this prohibition may be relaxed, provided the full circumstances giving rise to the need for delegation are reported both to the client of the practitioner concerned and to the Board.

11 FEES FOR PROFESSIONAL SERVICES

Introduction

- 11.1 When practitioners perform professional work for a client, they are responsible for performing the work objectively and with integrity and in accordance with the appropriate technical standards. They discharge that responsibility by applying the professional skill and knowledge which they and their staff have acquired through training and experience. They are entitled to be fairly remunerated for the services which they render.
- 11.2 When a practitioner indicates a fee, whether a quote or estimate, he/she should ensure that his/her objectivity, integrity and technical standards are not compromised as a result thereof.

Determination of fees

- 11.3 In determining what constitutes fair remuneration, a practitioner may take into account the value of the professional service to the client, the customary charge for similar services by other professions, banks and management and business consultants, and any other special circumstances which may exist. No single factor is necessarily the determining factor. Agreeing on an acceptable fee is primarily a matter for negotiation between the practitioner and the client.
- 11.4 Fees should be a fair reflection of the value of the professional services performed for the client. In determining the fee, the following factors should be taken into account:
 - 11.4.1 The skill and knowledge required for the type of professional service involved;
 - 11.4.2 The level of training and experience of the persons necessarily engaged in performing the professional services;
 - 11.4.3 The time necessarily taken by each person engaged in performing the professional services;
 - 11.4.4 The degree of responsibility that performing those services entail; and
 - 11.4.5 The level and extent of investment in technology.
- 11.5 It is in the best interests of both the client and the practitioner that he/she should explain the precise range of professional services that the fee is intended to

cover, the basis on which the fees is computed and any billing arrangements. This should be done, preferably in writing, before the commencement of the engagement, to help avoid misunderstandings regarding fees.

- 11.6 If requested, a practitioner should furnish such details as are reasonable to enable the client to understand the basis upon which the fee account has been prepared.
- 11.7 It follows that -
 - 11.7.1 where appropriate, time records should be kept as a basis for determining fees;
 - 11.7.2 the rates used to calculate the fees should be fair and reasonable in the circumstances; and
 - 11.7.3 the rates should be based on the fundamental premise that the organisation and conduct of the practitioner and the services provided to clients are well planned, controlled and managed.
- 11.8 A practitioner should not make a representation that specific professional services in current or future periods will be performed for either a stated fee, estimated fee, or fee range if it is likely at the time of the representation that such fees will be substantially increased and the prospective client is not advised of that likelihood.

Commissions

- 11.9 The payment or receipt of a commission by a practitioner might impair his/her objectivity and independence. A practitioner should not, for example
 - 11.9.1 pay a commission to obtain a client; or
 - 11.9.2 accept a commission from third persons for referring products or services to a client, unless the client has prior knowledge of the arrangement.
- 11.10 The payment or receipt of fees in respect of work referred between public practitioners is not regarded as a commission.
- 11.11 Payment and receipt of referral fees between practitioners when no services are performed by the referring accountant are regarded as commissions for the purpose of paragraph 11.9.
- 11.12 A practitioner may enter into an arrangement for the purchase of the whole or part of an accounting practice requiring payments to individuals formerly engaged in the practice, or to their heirs or estates. Such payments are not regarded as commissions for the purpose of paragraph 11.9.

Contingent fees

- 11.13 A contingent fee is a fee which is negotiated for the performance of any professional services pursuant to an arrangement whereby a fee will not be

charged unless a specified finding or result is obtained, or where the payment of the fee or the quantum thereof is otherwise dependent on the finding or result of the service.

- 11.14 Often it is not practical to charge fees other than on a contingency basis, in circumstances such as advising on a management buy-out, the raising of venture capital, acquisition search or sales mandates or where the capacity of the client to pay is dependent upon the success or failure of the venture.
- 11.15 A practitioner may not perform work related to the attest function, nor may he/she prepare an original or amended tax return, for a contingent fee.
- 11.16 In all cases the charging of fees on a contingency basis may be done only after careful consideration that the practitioner's objectivity and integrity would not be compromised.
- 11.17 Where the work is subject to a fee on a contingency basis, the capacity in which the practitioner has worked and the basis of the remuneration should, where appropriate, be made clear in any document prepared by the practitioner in contemplation that a third party might rely on it.

Fee estimates

- 11.18 In the event of a practitioner charging a client a lower fee than has previously been charged for similar services, he/she must ensure that –
 - 11.18.1 the fee has been calculated in accordance with the aspects referred to in paragraphs 11.1, 11.2, 11.3, 11.4 and 11.7;
 - 11.18.2 the client is not misled in respect of –
 - (a) the precise range of services that the quoted fee is intended to cover; or
 - (b) the level of fees it is anticipated will be charged for subsequent work at present-date prices.
- 11.19 Practitioners who obtain or retain work by quoting levels of fees which are significantly lower than those charged by an existing practitioner or quoted by other tendering firms, should be aware that their perceived independence may appear to be threatened, and their standards questioned. Such practitioners should accordingly take great care to allocate the appropriate quantity and quality of staff, both in terms of competence and time, to the assignment.
- 11.20 Practitioners should take care whatever their rate of charging, that they comply with all professional standards and guidelines and, in particular, quality control procedures.
- 11.21 In the event of a complaint being lodged against the practitioner where fees were a feature in obtaining the work, such practitioners should be prepared to demonstrate to the Investigation and Disciplinary Committees that –

- 11.21.1 their independence has not been affected;
- 11.21.2 the resources allocated to the assignment were at least those that would have been allocated to work of a similar nature; and
- 11.21.3 the client was not misled as to the level of fees for following and subsequent years.

12 PUBLICITY, ADVERTISING AND SOLICITATION

Publicity and advertising

- 12.1 Practitioners generally offer a wide range of professional services and products. For their practices to be conducted in a businesslike manner and to compete effectively with individuals and organisations offering similar services and products, it is necessary that the public be informed of the services and products on offer.
- 12.2 Publicity and advertising by all practitioners of all services and products is therefore permitted.
- 12.3 A practitioner preparing or authorising the issue of material for the purpose of publicity, advertising or direct mailing of his services and products, should do so with a due sense of responsibility to the profession and to the public as a whole. In particular, such material should be aimed at informing the public in an objective manner and be in good taste both as to content and presentation. The medium used must be consistent with the dignity of the profession.
- 12.4 Advertisements should conform with the accepted norms of legality, decency, honesty and truthfulness.
- 12.5 A practitioner will be personally responsible for ensuring that the provisions of this section are complied with, and that what is published about him/her or his/her firm complies with this Code. A practitioner will also be personally responsible for ensuring that all publicity, advertising and direct mailing are subject to the limitations and requirements of this Code.

Good taste

- 12.6 Judgement as to what might or might not constitute good taste can only be made in the context of the particular facts on which that judgement is exercised.
- 12.7 However, in general, material which tends to sensationalise or shock, or which is likely to give offence to religious beliefs, or is racist, is unacceptable. Generally too, the trivialisation of important issues, excessive reliance on a particular personality or personalities, the deriding of public figures, disparagement of educational attainment and material which makes odious comparisons or is strident in tone, hectoring or extravagant is not acceptable.

Furthermore, material should not compare with nor belittle services offered by others, whether practitioners or not, either by claiming superiority for the services of a particular practitioner or otherwise and should not contain testimonials or endorsements.

Advertisements

- 12.8 Advertisements may refer to the basis on which professional fees for services are calculated but to state hourly or other charging rates could be misleading and is considered to be inconsistent with the dignity of the profession.

Solicitation

- 12.9 Direct mailing by all practitioners, pertaining to any services and products, is permitted.
- 12.10 A practitioner may not continue to address such direct mail to, or in any other way pursue, a recipient who has asked him/her to desist.
- 12.11 Cold calling by practitioners for professional work is not permitted.

13 INCLUSION OF THE NAME OF A PRACTITIONER IN A DOCUMENT ISSUED BY A CLIENT

- 13.1 When a client proposes to publish a report by a practitioner (whether as part of another document or on its own) dealing with the client's existing business affairs or in connection with the establishment of a new business venture, the practitioner should take steps to ensure that the context in which the report is published is not such that it might result in the public being misled as to the nature and meaning of the report. In these circumstances the practitioner should advise the client that permission should be obtained before publication of the document.
- 13.2 Similar consideration should be given to other documents proposed to be issued by a client containing the name of a practitioner acting in an independent professional capacity. This does not preclude the inclusion of the name of a practitioner in the annual report of a client.
- 13.3 When practitioners in their private capacity are associated with or hold office in an organisation, it may use their names and professional designations on stationery and other documents. The practitioner should ensure that this information is not used in such a way as might lead the public to believe that there is a connection with the organisation in an independent professional capacity.

14 RECRUITING

Educational institutions

- 14.1 A practitioner may offer bursaries and prizes for students at educational institutions, and may allow the bursaries and prizes to be named after him/her or his/her firm.
- 14.2 A practitioner may endow a chair of accounting or related subjects at a university and may allow his/her or his/her firm's sponsorship to be acknowledged publicly by the university.

Competitor's staff

- 14.3 A practitioner should not, directly or indirectly, offer employment to an employee of another practitioner without first informing the latter in writing. However, an employee of another practitioner who, in response to an advertisement or of his/her own initiative, applies to him/her for employment may be engaged subject to the practitioner's informing the applicant's present employer.

15 RESPONSIBILITY TO COLLEAGUES

Introduction

- 15.1 A practitioner should conduct him/herself in a manner which will promote cooperation and good relations between practitioners and within the profession. In particular, a practitioner should not irresponsibly criticise the professional work, the professional attainments of, or the professional fees charged by another practitioner.
- 15.2 A practitioner should assist fellow practitioners in complying with this Code and should co-operate with the appropriate disciplinary authorities in applying the Code.
- 15.3 A practitioner may provide professional services to those who request it, and at the specific request of a client this may be done even if they are served by another practitioner. He may also replace another practitioner at a client's request.
- 15.4 Practitioners should undertake only such services which they can expect to complete with professional competence. It is essential therefore for the profession in general and in the interests of their clients that practitioners be encouraged to obtain advice when appropriate from those who are competent to provide it.

Accepting new assignments

- 15.5 The extension of the operations of a business undertaking frequently results in the formation of branches or subsidiary companies at locations where an

existing accountant does not practice. In these circumstances, the client or the existing accountants in consultation with the client, might request a receiving accountant practising at those locations to perform such professional services as are necessary to complete the assignment.

- 15.6 Referral of business might also occur in the area of special services, skills or tasks.
- 15.7 The wishes of a client are paramount in the choice of his/her professional advisers, whether or not special skills are involved. Accordingly, a practitioner should not attempt to restrict in any way his/her client's freedom of choice in obtaining special advice, and when appropriate, should encourage him/her to do so.
- 15.8 When a practitioner is asked by a prospective client to provide services or advice, he/she should enquire whether the prospective client has an existing accountant. In cases where there is an existing accountant who will continue to provide professional services, he/she should observe the procedures set out in paragraphs 15.9 to 15.14. If the appointment will result in him/her superseding another practitioner, he/she should follow the procedures set out in paragraph 15.15 to 15.27.
- 15.9 The receiving accountant should limit the services provided to the specific assignment referred from the existing accountant or the client, unless otherwise requested by the client. The receiving accountant should also take all reasonable steps to support the existing accountant's relationship with the client and should not criticise the professional services of the existing accountant, without giving him/her an opportunity to provide all relevant information.
- 15.10 A receiving accountant who is asked by the client to undertake an assignment which is clearly distinct from that being carried out by the existing accountant, or from that initially referred by the existing accountant or the client, should regard this as a separate request to provide services or advice. Before accepting any appointment of this nature, the receiving accountant should advise the client of his/her professional obligation to communicate with the existing accountant, and should immediately do so, preferably in writing, advising him/her of the approach made by the client and the general nature of the request. This action is indicated not only by considerations of professional courtesy but by good business judgement.
- 15.11 Circumstances sometimes arise when the client insists that the existing accountant should not be informed. In this case, the receiving accountant should decide whether the client's reasons are valid. In the absence of special circumstances a mere disinclination by the client for communication with the existing accountant is not a satisfactory reason.
- 15.12 The receiving accountant should -

- 15.12.1 comply with the instructions received from the existing accountant or the client to the extent that they do not conflict with relevant legal or other requirements; and
- 15.12.2 ensure, in so far as it is practical to do so, that the existing accountant is kept informed of the general nature of the professional services being performed.
- 15.13 When there are two or more other practitioners performing professional services for the client concerned, it might be appropriate to notify only the relevant practitioner, depending on the specific services being performed.
- 15.14 When appropriate, the existing accountant, in addition to issuing instructions concerning referred business, should maintain contact with the receiving accountants and co-operate with them regarding all reasonable requests for assistance.

Superseding another practitioner

- 15.15 Clients have an indisputable right to choose their professional advisers and to change them should they so desire.
- 15.16 While it is essential that the legitimate interests of clients be protected, it is also important that a practitioner who is asked to replace another practitioner has the opportunity to ascertain if there are any professional or other reasons why he/she should not accept the appointment. He/she cannot effectively do so without direct communication with the existing accountant. In the absence of a request, the existing accountant should not volunteer information about the client's affairs.
- 15.17 Communication enables a practitioner to ascertain whether the circumstances in which a change in appointment is proposed are such that he/she can properly accept the appointment and also whether he/she wishes to undertake the engagement. In addition, it helps to preserve the harmonious relationships which should exist between all practitioners on whom clients rely for professional advice and assistance.
- 15.18 The extent to which an existing accountant can discuss the affairs of the client with the proposed accountant will depend on
 - 15.18.1 whether the client's permission to do so has been obtained; and
 - 15.18.2 the legal or ethical requirements relating to such disclosure.
- 15.19 The proposed accountant should treat in the strictest confidence and give due weight to any information provided by the existing accountant.
- 15.20 The information provided by the existing accountant might indicate, for example, that the ostensible reasons given by the client for the change are not in accordance with the facts. It might disclose that the proposal to change the accountant was made because the existing accountants stood their ground

and properly carried out their duties, despite opposition or evasion, on an occasion when important differences of principles or practices arose with the client.

- 15.21 Communication between the parties therefore serves –
- 15.21.1 to protect a practitioner from accepting an appointment in circumstances where all the pertinent facts are not known;
 - 15.21.2 to protect the minority proprietors of a business who might not be fully informed of the circumstances in which the change is proposed; and
 - 15.21.3 to protect the interest of the existing accountant when the proposed change arises from, or is an attempt to interfere with the conscientious exercise of his/her duty to act as an independent professional.
- 15.22 Before accepting an appointment involving continuing professional work previously carried out by another practitioner, the proposed accountant should –
- 15.22.1 explain to the prospective client his/her duty to communicate with the existing accountant;
 - 15.22.2 ascertain if the prospective client has informed the existing accountant of the proposed change and has given permission, preferably in writing, to discuss the client's affairs fully and freely with the proposed accountant;
 - 15.22.3 if satisfied with the reply received from the prospective client, request permission to communicate with the existing accountant. If such permission is refused, or the permission referred to in paragraph 15.22.2 is not given, the proposed accountant should decline the appointment, unless there are exceptional circumstances of which he/she has full knowledge, and he/she has satisfied him/herself regarding all relevant facts, by some other means; and
 - 15.22.4 on receipt of permission, ask the existing accountant, preferably in writing
 - (a) to provide information on any professional reasons which should be known before deciding whether or not to accept the appointment; and, if there are such matters,
 - (b) to provide all the necessary details to be able to come to a decision; and
 - (c) to provide the information within a specified time otherwise he/she will assume that there are no matters which should be brought to his/her attention.

- 15.23 On receipt of the communication referred to in paragraph 15.22.3-
- 15.23.1 the existing accountant should forthwith reply, preferably in writing, advising whether there are any professional reasons why the proposed accountant should not accept the appointment;
 - 15.23.2 if there are any such reasons or other matters which should be disclosed, the existing accountant should ensure that the client has given permission to give details of this information to the proposed accountant. If permission is not granted the existing accountant should report that fact to the proposed accountant; or
 - 15.23.3 on receipt of permission from the client, the existing accountant should disclose all information needed by the proposed accountant to be able to decide whether or not to accept the appointment, and discuss freely with the proposed accountant all matters relevant to the appointment of which the latter should be aware.
- 15.24 If the proposed accountant does not, within a reasonable time, receive a reply to his/her communication to the existing accountant and he/she has no reason to believe that there are any exceptional circumstances surrounding the proposed change, he/she should try to communicate with the existing accountant by some other means. If he/she is unable to obtain satisfactory response in this way, he/she should send a further letter, stating that he/she assumes there is no professional or other reason why he/she should not accept the appointment and that he/she intends to do so.
- 15.25 The fact that there might be fees owing to the existing accountant is not a professional reason why the proposed accountant should not accept the appointment.
- 15.26 Unless he/she has a lien over any books and papers for the payment of charges outstanding, the existing accountant should, promptly after the change in appointment, transfer all books and papers that are the property of the client and which are in or which may come into his/her possession to the client, or with the client's permission, to the newly appointed accountant. Whether or not he/she has a lien is a question of law and of fact, and practitioners should bear in mind that a refusal to hand over books and papers over which they do not have a valid lien could render them liable for any costs by the client as a consequence of that refusal.
- 15.27 Matters of which the proposed accountant should be made aware would, where relevant, include the following:
- 15.27.1 Reasons for the change advanced by the client of which the existing accountant is aware, are not in accordance with the facts, as understood by the latter;

- 15.27.2 The proposal to displace the existing accountant arises because the incumbent carried out his/her duties in the face of opposition or evasion/s in which important differences of principle or practice had arisen with the client;
 - 15.27.3 The client, its directors, or employees might have been guilty of some unlawful act or default, or some aspect of their conduct which is relevant to the carrying out of an audit ought, in the opinion of the existing accountant, to be investigated further by the appropriate authority;
 - 15.27.4 The existing accountant has unconfirmed suspicions that the client or its directors or employees have defrauded the Inland Revenue, Customs and Excise or others;
 - 15.27.5 There remains a failure or refusal by the client to supply the existing accountant with information required by him/her for the performance of his/her duties;
 - 15.27.6 The existing accountant has serious doubts regarding the integrity of the directors and/or senior managers of the client company;
 - 15.27.7 The client, its directors, or employees have attempted to limit the scope of the existing accountant such that this would entail the issue of a disclaimer of opinion;
 - 15.27.8 The existing accountant proposes to bring to the attention of members or creditors circumstances surrounding the proposed change of auditor.
- 15.28 The existing accountant should not refuse to communicate, or delay his reply, on the following grounds:
- 15.28.1 The proposed accountant has obtained nomination in contravention of this Code; or
 - 15.28.2 The existing accountant has a genuine belief, whether justified or not, of having been unfairly treated by the client.

5
PRACTICE
REVIEW

1	Act	5-3
2	Types of reviews	5-3
3	Review cycles	5-3
4	Review objectives	5-3
5	Review scope	5-3
6	Practice reviewers	5-3
7	Practice review process	5-3
8	Results of the review	5-4
9	Inspection Committee	5-4
10	Re-review criteria	5-5
11	Reconsiderations	5-5
12	Costs	5-5
13	Cancellation	5-5
14	Confidentiality	5-5

ACT

Practice reviews (also referred to as inspections) are performed in terms of Section 47 of the Auditing Profession Act, 2005. Functions of the IRBA include promoting the integrity of the auditing profession through conducting practice reviews.

TYPES OF REVIEWS

Audit firms performing audits of financial statements of public interest entities are subject to firm reviews at least once in a review cycle. This review will include the review of a sample of attest engagement files in respect of category A and B clients.

Audit firms performing audits of financial statements of non-public interest entities (category C), are subjected only to a review of attest engagements.

REVIEW CYCLES

Engagement reviews are either on a 3 year or a 6 year review cycle, depending on the classification of the firm/RA's attest portfolio. Firm reviews are on a 3 year review cycle.

REVIEW OBJECTIVES

The objective of engagement reviews is to monitor compliance with the relevant professional standards in the performance of the attest function. The objective of firm reviews is to inspect the design and implementation of the systems of quality control employed by audit firms.

REVIEW SCOPE

Engagements subject to review are audits of public interest entities as referred to in the Auditing Profession Act, 2005, section 1(b). For firm reviews the control system elements are leadership responsibilities, ethical requirements, client acceptance and continuance, human resources, engagement performance, and monitoring.

PRACTICE REVIEWERS

Reviews are performed by qualified professionals employed on a full time basis by the IRBA.

PRACTICE REVIEW PROCESS

A broad overview of the practice review process is as follows:

- Schedule review date eight weeks in advance.

- Request pre-review information from RA/Firm.
- Perform review of RA/Firm.
- Discuss review findings with RA/Firm (no third party attendance allowed).
- Obtain comments from RA/Firm on review findings within specified time frame.
- Prepare formal review report (which includes review findings and comments received) and make recommendation on review result in terms of re-review criteria.
- Perform review department consistency/quality control checks.
- Present formal review report to Inspection Committee on an anonymous basis of quarterly meeting for decision on findings of the review.
- Director: Practice Review relays Committee decision to RA/Firm.
- Receive undertaking from RA/Firm to implement corrective action.

RESULTS OF THE REVIEW

Review decision is either:

- Satisfactory.
- Review pending – conducting follow up reviews until satisfactory.
- Investigating Committee referral – disciplinary action by the IRBA.

Referral to Investigating Committee if:

- Public is at risk, or
- Re-review indicates failure to implement corrective action, or
- Flagrant disregard of professional standards, or
- Refusal to cooperate in the review process.

INSPECTION COMMITTEE

Currently, the Inspection Committee comprises of 8 RAs who serve on a voluntary basis for a maximum period of 6 years. One of the Committee members is an IRBA Board member. In future it is the intention to also include non-attest RAs in order for the Committee to reflect the same composition ratio as the Board (i.e. 60% non-attest RAs and 40% attest RAs). The committee's responsibilities include:

- Determining the nature of attest engagements subject to practice review,
- Determining the re-review criteria for each review cycle,
- Assessing the appropriateness of the standard documentation used in the review process;
- Determining the outcome of reviews on an anonymous basis, and
- Assessing the quality and consistency of review reports.

REVIEW PENDING CRITERIA

The criteria for follow-up inspections or reviews are determined by the Inspection Committee for each review cycle. Sufficient and appropriate documentation is required. Verbal representations are not accepted. Non-compliance with any one of the criteria results in an unsatisfactory result.

RECONSIDERATIONS

Should an RA/Firm believe the decision of the Inspection Committee should be reconsidered, due to the Committee not having sufficient information available at the time the initial decision was made, they have 45 calendar days from the Inspection Committee decision date to submit a detailed written request for reconsideration to the Director: Practice Review. This request will then be placed before the Inspection Committee, on an anonymous basis, at the next quarterly meeting for consideration. The Director: Practice Review will relay the Committee's final decision to the RA/Firm.

COSTS

RAs/Firms are billed for all reviews. Fees are determined annually and are published under Section 7 of the Manual.

CANCELLATION

RAs/Firm receive a minimum of eight weeks notice prior to their review visit. Cancellation fees are charged for both initial and other reviews where review visits are cancelled by RAs/Firms at short notice.

CONFIDENTIALITY

The confidentiality requirements of Section 47 of the Auditing Profession Act, 2005 are strictly respected and enforced. Documentation pertaining to the completed review cycle of an RA/Firm is not retained.

6
STANDARDS

1	Background	6-3
2	Committee for Auditing Standards	6-3
3	Committee for Auditor Ethics	6-4
4	Consultative Advisory Group	6-4
5	Auditing pronouncements issued by the CFAS	6-5

BACKGROUND

On 1 April 2006, the Auditing Profession Act, 2005 (Act 26 of 2005) (the APA) came into effect. The APA provides for the establishment of a Committee for Auditing Standards (CFAS), and a Committee for Auditor Ethics (CFAE).

COMMITTEE FOR AUDITING STANDARDS

The CFAS was established by the Regulatory Board in terms of section 20(2)(b) of the APA to assist the Regulatory Board:

- (a) to develop, maintain, adopt, issue or prescribe auditing pronouncements.
- (b) to consider relevant international changes by monitoring developments of other auditing standard-setting bodies and sharing information where requested; and
- (c) to promote and ensure the relevance of auditing pronouncements by:
 - (i) considering the needs of users of audit reports;
 - (ii) liaising with the other committees of the Regulatory Board on standards to be maintained by registered auditors and by receiving feedback from such committees on areas where auditing pronouncements are needed;
 - (iii) ensuring the greatest possible consistency between auditing pronouncements and accepted international pronouncements; and
 - (iv) consulting with professional bodies on the direction and appropriateness of auditing pronouncements; and
- (d) to influence the nature of international auditing pronouncements by:
 - (i) preparing comment on exposure drafts or discussion papers and replies to questionnaires prepared by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC) or a successor body; and
 - (ii) nominating representatives to committees of the International Auditing and Assurance Standards Board or a successor body when requested to do so by the Regulatory Board.

Section 22(1) of the APA provides that the CFAS shall consist of at least the following members appointed by the Regulatory Board;

- (a) five (5) persons registered as auditors with the Board;
- (b) one (1) person with experience of business;
- (c) an incumbent of the office of the Auditor-General, or a person nominated by that incumbent;
- (d) an incumbent of the office of the Executive Officer of the Financial Services Board, or a person nominated by that incumbent;

- (e) one (1) person with experience in the teaching of auditing at a university recognised or established under the Higher Education Act, 1997 (Act 101 of 1997);
- (f) one (1) person nominated by any stock exchange licensed under the Securities Services Act, 2004 (Act 36 of 2004);
- (g) the Commissioner of the South African Revenue Services established in terms of the South African Revenue Services Act, 1997, (Act 34 of 1997), or a person nominated by the Commissioner; and
- (h) an incumbent of the office of the Registrar of Banks, or a person nominated by that incumbent.

COMMITTEE FOR AUDITOR ETHICS

The CFAE was established in terms of section 20(2)(a) of the APA to assist the Regulatory Board to:

- (a) Determine what constitutes improper conduct by registered auditors by developing rules and guidelines for professional ethics, including a Code of Professional Ethics;
- (b) Interact on any matter relating to its functions and powers with professional bodies and any other body or organ of State with an interest in the auditing profession; and
- (c) Provide advice to registered auditors on matters of professional ethics and conduct.

Section 21 (1) of the Auditing Profession Act provides that the CFAE shall consist of at least the following members appointed by the Regulatory Board:

- (a) Three (3) registered auditors;
- (b) Three (3) persons representing users of audits;
- (c) One (1) person representing an exchange which is the holder of a stock exchange licence issued under the Securities Services Act 36 of 2004; and
- (d) One advocate or attorney with at least ten (10) years experience in the practice of law.

CONSULTATIVE ADVISORY GROUP

The Consultative Advisory Group (CAG) provides an advisory role to the IRBA on an ad hoc basis. The objectives of the CAG are to consult to the IRBA on matters relating to the auditing profession, to identify matters for the attention of the IRBA and to enhance the transparency and accountability of the auditing profession in South Africa. The CAG is broadly constituted, comprising of members representative of those preparing financial statements, regulators of various industries as well as individuals otherwise interested in audit issues.

AUDITING PRONOUNCEMENTS ISSUED BY THE CFAS

On 1 January 2005 the Auditing and Assurance Standards Board (AASB), the predecessor to the CFAS, adopted the entire suite of auditing pronouncements issued by the IAASB for use in South Africa. These pronouncements replaced South African Auditing Standards (SAAS) and South African Auditing Practice Statements (SAAPS) in existence at the time.

Guidance issued over and above the guidance contained in the IAASB Standards adopted and relating to the application of those standards is issued as SAAPS. Other auditing pronouncements are issued as guidelines or circulars.

Board Notice 128 published in Government Gazette No. 32615 on 9 October 2009 more fully describes the adoption of auditing pronouncements and circulars made under the Public Accountants and Auditors Act, 80 of 1991 (now repealed) and the adoption of International Standards on Auditing, Assurance and Ethics Pronouncements in terms of the Auditing Profession Act, 26 of 2005 (the Act).

Subsequent to 1 April 2006, the Board resolved to adopt, issue and prescribe all the documents contained in the successive 2006, 2007 and 2008 Editions of the International Federation of Accountants' publications known as the *"Handbook of International Auditing, Assurance and Ethics Pronouncements"* with the 2008 Handbook Part 1 being currently effective. Board Notice 128 also adopts, issues and prescribes the *"Handbook of International Standards on Auditing and Quality Control - 2009 Edition"* that incorporates the redrafted and revised International Standards on Auditing (ISAs) arising from the "Clarity project" of the International Auditing and Assurance Standards Board (IAASB), which become effective for audits of entities with financial periods commencing on or after 15 December 2009. Early adoption is permitted.

The auditing pronouncements may be downloaded free of charge from the IRBA website: <http://www.irba.co.za> and are also available free of charge on CD on request from the IRBA.

7
GENERAL
CIRCULARS

B.1/1992	Maintenance of standards and reporting of improper conduct	7-3
B.2/1992	Appointment of incorporated practices as auditors or accounting officers	7-4
B.1/1995	Practice rights in adjoining countries	7-5
B.1/1997	Trust monies	7-12
01/2006*	Giving Second Opinions	7-15
01/2009*	Vertaling van 'IAASB Glossary of Terms (December 2006)'	7-16
	List of circulars that have been withdrawn or replaced	7-17

* Available from IRBA on request and on the IRBA website.

MAINTENANCE OF STANDARDS AND REPORTING OF IMPROPER CONDUCT

Circular B.1/1989 imposed a duty on registered accountants and auditors to report to the Board serious instances of questionable services being rendered by colleagues. It envisaged instances of professional negligence, as well as serious misrepresentation in financial statements, and collusion to deceive.

However, in the light of an opinion received from a senior counsel which dealt with the issue of client confidentiality, it has been decided to replace that circular.

The reason for the substitution of the circular is briefly as follows:

The reporting to the Board of questionable work on the part of a colleague could ultimately result in a disciplinary hearing. Obviously, the client's affairs would, to some extent, be scrutinised during an investigation of the alleged questionable work. This could constitute a breach of client confidentiality. Even though a disciplinary enquiry is confidential, its findings are not privileged and this could have the unlikely but nevertheless foreseeable consequence of the client's affairs becoming widely known. (For example the Board's records are vulnerable to subpoena.)

Therefore, if the reporting of a colleague would not involve the divulging of a client's affairs, or if the client agrees, then a practitioner is ethically bound to report substandard work (as outlined above) to the Board, in the interests of maintaining the standards of the profession generally.

L M VAN VUUREN
Executive Director

APPOINTMENT OF INCORPORATED PRACTICES AS AUDITORS OR ACCOUNTING OFFICERS

Section 21 (2) of the *Public Accountants' and Auditors' Act, 1991* (Act 80 of 1991) allows accountants and auditors registered in terms of the Act and engaged in public practice to form a company in terms of the Companies Act, 1973 (Act 61 of 1973).

The Chief State Law Adviser states that when a partnership (of registered accountants and auditors) converts to a company a new legal person is formed which, although the members may remain the same, cannot be regarded as equal to the partnership.

Accordingly, unless the relevant legislation is amended, the Registrar of Companies and Close Corporations requires auditors and accounting officers who held such appointments prior to converting their practices from partnerships to companies, to submit forms CM31 in respect of each company audit appointment and to have themselves elected anew as accounting officers of each close corporation for which they act as such.

The close corporation must also lodge with the Registrar an amended CK2A.

L M VAN VUUREN
Executive Director

PRACTICE RIGHTS IN ADJOINING COUNTRIES

BOTSWANA

In terms of the Accountants' Act, 1988 as amended up to 1998 AGM, a full member (Associate or Fellow) of the Botswana Institute of Accountants may practise as a Public Accountant in Botswana if he/she has been admitted as a member of the Institute, has been issued with a practising certificate by the Institute and he/she is resident in Botswana.

A person is considered resident if he has an office or place of business in Botswana. It should be noted that the practising certificate should be renewed annually.

PRACTISING CERTIFICATE CHECK LIST

1. An Associate or Fellow member of the Institute
2. A member of the Institute continuously for a period of not less than two years
3. Before or after or partly before and partly after admission to membership of the Institute, has completed a period, being not less than thirty months, of approved accountancy experience in public practice under the supervision of the principal in an approved training office of a firm of Public Accountants
4. After admission to membership of the Institute he/she has obtained within the five years preceding his/her application for a practicing certificate, a further period being not less than twelve months of post qualification experience under the supervision of a principal in an approved training office of a firm of Public Accountants
5. Passed Botswana Tax
6. Has an office or place of business in Botswana in the capacity of sole principal or in partnership
7. Provide Professional Indemnity Insurance
8. Provide Continuity of Practice Agreement in the event of death or incapacity
9. Provide Continuing Professional Development Return for the year ended and solemn declaration
10. Provide Post Qualification Practicing Experience in at least 4 of the following 6 areas:
 - Accounting
 - Auditing
 - Taxation : Corporate, Personal

- Incomplete Records
 - Computer Systems and Operation
 - Sources of Finance
11. Provide solemn declaration of being Resident of Botswana for the past twelve months
 12. Provide copy of residence and work permit
 13. Remittance Fee – currently P11000 VAT inclusive
 14. Practising Certificate shall be issued to members for a period not exceeding twelve months and ending on the thirty-first day of December and shall be renewed for a period of twelve months on the first day of January

For further information, please contact

Mr Duncan Majinda
 Chief Executive Officer
 The Botswana Institute of Accountants
 Private Bag 0021
 GABORONE
 Botswana
 Telephone: (+267) 397-2992
 Telefax: (+267) 397-2982
 E-mail: dmajinda@bia.org.bw
 Website: www.bia.org.bw

LESOTHO

The Accountants’ Act, 1977 and the Accountants’ Amendment Act, 1984 distinguish between three types of members, i.e. Chartered Accountants, Registered Accountants and Licensed Accountants. Members of The South African Institute of Chartered Accountants would qualify for membership of the Lesotho Institute of Accountants as Public Accountants and this would in the absence of exceptional circumstances, be granted on provision of evidence of current membership of The South African Institute of Chartered Accountants. Such persons would, however, also be required to be registered as non-practising Lesotho Chartered Accountants for a period of one year. After the expiration of the year, he may apply for practising status, provided he can show he has sufficient audit experience with a recognised firm, which could be a South African firm.

Legislation was amended, and since August 9, 1989, a chartered accountant practising in Lesotho must be resident in Lesotho or be a partner in a firm of chartered accountants

registered in Lesotho in which not less than one partner is resident in Lesotho. He must have a permanent place of business in Lesotho, and employ Basotho staff (although there is no minimum requirement), and train them as far as reasonably practicable.

Each practising member must belong to a registered firm or be classified as a sole practitioner. The name of each practising firm must be approved by the Lesotho Institute of Accountants and entered in its Register of Firms.

The concept of "residence" is interpreted rather loosely and persons spending most of their working hours in Lesotho, regardless of where they sleep, are considered to be resident.

It should be noted that the Accountants' Act, 1977, includes "holding out" provisions.

For further information, please contact

Ms P Lebitsa

Chief Executive Officer

Lesotho Institute of Accountants

P O Box 1256

MASERU 100

Lesotho

Telephone: (00266) 2231-2115

Telefax: (00266) 2232-0022

E-mail: puleng.lebitsa@lia.org.ls or ceo@lia.org.ls Website: www.lia.org.ls

MALAWI

Under the Public Accountants' and Auditors' Act (Malawi), a qualified person practising in Malawi should be registered with the Malawi Accountants' Board through the Society of Accountants in Malawi. Registered accountants and auditors (with the Independent Regulatory Board for Auditors in South Africa) qualify for membership of the Society of Accountants in Malawi but have to register with the Malawi Accountants' Board. Under the by-laws of the Society of Accountants in Malawi a member of the Society cannot practise in partnership with a non-member. Members wishing to practice in Malawi are required to sit and pass practising examinations in Malawi Company Law and Tax.

For further information, please contact

Mr Daniel Dunga

Chief Executive

The Society of Accountants in Malawi

P O Box 1

BLANTYRE

Malawi

Telephone: (00265) 1820-301

Telefax: (00265) 1824-312

Email: socam@socam.mw

NAMIBIA

The practising rights of auditors in Namibia are governed by the Public Accountants' and Auditors' Act, 1951 of Namibia. This Act, which was applicable in the territory before Namibia's independence, remains in force by virtue of the provisions of section 140 of the Constitution of Namibia.

Members of the Institute of Chartered Accountants in South Africa are recognised by the Namibian Institute, and may become members of the Namibian Institute on application.

A member of The South African Institute of Chartered Accountants and a person who qualifies for registration with the South African Independent Regulatory Board for Auditors and who is not resident in Namibia, may only practise as a non-resident practitioner provided that he or she is registered with the Namibian Public Accountants' and Auditors' Board as such, and is in partnership with persons who are resident in Namibia and registered as public accountants and auditors with the Namibian Public Accountants' and Auditors' Board. The non-resident partners may not exceed 50 percent of the total number of partners in the Namibian firm, and may not sign audit reports.

For further information, please contact

Ms A Jooste

The Administrative Officer

Public Accountants' and Auditors' Board

P O Box 21459

WINDHOEK

Namibia

Telephone: +26461 220218

Telefax: +26461 230014

E-mail: secretariat@icanpaab.com

SWAZILAND

In terms of the Accountants' Act, 1985, which came into force on April 1, 1985, accountants practising as auditors in Swaziland must be members of the Swaziland Institute of Accountants and must be registered in terms of the Act.

An auditor practising in Swaziland must have an office or place of business in Swaziland and must either be a citizen of Swaziland or hold a residence permit and be ordinarily resident in the country for not less than eight months in each year.

In order to obtain membership as a practising auditor of the Swaziland Institute of Accountants, a member of the South African Institute of Chartered Accountants will have to satisfy the Swaziland Institute by examination that he has an adequate knowledge of the laws of Swaziland relating to taxation, companies, insolvency and administration of estates as well as complying with the above residential and place of business criteria.

For further information, please contact

Mr RT Sithebe

Chairman

Swaziland Institute of Accountants

P O Box 2653

MBABANE H100

Swaziland

Telephone: (00268) 404-5566

Telefax: (00268) 404-6827

E-mail: sia@realnet.co.sz

ZIMBABWE

Accounting services

Within the profession there are no restrictions on foreign accountants wishing to work (be employed) in Zimbabwe. However, a work permit from the government is required.

Similarly, foreign accountants may provide accountancy services to the public if they register with the PAAB and obtain a Practising Certificate, which must be renewed annually. However, they may not register as public accountants unless they are members of a constituent body of the Zimbabwean Public Accountants' and Auditors' Board. The constituent bodies are –

- the Zimbabwe Branch of the Association of Chartered Certified Accountants;
- the Zimbabwe Branch of the Chartered Institute of Management Accountants;
- the Institute of Chartered Accountants of Zimbabwe;

- the Institute of Chartered Secretaries and Administrators of Zimbabwe; and
- the Institute of Certified Public Accountants of Zimbabwe.

Members of constituent bodies providing services direct to the public are required to hold practising certificates issued by the Zimbabwean Board.

The Zimbabwe branches of the Chartered Association of Certified Accountants and of the Chartered Institute of Management Accountants both require members to be resident in the country. The Institute of Chartered Accountants of Zimbabwe has a reciprocal membership agreement with The South African Institute of Chartered Accountants which allows South African chartered accountants to pass conversion examinations and thus be admitted as members.

Auditing services

The Companies Act and other acts dealing with the audit of business enterprises require that the auditor be a registered public auditor in terms of the Public Accountants' and Auditors' Act. Foreign auditors wishing to practise in Zimbabwe are required to -

- (a) be a member of a constituent body of the Zimbabwean Public Accountants' and Auditors' Board;
- (b) meet any requirements of that constituent body (e.g. a practising certificate);
- (c) be registered as an auditor with the Zimbabwean Public Accountants' and Auditors' Board; and
- (d) hold a Zimbabwean Public Accountants' and Auditors' Board practising certificate as an auditor.

Only members of the following three constituent bodies may register as auditors:

- The Institute of Chartered Accountants of Zimbabwe; and
- The Zimbabwe Branch of the Association of Chartered Certified Accountants.
- The Institute of Certified Public Accountants of Zimbabwe.

Members of the Institute of Chartered Accountants who wish to practise are required to hold practising certificates issued by the Institute. These are issued annually and members are required to show that they hold adequate professional indemnity insurance, to show that any client monies held in trust have been audited, and to meet annual Continuing Professional Development requirements. There is provision for non-resident partners of local practising firms to be admitted as provisional members of the Institute.

The Public Accountants' and Auditors' Act and the acts establishing the constituent bodies provide penalties for anyone carrying out audits without being registered, for holding oneself out as a member of a constituent body, and for holding oneself out as a registered public auditor. "Holding oneself out as an auditor" includes the circulation within Zimbabwe of an audit report on a Zimbabwean business entity.

For further information, please contact

Admire Ndurunduru

Secretary and Chief Executive Officer

PAAB (Public Accountants' and Auditors' Board of Zimbabwe)

2 Bath Road

Belgravia

Harare, Zimbabwe

Telephone: (00263) 4 793950/793471/252672

Telefax: (00263) 4-70-6245

E-mail: admiren@icaz.org.zw

Website: www.paab.org.zw

TRUST MONIES

The question of so-called "trust accounts" being utilised by RAAs for the retention of clients' monies or "trust monies" as they are sometimes called, is beginning to cause concern to the Board. The major reason for this concern is that the term "trust account" is misleading. Clients and members of the public in general tend to assume that the term "trust account" connotes a statutory trust account (such as those utilised by estate agents and attorneys, and regulated in terms of the Estate Agents and Attorneys Acts) which are underpinned by statutory fidelity funds. This assumption is not unreasonable; however, it is inaccurate.

So-called "trust accounts" operated by persons, including accountants, which do not enjoy statutory protection, do not afford the sort of protection which the public (and I suspect many practitioners as well) believe that they do enjoy. The immediate effects of this are twofold:

- 1 In the event of the practitioner absconding with the funds in the so-called "trust account" the owner of the funds is left with nothing but a personal action against the individual (who might or might not himself carry fidelity insurance);
- 2 In the event of the practitioner's insolvency, the funds will in all probability fall into the insolvent estate at the expense of the true owner and also at the expense of the image of the profession as a whole.

Some practitioners are also under the impression that these monies are protected by the provisions of the Trust Property Control Act, 1988: This is not the case.

Accordingly the Board requests that any practitioners who operate so-called "trust accounts" or who refer to "trust accounts" in their dealings with their clients, desist from this practice immediately.

The Board is, however, fully aware of the fact that practitioners do periodically hold funds for or on behalf of clients, for a variety of reasons.

This fact is recognised in both the Disciplinary rules and the Code of conduct which respectively state the following:

"OLD" DISCIPLINARY RULES

- 2.1 ... any practitioner shall be guilty of improper conduct if he/she –
2.1.7 fails

- 2.1.7.1 to maintain in an account or accounts with an institution or institutions registered in terms of the Banks Act, 1990 (Act 94 of 1990), separate from his/her own account and appropriately designated (which account or accounts may be a general account in his/her name or specific accounts operated in the names of the relevant clients or any other person to whom he/she is accountable), all moneys which shall come into his/her possession or under his/her control in the course of his/her professional practice and for which he/she is liable to account to a client or any other person;

CODE OF CONDUCT

- 10.15 A practitioner entrusted with monies belonging to others, in the course of his/her professional work, should –
- 10.15.1 keep such monies separate from personal or firm monies;
 - 10.15.2 use such monies only for the purpose for which they are intended; and
 - 10.15.3 at all times be ready to account for those monies to any person entitled to such accounting.
- 10.16 A practitioner should maintain one or more bank accounts appropriately designated for clients' monies.
- 10.17 Clients' monies received by a practitioner should be deposited without delay to the credit of a client account, or – if in the form of documents of title to money and documents of title which can be converted into money – be safeguarded against unauthorised use.

Keeping clients' monies totally separate in specifically designated client accounts (rather than so-called "trust accounts") will go some way towards solving the problem and is probably acceptable in a number of cases, for example where a practitioner receives funds on behalf of a client and has to bank them for a short period before transferring them to the client.

Where the account is opened in the name of the client but is operated by the practitioner, the practitioner acts in the capacity of mandatory of the client. In other words, this is nothing more than a contract of mandate for the rendering of certain services coupled with the power to represent the client in operating the account. The practitioner acts as the client's agent. If the practitioner goes insolvent the money in the account will not form part of his insolvent estate but remains the property of the client.

The same considerations do not apply where the account is opened in the name of the practitioner, but with a reference to a client. Unless the client is able to show that

the mandate given to the practitioner was for limited purposes only, the client will not be successful in claiming the money in the account if the practitioner does become insolvent.

Furthermore, this would in any event not afford the client any protection against theft by the practitioner.

However, in the case of trust monies in the conventional sense (frequently funds held pending the outcome of some dispute, the ownership of such funds being uncertain at the time), the Board suggests that these rather be placed in the statutory trust account of an attorney where they will be beyond attack.

The Board welcomes comment from practitioners on this subject. If necessary, the profession could consider the introduction of statutory trust accounts, but this would obviously involve fairly major legislative amendment, additional administration (by practitioners and by the Board) and additional costs.

L M VAN VUUREN
Executive Director

GIVING SECOND OPINIONS

* Available from IRBA on request and on the IRBA website.

01/2009*

**VERTALING VAN 'IAASB GLOSSARY OF TERMS
(DECEMBER 2006)'**

* Available from IRBA on request and on the IRBA website.

**LIST OF CIRCULARS THAT HAVE BEEN WITHDRAWN OR
REPLACED BY SUBSEQUENT CIRCULARS**

Circular no. B	Subject	Comment
2/1981	Establishment of Public Accountants' and Auditors' Board National Education Fund	Withdrawn (01/12/98)
1/1986	Neighbouring states	Withdrawn (01/01/95)
2/1986	Late lodging of articles of clerkship and antedating of articles of clerkship	Withdrawn (01/01/94)
3/1986	Stamp duty on articles of clerkship	Withdrawn (01/01/94)
4/1986	Application of Rule of Conduct	Withdrawn (01/11/98)
5/1986	General circular	Withdrawn (01/01/94)
1/1987	Breaks in articles to do the initial period of national service	Withdrawn (01/01/94)
2/1987	Material irregularities under section 20(5) of the Public Accountants' and Auditors' Act, 1951	Replaced by Circular no. B.3/1991
3/1987	Fees	Withdrawn (01/01/94)
1/1988	Date of lodgement and antedating of articles of clerkship	Withdrawn and replaced by Articled Clerk regulation 7 and Trainee Accountant regulation 9
2/1988	Deferment of national service of prospective chartered accountants	Withdrawn (01/01/94)
1/1989	Maintenance of standards and reporting of improper conduct by registered accountants and auditors	Replaced by Circular no. B.1/1992
1/1991	Material Irregularities	Withdrawn (now covered by Material Irregularities Guide* issued April 2004)
2/1991	Independent neighbouring states	Withdrawn (01/01/95)
3/1991	Material Irregularities	Withdrawn (now covered by Guide on Reportable Irregularities Issued June 2006)*
1/1998	Firm Names	Withdrawn (now covered by paragraphs 10.25 to 10.39 in the Code of Conduct)
2/1998	Restructuring of certain functions	Withdrawn (31/12/2000)

**LIST OF CIRCULARS THAT HAVE BEEN WITHDRAWN OR
REPLACED BY SUBSEQUENT CIRCULARS**

Circular no. B	Subject	Comment
1/2004	Adoption of IAASB standards by the Auditing and Assurance Standards Board, including Appendix 1 and Appendix 2 thereto.	Withdrawn and replaced by Board Notice 128 of 2009 in Government Gazette No. 32615 published on 9 October 2009
1/2005	Addendum to Circular B.1/2004	Withdrawn and replaced by Board Notice 128 of 2009 in Government Gazette No. 32615 published on 9 October 2009
2/2006	Vertaling van Verslae en Woordelys	Replaced. Refer to: Omsendbrief 01/2009 Vertaling van 'IAASB Glossary of Terms (December 2006)' issued July 2009

*The Guide on Reportable Irregularities is available on the IRBA website.

