



# MANEO

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NEWSLETTER FROM THE PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD  
NUUSBRIEF VAN DIE OPENBARE REKENMEESTERS- EN OUDITEURSRAAD

## REPORT FROM THE CHIEF EXECUTIVE OFFICER

The 2004 year ended on a very positive note with the release by National Treasury of the Draft Auditing Profession Bill, 2004, for public comment by 11 February 2005. The PAAB welcomes this very important milestone in the quest for a new and improved regulatory system for the auditing profession.

The PAAB devoted considerable time and effort to a detailed study of the document and we submitted our comprehensive comment on due date. We also advised members by e-mail that a copy of the press release and of our comment document was posted on our web-site on that date.

The PAAB's comment is for the most part positive with respect to the principles underpinning the Bill, but we have expressed concerns that we believe need to be addressed before the Bill is finalised. Many of these concerns relate to the actual drafting of the Bill that contains areas of ambiguity and a general lack of empowering clauses to enable the new regulatory body to carry out the objectives and responsibilities ascribed to it.

Some of the major areas of concern raised by the PAAB are:

- The contradictory provisions of the Bill relating to the responsibilities of accredited professional bodies and the new regulatory body for the education and training of entrants

into the practicing profession.

- The provisions of the Bill which deal with the operational procedures and processes relating to the investigation and disciplinary functions of the new regulatory body. The PAAB fully supports what it believes to be the intention of the drafters, but has reservations about whether the Bill as drafted achieves this.
- The fact that the Bill does not clarify the funding arrangements for the new regulatory body. International best practice requires regulators to be seen to be independent of possible undue influence by the profession and funding arrangements are a key consideration in this regard.

The PAAB has submitted its comments and suggestions with the intention of contributing positively to assisting in the need for the new legislation to be clear, unambiguous and practical to enable the successor regulator to carry out its functions effectively and efficiently in the public interest.

The submissions by the PAAB and all other parties may be viewed on the government website at [www.treasury.gov.za](http://www.treasury.gov.za). The PAAB's submission may be viewed on our website at [www.paab.co.za](http://www.paab.co.za) ■

– **CLAUDE O'FLAHERTY**  
*Chief Executive Officer*

## PAAB STAFF EXCEL

The PAAB congratulates the following staff members for their commitment to improving their knowledge and for achieving outstanding results:

### LEGAL DEPARTMENT

Caroline Garbutt: Master of Laws (LLM), UNISA

Tshepo Maganedis: Diploma in Management, Accounting and Finance, Varsity College

### AUDITING STANDARDS DEPARTMENT

Bernard Agulhas: Management Advancement Programme, WITS (with distinction)

Cindy Jonker: Certificate in Money Laundering Control, RAU (with distinction)



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## NEW APPOINTMENTS

### BOARD

For the first time since the 1960's, both the Chairman and Vice-Chairman have been re-elected to office for a second term. Their respective profiles are as follows:

#### CHAIRMAN:

##### MS RUTH BENJAMIN-SWALES



Ruth completed her B Comm and CTA through UCT in 1985, and passed the qualifying examination in 1989. She was elected as SAICA's representative to the PAAB in 2000, and has served as a member of the

PAAB's Exco since 2002. She served as Vice-Chairman of the PAAB in 2003, and was elected Chairman in 2004. Ruth is currently a partner at Ernst & Young.

#### VICE-CHAIRMAN:

##### MR CHARLES REID



Charles studied at Natal University and passed the Board's qualifying examination in 1981. He served articles with Forsyth and Nel. He was admitted as a partner of CJ Lowe & Company in 1987, and is currently a director of Lowe & Company Chartered Accountants (SA) Inc.

His particular professional interests include taxation, estate planning and all aspects of property development, investment and management.

### CERTIFICATE AWARD



In recognition of Mr. Patel's dedicated service as a member of the Board from 1999 to 2004 and as its Chairman during 2003, the PAAB presented Mr. Patel with a certificate. Pictured with Mr. Patel is the current chairperson, Ms. Ruth Benjamin-Swales.

### PAAB STAFF

#### Communications Manager

Joanne Johnston joined the PAAB in January 2005. She is familiar with the profession, having been employed at SAICA previously, where she was involved in marketing, communications and publications, including the e-media.

#### IT Engineer

Kreeson Naraidoo joined the PAAB in March 2005. He has an extensive IT background and his core responsibilities include networking, research, system maintenance, training, troubleshooting and user support.



## AUDITING STANDARDS

### IAASB RELEASES NEW ISA 700

The International Auditing and Assurance Standards Board (IAASB) released International Standard on Auditing (ISA) 700 Revised, *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements*, including conforming amendments.

One of the main reasons for the change to the format of the auditor's report was the IAASB's desire to enhance the transparency and comparability of auditor's reports across international borders.

The purpose of ISA 700 (Revised) is to establish standards and provide guidance on the independent auditor's report issued as a result of an audit of a complete set of general purpose financial statements prepared in accordance with a financial reporting framework that is designed to achieve fair presentation. It also provides guidance on the matters the auditor considers in forming an opinion on those financial statements. As described in ISA 200, *Objective and General Principles Governing an Audit of Financial Statements*, "general purpose financial statements" are financial statements prepared in accordance with a financial reporting framework that is designed to meet the common information needs of a wide range of users.

ISA 700 (Revised) addresses circumstances when the auditor is able to express an unqualified opinion and no modification to the auditor's report is necessary. ISA 701, *Modifications to the Independent Auditor's Report*, establishes standards and provides guidance on the modifications to this report for an emphasis of matter, a qualified opinion, a disclaimer of opinion, or an adverse opinion.

The new form of the report is to be applied for auditors' reports dated on or after 31 December 2006. Conforming amendments to other ISAs are applicable for audits of financial statements for periods beginning on or after 15 December 2005. The IAASB has not allowed for early application of the new report wording to prevent confusion that might arise if both the old and new forms of report were being used at the same time.

### EXPOSURE DRAFTS RELEASED FOR COMMENT

- Proposed revised ISA 540, *Auditing Accounting Estimates and Related Disclosures (Other than Those Involving Fair Value Measurements and Disclosures)*.

The proposed revised ISA introduces requirements for greater rigor and skepticism into the audit of accounting estimates, including the auditor's consideration of indicators of possible management bias. It also conforms to the approach taken to the audit of accounting estimates with the revised audit risk and fraud standards issued by the IAASB.

The proposed revised ISA provides standards and guidance on the auditor's determination and documentation of misstatements and indicators of possible management bias relating to individual accounting estimates. These matters are evaluated in accordance with the standards and guidance in the proposed revised ISA 320, *Materiality in the Identification and Evaluation of Misstatements*. Based on this evaluation, the auditor communicates with those charged with governance in accordance with ISA 260, *Communication of Audit Matters with Those Charged with Governance*, and reports in accordance with ISA 700 (Revised), *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements*, or ISA 701, *Modifications to the Independent Auditor's Report*.

The closing date for comments is **15 April 2005**.

- Proposed revised ISA 320, *Materiality in the Identification and Evaluation of Misstatements*.

The proposed revised ISA includes a definition of materiality that makes it clear that materiality depends on the size and nature of an item judged in the surrounding circumstances. The definition is the same as that in International Accounting Standard (IAS) 1, *Presentation of Financial Statements*, issued by the International Accounting Standards Board (IASB). The proposed revised ISA also makes it clear that if the applicable financial reporting framework provides a different definition of materiality, the auditor uses that definition for the purpose of the audit.



## AUDITING STANDARDS

The proposed revised ISA introduces guidance on the use of percentages of benchmarks for the initial determination of materiality for the financial statements as a whole, when establishing the overall audit strategy. This guidance is not, however, intended to set formulaic rules for the determination of materiality; it makes it clear that the auditor may consider higher or lower percentages to be appropriate.

The closing date for comments is **15 April 2005**.

### PRACTICE STATEMENTS WITHDRAWN

The following IAASB pronouncements were withdrawn with effect from 31 December 2004:

- International Auditing Practice Statement (IAPS) 1001, *IT Environments – Stand-alone Personal Computers*.
- IAPS 1002, *IT Environments – On-line Computer Systems*.
- IAPS 1003, *IT Environments – Database Systems*.
- IAPS 1009, *Computer-assisted Audit Techniques*.

At its December 2004 meeting, the IAASB concluded that the need for these IAPSs has been superseded by the assumption of computer processing in the revised standards on understanding the business and assessing the risks of misstatement. The IAASB also felt that they have been outdated by the continuing pace of innovation in information technology.

### CIRCULAR B.1/2005 ISSUED

Circular B.1/2005: *Addendum to Circular B.1/2004, Adoption of IAASB Standards by the Auditing and Assurance Standards Board* was issued in February 2005.

The circular explains that SAAS 502, *Enquiries regarding litigation and claims* and SAAPS 1100, *Bank confirmations* do not form part of the body of IAASB Standards adopted as they were issued in South Africa specifically to provide guidance to auditors in South Africa. The circular further informs members that the AASB intends revising and reissuing the guidance contained in SAAS 502 and SAAPS 1100 as South African Auditing Practice Statements (SAAPS) and that, until such time, the existing statements SAAS 502 and SAAPS 1100 remain in issue.

The statements provide useful guidance to auditors and are not intended to establish new requirements for, or exemptions from, the requirements of the IAASB Standards.

### AASB RELEASES QUALITY CONTROL PRACTICE STATEMENT

The AASB released an exposure draft of the proposed South African Auditing Practice Statement (SAAPS), *Quality Control*. The SAAPS was developed by the AASB and is based on the new International Auditing and Assurance Standards Board's quality control standards, International Standard on Quality Control (ISQC) 1 and International Standard on Auditing (ISA) 220 (Revised), both of which become effective from 15 June 2005.

The AASB contracted a research team from the University of the Witwatersrand (WITS). The research was conducted from March-August 2004 and included:

- Literature reviews
- A questionnaire which was distributed to a sample of auditors and was posted to the PAAB website, inviting practitioners to complete and submit the information to the research team;
- Interviews conducted with those to whom the questionnaire was sent and with a small number of interested auditors who responded to focus group sessions held in Johannesburg, Durban and Cape Town.

The proposed practice statement provides useful practical guidance to assist auditors with the implementation of ISQC 1 and ISA 220 (Revised).

The exposure draft can be accessed on the PAAB website. The closing date for comments is **15 May 2005**.

### AASB RELEASES FIRST ANNUAL REPORT

The AASB will issue its first annual report for the 2004 year. The report includes highlights of the AASB's projects and activities for 2004, as well as key performance information in respect of desired outcomes and achievements. ■

– **CINDY JONKER**

*Professional Assistant: Auditing Standards*



## AUDITING STANDARDS

### NATIONAL STANDARD-SETTERS WORK TOGETHER

It is comforting to know, in a strange kind of way, that the rest of the world experiences similar challenges insofar as scarcity of good technical resources and capacity is concerned. It is more comforting to know, however, that the profession is increasingly moving towards a culture of working together and sharing information.

#### LIAISON BETWEEN IAASB AND NSS

The annual National Standard – Setters' (NSS) meeting was held in February 2005. The main purpose of these meetings is to determine how standard-setters can better liaise with each other and work together on projects that are of common interest to most countries. The objectives of such a co-venture or partnering arrangement, which are in agreement with the International Federation of Accountants (IFAC's) reform process, evolved to include:

- Achieving closer cooperation and strengthened communication between the International Auditing and Assurance Standards Board (IAASB) and NSSs;
- Sharing resources and minimising duplication; and
- Exploring opportunities for closer collaboration on projects.

Areas where it was felt that NSSs could contribute to the work of the IAASB of IFAC include setting priorities, assisting with the standard-setting agenda, advancing the research agenda, implementation and interpretation, evaluating the effectiveness of standards and promoting the acceptance of International Standards on Auditing (ISAs).

#### WORKING TOGETHER TOWARDS CONVERGENCE

The international convergence strategies of the countries represented at the meeting were noted and while most countries had a convergence strategy, none, other than SA, had fully adopted the entire suite of IAASB standards. Challenges peculiar to certain NSSs included translation into their official language and the fact that standards are incorporated into national legislation, making it difficult to change without following the required parliamentary processes. What was clear is that convergence is a process and NSSs were encouraged to allocate resources to developing international convergence strategies. In retrospect, the process in SA commenced with the Harmonisation and Improvements project in 1994 – a decision that

enabled SA to now position itself comfortably ahead of the pack.

#### CLARITY AND ENHANCEMENT OF STANDARDS

The IAASB sought participants' views on some fundamental issues and on the way forward based on the comments received following the exposure of the Clarity exposure draft. Some of the important views included:

- Elimination of the present tense and clarifying the obligations imposed on professional accountants. Such obligations appeared to be adequately addressed by the use of the words 'shall' and 'should' (provided the distinction between these words are clearly defined);
- Criteria or drafting guidelines are required to determine how the categories of professional requirements should be applied, such categories being reflected in the use of the terms 'shall' and 'should';
- The timing of the proposed improvements to standards ranged from changing all standards concurrently (a 'big bang' approach) and as soon as possible, to maintaining a stable platform of standards by gradually updating the earlier standards to conform to the audit risk model;

Other common comments included the need to address the relevance and applicability of the standards to Small and Medium Practices and a caution that the current standards are high quality, not to be too easily dismissed as being inadequate. South Africa, while acknowledging the need for some improvement, certainly supports the high quality of the current standards as well as maintaining a stable platform, otherwise it would not have taken the bold step of adopting these standards.

In my view, care should be exercised to ensure that the very objective of clarifying the standards does not result in a process and requirements being placed on the auditor that may, indeed, complicate his or her understanding of what is expected of auditors.

Other items on the agenda included reporting on sustainability, reporting on internal control and the development of performance measures for NSS. ■

– **BERNARD PETER AGULHAS**

*Director: Auditing Standards*



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## EDUCATION AND TRAINING

### OFFICIAL STATEMENT ACCOMPANYING THE RELEASE OF THE RESULTS OF THE PUBLIC PRACTICE EXAMINATION (PPE) 2004

A record number of **1675** (2003 : 1452) candidates passed the Public Practice Examination (PPE) of the Public Accountants' and Auditors' Board (PAAB) written in November 2004, which equates to a pass rate of **70%**. This represents an increase of 9% in the pass rate from 2003. The pass rate for candidates who wrote for the first time was **78%** (2003 : 70%). The PAAB is delighted with the results.

Particularly noteworthy is the increase in the black pass rate from prior years. Of the 740 Black African, Coloured and Indian candidates who wrote, a record number of 450 passed. This pass rate of 61% is equal to the overall national pass rate achieved in 2003. Indian and Coloured candidates achieved a pass rate of 63% (2003: 57%) and 67% (2003: 50%) respectively. Black African candidates achieved a pass rate of 55%, a marked increase from the 41% achieved in 2003. This bears testimony to the success of a range of interventions put in place by the profession to advance the number of black accountants and auditors.

One such special initiative of the PAAB was the implementation of a Support Programme for black candidates who have been unsuccessful in previous attempts to pass the PPE. In 2004, of the 117 black candidates who participated in and completed the PAAB's programme, 71 passed, representing a pass rate of 61%. This is 5% higher than the average national pass rate of all repeat candidates of 56%, and 8% higher than the pass rate achieved by black repeat candidates who did not attend the PAAB's Support Programme (53%). Increasing the number of black accountants and auditors remains a national imperative and the PAAB, the South African Institute of Chartered Accountants (SAICA), the universities and the professional firms are working aggressively to address this.

Two candidates were awarded honours for achieving a pass mark of over 75%.

The names of the top 10 candidates are:

1. **Bianca Leigh Brebnor (Honours)**
2. **Heather Louise Mackenzie (Honours)**
3. **Justin Glen Goldberg**
4. **John Leon Preston Kruger**
5. **Charles Alistair Stuart**

6. **Joana Correia Marques**
7. **Anelise Du Preez**
8. **Vaughan Ashley Grandin**
9. **Theofilos John Lagonikos**  
**Claire Roberta Hawson**
10. **Stephen Bruce Scott**

#### THE EXAMINATION OBJECTIVE

For the first time, the examination was written under open-book conditions. This allowed candidates to adapt their learning style so as to focus more on application rather than rote learning. It is also in keeping with the ever increasing demand for practitioners to manage knowledge acquired from a variety of different sources.

The objective of the examination is to assess the professional competence of candidates at entry point to the registered auditing profession. In recent years, the PAAB has paid close attention to the assessment tool, in order to ensure that it is appropriate for this purpose and that it reflects the multi-disciplinary public practice environment.

The statutory auditor performs a very responsible function and the PAAB has a duty to ensure that only those who have demonstrated an appropriate degree of professional competence are registered as auditors. The examination, which aims to assess professional competence, takes the form of a five-hour written assessment consisting of a selection of case studies reflecting the public practice environment. Candidates must demonstrate an ability to solve multi-disciplinary practical problems in an integrated manner and to do so must analyse and interpret information and provide viable solutions to address specific client needs. The ability to demonstrate logical thought and exercise professional judgement is an integral part of the examination.

#### ADMISSION REQUIREMENTS

Admission requirements to the PPE are onerous, requiring completion of a recognised academic and education programme. In addition, entrants must also have passed Part I of the Qualifying Examination of the SAICA. Completion of the academic requirement under a full-time study pro-



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programme ordinarily takes at least four years. Given the practical focus of the assessment, candidates are required to have served at least 18 months of a registered training contract in the service of a Registered Accountant and Auditor before being admitted to write the PPE.

The minimum total duration of a training contract is three years, which usually follows the four-year period of full-time study. The period of qualification for most students is therefore at least seven years. This may seem to be extremely protracted, however, the PAAB believes that this is in keeping with its duty to ensure that standards at entry point are maintained and that only those who are able to meet prescribed competency standards, are registered as auditors. The qualification period is certainly not out of

line with those of other highly regarded professions and internationally recognised accounting bodies.

### CONCLUSION

The PPE is the culmination of a long academic, education, training and assessment process aimed at developing professional competence. We wish to acknowledge the significant contribution made by various education institutions, training officers and SAICA towards the success of the candidates.

The PAAB is confident that the successful candidates have demonstrated a degree of professional competence that will enable them to make a positive contribution to the profession and the economy of South Africa and we wish to congratulate our successful candidates on their achievement. ■





## PAAB STATEMENT OF VALUES

In September 2004, the staff of the PAAB embarked on a consultative process to formulate a joint statement of values. This is intended to guide the decisions and operations of employees in the interest of ensuring that, while the PAAB continues to meet its statutory objectives, it does so while recognising the dignity and particular value of other stakeholders.

### OUR SHARED VALUES

We believe that our primary responsibility is to the **Public** at large; the citizens of South Africa who rely on the PAAB to protect their financial interests through services rendered by Registered Accountants and Auditors. In responding to their needs, we should carry out the statutory duties assigned to us under the PAA Act in a professional manner. The public should be able to place their trust in the PAAB and should at all times be treated with respect and dignity.

We believe that we have a responsibility towards **Registered Accountants and Auditors**; those who carry out their duties competently, fearlessly and in good faith. They should at all times have our support as well as access to appropriate information and guidance on best practices

### STAFF OF THE PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD: FEBRUARY 2005



which are both internationally comparable and locally relevant. We should at all times strive to uphold the integrity of the profession.

We have a responsibility towards our fellow **Staff members**; the men and women with whom we share our responsibilities on a daily basis. We should treat each other with respect, trusting in one another at all times. We should provide the necessary support to one another so that together, we may achieve our common objectives. In recognition of our shared humanity, we should invest in one another's potential and ensure that each has the opportunity to learn, grow and develop as a person.

We have a further responsibility to the members of our various **Committees**; those who give of their time and expertise to assist the PAAB. They should have the support of the secretariat to enable them to carry out the duties assigned to them by the Board. We should accord them the appropriate respect and hospitality which they have come to recognise and appreciate at the PAAB.

We also have a responsibility to **aspirant members**; the students and trainees within the education and training process. They should be encouraged to achieve a high standard of knowledge, skills and professional values appropriate for the auditing profession. We should ensure that access to the profession is fair and equitable and where possible, we should provide support to enhance the demographic profile of new members.

We also have a responsibility to various **stakeholders**, including government and other institutions who share our responsibility for protecting the financial interests of the public. We should engage with these bodies so as to contribute to the overall regulation of financial markets for the benefit of all citizens. We should communicate and co-operate with them whilst building relationships of trust and enhancing the credibility of the profession. ■



### QUARTERLY REPORT FROM THE DIRECTOR: LEGAL

for the period 1 October 2004 to 31 December 2004

#### INVESTIGATION COMMITTEE

The Investigation Committee met twice during this period and disposed of 35 cases as follows:

3 matters were not proceeded with:

- 1 was withdrawn by the complainant;
- In 2 matters the committee was unable to proceed because of an absence of evidence.

8 cases in terms of Disciplinary Rule 3.9.1 (the accused having given a reasonable explanation for the conduct).

2 cases in terms of Disciplinary Rule 3.9.2 (the conduct complained of not constituting unprofessional conduct).

4 cases in terms of Disciplinary Rule 3.9.3 (there being no reasonable prospect of proving the accused guilty).

18 practitioners were found guilty and punished, by consent, as follows:

- 3 practitioners were cautioned. Two matters were tax related and one related to the description of an account as a 'trust account'.
- 15 practitioners were fined. The matters were as follows:
  - ♦ 2 related to bringing the profession into disrepute. In these cases the RAs were found guilty of bringing the profession into disrepute by allowing the confusion between RAAs and CFAs to occur.
    - ◊ 1 concerned a Law Society Trust Account 'audit' conducted by a CFA firm, in which the RAA was a partner (R20 000)
    - ◊ 1 concerned an 'audit' conducted by a CFA firm in which the RAA was a partner (R25 000).
  - ♦ 5 related to negligence
    - ◊ 1 concerned a Law Society Trust Account audit (R20 000)
    - ◊ 2 related to tax (R5 000 of which R2 500 was suspended on conditions, and R5 000, respectively)

◊ 2 were referred by the GAAP Monitoring Panel (R20 000 of which R10 000 was suspended on conditions, and R75 000 of which R37 500 was suspended on conditions, respectively)

♦ 8 related to practice review

- ◊ 1st cycle 3rd review - R15 000 suspended on conditions;
- ◊ 2nd cycle 2nd review – R20 000 of which R10 000 was suspended on conditions;
- ◊ 2nd cycle 2nd review – R20 000 of which R10 000 was suspended on conditions;
- ◊ 2nd cycle 2nd review – R30 000 of which R15 000 was suspended on conditions;
- ◊ 2nd cycle 3rd review (failure to present files) – R10 000 suspended on conditions;
- ◊ 2nd cycle 3rd review – R20 000 of which R15 000 was suspended on conditions;
- ◊ 2nd cycle 3rd review – R30 000 of which R15 000 was suspended on conditions, plus a previous suspended sentence of R10 000 imposed;
- ◊ 2nd cycle 3rd review – R30 000 of which R15 000 was suspended on conditions.

#### DISSIPLINÊRE KOMITEE

Die Dissiplinêre Komitee het een maal tydens hierdie periode vergader, op 2 November 2004, en het die saak teen Mnr M aangehoor. Hy was teenwoordig en verteenwoordig. Hy was skuldig bevind op die een klag van onprofessionele gedrag teen hom.

#### DIE KLAG

Die praktisyn was skuldig bevind aan onbehoorlike gedrag soos neergelê in dissiplinêre reël 2.1.4 deurdat hy oneerlik was met die uitvoering van werk of pligte wat op hom gerus het in verband met 'n vertrouensamp wat hy onderneem of aangeneem het, deurdat



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- Gedurende of omtrent Oktober en November 1999 het hy die amp beklee van Direkteur van [organisasie], en wel dit van Finansiële Direkteur.
- In sy hoedanigheid as Finansiële Direkteur het hy aanbevelings gemaak aan die Raad van [organisasie] in verband met beleggings deur [organisasie] in [S] en/of [G]: alternatiewelik het hy die Raad van [organisasie] attent gemaak op die beleggingsmoontlikhede in [S] en [G].
- Beleggings is wel deur [organisasie] gemaak in [S] en [G], naamlik R3 miljoen in [S] en R4,5 miljoen in [G] (watter bedrag op 'n latere stadium verminder is tot R3,2 miljoen).
- As gevolg van die belegging deur [organisasie] gemaak in [S] en/of [G] het hy R60 000 kommissie ontvang.
- Hy het nie aan die Raad van [organisasie] openbaar dat hy die kommissie van R60 000 ontvang het nie en hy het ook nie toestemming gehad van die Raad van [organisasie] of van enige amptenaar van [organisasie] om die kommissie te behou nie.
- Hy het nie rekenskap gegee aan [organisasie] vir die R60 000 of enige gedeelte daarvan nie;
- Ontvangs van die kommissie deur hom -
  - ♦ was teenstrydig met sy vertrouenspligte teenoor [organisasie] as gevolg van sy amp as 'n direkteur van [organisasie]; en/of
  - ♦ was teenstrydig met die volgende paragrawe van sy dienskontrak met [organisasie]:
    - ◊ *K.3.3 an employee may not abuse his position at [organisation] to make a secret profit;*
    - ◊ *K.10 acceptance of gifts - an employee may not accept a gift, money or reward offered to him by a member of the public because he is in a certain post or office, without the permission of the Chief Executive Officer.*

Die voorsitter, Mnr Dines Gihwala, het die vonnis van die Komitee gelewer -

### “OPSOMMING

Die beskuldigde in hierdie dissiplinere verhoor is 'n Mnr M, wie aangekla is volgens die dissiplinere reëls van die

Openbare Rekenmeesters en Ouditeurswet, deurdat hy skuldig is aan sekere gedrag soos neergele in Reël 2.1. 4 van die Dissiplinere Reëls, deurdat hy oneerlik was by die uitvoering van sy werk of pligte wat op hom gerus het in verband met 'n vertrouensamp wat hy onderneem het, of aangeneem het.

Aangesien die beskuldigde skuldig gepleit het na die betoog wat gelewer is deur die pro forma klaer op die hoofklagte, dink ek nie dit is nodig dat ek al die feite herhaal nie, maar ek dink dit mag wel goed wees om net sekere punte uit te lig.

Die beskuldigde was in diens geneem deur die [organisasie] gedurende April 1999, en hy het 'n geskrewe dienskontrak aangegaan met sy werknemer waarin spesifiek genoem word dat hy nie enige geheime wins of voordeel mag trek uit sy diens - uit sy amp nie, behalwe die loon wat hy van sy werknemer sou kry. Kort nadat hy in diens geneem is, het hy klaarblyklik te hore gekom dat 'n soortgelyke instansie soos waarby hy in diens is, beleggings maak by twee maatskappye wat buite [die stad] gelee was, en waar die opbrengs op hierdie beleggings goed was. Dit is baie duidelik dat die [tipe] beleggings waarvan die beskuldigde gepraat het, hoë risiko beleggings was en dat die redelike moontlikheid bestaan het dat die beleggings ten volle verlore kon gaan.

Desnieteenstaande het hy op 14 Junie by 'n vergadering van die ouditkomitee van sy werknemer verwys na hierdie beleggings as, en ek haal aan in Engels, “the risk was very low.” Nadat hierdie voorlegging gemaak is, is hy en sekere lede van die raad 'n mandaat gegee om 'n aanbieding by te woon in Gauteng om presies uit te vind wat hierdie tipe beleggings behels. Volgens die stukke voor my het die beskuldigde en een ander raadslid so 'n vergadering op die 11de November bygewoon. Op die 29ste November van dieselfde jaar, was daar weer 'n vergadering van die ouditkomitee waar daar 'n voorstel gemaak is dat hierdie beleggings gemaak moet word. Die volgende dag by 'n raadsvergadering van sy werknemer, is hierdie aanbeveling bekragtig en die raad het dan aanvaar dat hierdie beleggings dan gemaak sou word.

Wat vir my snaaks is, is die volgende. Die aansoekvorm vir die belegging is gedateer 30 November alhoewel die belegging alreeds op 5 November gemaak is. En wat nog



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snaakser is, is die feit dat indien die stukke wat ek voor my gehad het korrek is, dat die aanbieding eers op 11 November plaasgevind het, alhoewel die belegging min of meer 'n week tevore alreeds plaasgevind het.

Daar is geen getuienis dat die beskuldigde bewus was, of enige geheime voordeel belowe was voordat hierdie belegging gemaak is nie. Wat in my oordeel teen die beskuldigde tel is die feit dat toe dit op die lappe kom dat hy 'n geheime kommissie gekry het, hy dit nie onmiddellik terugbetaal het nie, maar eers as gevolg van 'n hofsak wat op die been gebring is deur sy vorige werknemers, is die geld met rente terugbetaal. Dit is baie duidelik dat as gevolg van die beskuldigde, die amp wat hy bekleed het en die kwalifikasies wat hy behou, dat hy bewus moes wees, trouens bewus was dat wat hy gedoen het verkeerd was op twee basisse. Die eerste basis, dat sy dienskontrak hom verbied het om 'n geheime kommissie te kry, en tweedens, dat hy in 'n vertrouensposisie verkeer het en as gevolg daarvan ook nie kommissie kon ontvang nie.

Ek is daarvan oortuig dat die feit dat die beskuldigde sy pleit na skuldig verander het, behoorlik gedoen [is] en dat hy inderdaad skuldig is op die hoofklage soos dit verskyn in paragraaf 5.1 van die klagstaat op bladsy 48 van die bundel. Gevolglik word die beskuldigde skuldig bevind soos aangekla en soos hy skuldig gepleit het.

### VONNIS:

Mnr M, hierdie komitee het nou lank besin oor wat 'n gepaste vonnis sal wees onder die omstandighede. Die klage waarop u skuldig gepleit het en waarvoor u skuldig bevind is, is 'n ernstige klage waarby oneerlikheid betrokke is. Ek dink nie ons gaan nou verder daarop in nie. Ek weet u is bewus presies waarom dit gaan en gevolglik het hierdie komitee besluit dat die volgende 'n gepaste vonnis sal wees.

1. U word geskors van praktyk vir 'n periode van vyf jaar, welke skorsing opgeskort word vir 'n periode van vyf jaar vanaf vandag op voorwaarde dat u nie weer skuldig bevind word gedurende die tydperk van opskorting, van enige oortreding soos neergele in Reel 2.1.4 van die Dissiplinere Reels nie.
2. Die feite van hierdie saak met sy bevindings sal in

MANEO gepubliseer word sonder vermelding van u naam of van die naam van die ander partye betrokke.

3. U word gelas om 'n bydrae van R20 000 tot die koste van hierdie verrigtinge te maak.”

## MONEY BROKING/MONEY POOLING BY RAA'S

### RULING

To the extent that it is not already clear, the PAAB hereby states categorically that the pooling by RAAs of funds outside the ambit of the exclusion contained in paragraph (ff) of the definition of the business of a bank, (be they client funds, or partner or staff funds) is considered to be unprofessional conduct in terms of Disciplinary Rule 2.1.2. It will be regarded as a serious breach of the rules and the PAAB will not hesitate to institute disciplinary action against RAAs concerned.

### BACKGROUND

The Banks Act No. 94 of 1990 as originally enacted defined “money broking” as:

*“The effecting of a money lending transaction directly between a lender and a deposit taking institution as a borrower through the intermediation of a money broker”*

A “money broker” in turn was defined as:

*“A person who conducts money broking as a material part of his business”*

It is well known that many of our members have been and continue to be involved in money broking, more specifically the grouping of clients' funds in order to invest the funds at a higher rate of interest than the individual investor would receive if he or she invested these funds individually.

This issue and the regulation thereafter exercised the minds of both the Board and, before it, SAICA. With the promulgation of the Banks Act in 1990 the definition of the business of a bank seriously restricted money broking activities. The last word published by the profession on this issue was in SAICA's Techtalk of July 1998, in an article headed “Money Broking Progress Report.”

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### THE 'TECHTALK' ARTICLE

In summary, the article stated:-

#### *Paragraphs (ff) and (gg) of the definitions of 'the business of a bank' in section 1 of the Banks Act*

The 1997 annual report at the Bank Supervision Department of the SA Reserve Bank discussed the legal implications of financial intermediation and legal risk emanating from related banking contracts, highlighting the difference between agency business (ff) and mandatory business (gg).

As a result of the concern regarding CAs involved in mandatory business (i.e. pooling client funds) that were not regulated by a statutory body designated in terms of paragraph (gg), a sub-committee was established by SAICA on behalf of the PAAB to research the matter.

Following from the results of the research, the members recommended to the PAAB that it accept the statutory regulatory function under (gg) within a framework to be developed by the Sub-Committee, but after consideration the PAAB decided not to accept this function. This decision was taken after considering:

- the inherent, unavoidable risk to the PAAB
- the timing of the issue with regard to the report of the Nel Commission
- the potential risk of money laundering
- the fact that it is not possible to implement controls as stringent as those of the JSE regarding stockbrokers who conduct mandatory business
- the limited number of RAAs actually involved in this practice.

### THE NEXT STEPS

Subsequently, at the request of (the late) Nathan Gordon, the chairman of the abovementioned sub-committee, SAICA agreed to facilitate a process whereby alternative routes could be investigated for its members to conduct mandatory business. As a result, representatives from SAICA and the PAAB met with the Registrar of Banks and the Assistant-General Manager of the Bank Supervision Department, who appeared to be of the opinion that it was

in the interest of the public to explore means of permitting mandatory business due to the total amount of money involved at present and the potential increase in volume in future. That group adopted the following proposal:-

- The establishment of a Section 21 Company
- The designation, in terms of paragraph (gg), of the Company as the statutory regulator
- The adoption by that Company of the regulatory proposals initially submitted to the PAAB including;
  - ♦ Registration reporting and monitoring control measures
  - ♦ Compulsory fidelity and indemnity cover
  - ♦ Annual audit of the department / division of the member conducting the business
  - ♦ The costs of insurance and audit to be borne by the member
  - ♦ The funding of the entire regulatory exercise by the members registered with the Company

The Registrar indicated that this process would need to be finalised by the end of December 1998, and Nathan Gordon accepted responsibility for the establishment of the Section 21 Company.

### SCOPE OF ACTIVITIES

The article went on to note that the process described did not affect members conducting agency business in terms of paragraph (ff). The article concluded that it was uncertain as to whether what was generically known as 'corporate saver type accounts' comprised agency business in terms of (ff), or mandatory business in terms of (gg).

The article also quoted a useful extract from the 1997 Annual Report of the Bank Supervision Department of the South African Reserve Bank, as follows:-

### LEGAL IMPLICATIONS OF FINANCIAL INTERMEDIATION AND LEGAL RISK EMANATING FROM RELATED BANKING CONTRACTS

*For purposes of effecting a money-lending transaction between a lender and a bank, the provisions of paragraph (ff) of the definition of "the business of a bank" in Section*



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*1 of the Banks Act, 1990, allows an agent to perform such a service for and on behalf of the agent's principal. The said paragraph (ff) provides for an agent to open an account with a bank in the principal's name and to pay into the account an amount of money belonging to the principal, thereby bringing about a bank/client relationship between the bank and the agent's principal.*

*A bank/client relationship is a contractual relationship between a creditor and a debtor and may further be described as a contract of mandatam. Based on the agreement in terms of which the customer lends money to the bank on a current account, the bank undertakes to repay such money on demand, by honouring cheques drawn on it, and to perform certain other services for the customer, such as the collection of cheques and other instruments. The agent is not a party to the aforementioned bank/client relationship, and the bank will have a duty towards the principal to act in accordance with the principal's instructions. The principal of the agent ostensibly has a duty towards the bank to draw cheques in a manner that prevents fraud.*

*For purposes of effecting a money-lending transaction with a bank, the provisions of paragraph (gg) of the definition of "the business of a bank" in Section 1 of the Banks Act allow a mandatory to accept money into an account with a bank maintained by the mandatory. Such money may be deposited together with other mandators' money.*

*In such a transaction, two separate contracts come into existence. One contract involves the owner of money ("the mandatory") conferring authority upon another ("the mandatory") to invest money in a bank account, on behalf of the mandatory. This contract determines the nature and ambit of the mandate conferred by the mandatory upon the mandatory. The other contract involves the mandatory, in the execution of the mandatory's duty towards the mandatory, entering into a bank/client relationship with a bank. Consequently, a separate contract of mandatam comes into existence, between the mandatory and the bank in question, resulting in a creditor/debtor relationship between the bank and the mandatory, in the mandatory's capacity as the account holder. The mandatory is not a party to that contract. If one mandator's money is*

*deposited in a bank account maintained by a mandatory together with the money of other mandators, the money becomes the property of the bank, and the mandatory has a claim against the bank for the amount. Funds belonging to different owners lose their [identity] when joined to form a single amount, and such a pool of funds acquire a claim against the pool of funds coincidental to the value of the funds that each has contributed. If a mandatory collected such a pool of funds from mandators for purposes of investing the funds in a bank account, the claim of the mandators will be against the mandatory.*

*Authorities in South African law are inconclusive with regard to loss or damage that flows from a contract of mandate.*

### SUBSEQUENT DEVELOPMENTS

The section 21 company was supposed to have been established by August 1998. As far as I can establish, the formation of the company was initiated, and an application for designation submitted to the Registrar of Banks. The Registrar appears to have handed the application to the Ministry of Finance, which appears to have taken no further steps.

And there the matter remained.

### AVAILABLE BANKING PRODUCTS

Thereafter, in November 1999, the PAAB's investigation took an entirely different turn, namely a specific investigation as to whether the NBS "Corporate Saver" Scheme was in contravention of the Banks Act or whether practitioners (who were already doing so) could continue to use this scheme with impunity as a vehicle for money broking.

To this end the PAAB instructed an expert attorney in this field to conduct an investigation of the NBS Scheme and to provide us with an opinion as to whether it was compliant. Ultimately our attorney concluded that the corporate saver scheme did not appear to be contrary to the provisions of the Banks Act of 1990 provided that each member made disclosure to their respective clients of the amount of the administration fee charged by them under the scheme.

Other banking institutions introduced similar products thereafter, and whilst certain of these were scrutinised on

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behalf of the PAAB, we cannot endorse any particular product as compliant, as it is within the bank's power to change the product at any time and practitioners were advised to ascertain individually whether the products were legally compliant.

As there now appeared to be Banks Act-compliant vehicles readily available for practitioners to use in the interests of their clients, nothing further was done by the profession in this regard.

### SUBSEQUENT INFORMATION

It has subsequently come to the PAAB's attention that – notwithstanding all of the above – there are firms that continue to pool their clients' money and offer this pooled amount around to the various banks in an attempt to obtain the best interest possible, irrespective of the fact that this is in contravention of the Banks Act. The justification for this, we are informed, is that there has been no definite ruling from the profession that such conduct is unacceptable, hence the ruling appearing at the beginning of this article.

**Members should take note of the consequences of continuing with these pooling arrangements.**

**AND ON A LIGHTER NOTE** but still on the question of money, this department recently received one of its more interesting enquiries.

A practitioner phoned to say that a fairly irate client was in reception to remove his work from the firm and to pay his bill in cash. It was a fairly substantial bill and the practitioner was uncertain whether there were any "money laundering" considerations which he should take into account, or any steps which he should follow, before accepting a cash payment. Our technical department, in their usual competent manner advised him in this regard.

However, the practitioner phoned back a few minutes later to say that not only was the client paying cash but he was paying cash in sacks full of small denomination coinage. The amount in question was a number of thousands of rands, effectively being paid in small change. The practitioner was horrified (having already established that

he was able to accept the cash in payment) as it had security implications for the retaining of the cash over night, as well as cost implications concerning the transport of it to the Bank the following day. (Never mind the cost of the cash deposit fee). He was uncertain whether he was obliged to accept the change as payment of his account, and requested our advice.

For the edification of practitioners, we set out §17(2) of the South African Reserve Bank Act 90 of 1989 states:

“(2) A tender, including a tender by the Bank itself, of an undefaced and unmutated coin which is lawfully in circulation in the Republic and of current mass, shall be a legal tender of payment of money-

- (a) in the case of gold coins, in settlement of any amount, and the value of each gold coin so tendered shall be equal to the net amount at which the bank is prepared to purchase that gold coin on the day of such tender thereof, and
- (b) in the case of other coins, in settlement, per individual transaction, of a total amount not exceeding-
  - (i) fifty rand, where coins of the denomination of one rand or higher are so tendered;
  - (ii) five rand, where coins of denominations of ten cents up to and including fifty cents are so tendered;
  - (iii) fifty cents, where coins of the denomination of five cents or less are so tendered,and the value of each coin so tendered shall be equal to the amount specified on that coin.

So the legal answer to the practitioner's question was that at the very most he had to accept R50 of his bill in change. The real answer to his question was, however, not that simple. During the time that the practitioner was on the phone to us the client simply left, leaving it up to the practitioner to decide whether he would "take it or leave it", depending on how badly he wanted his fee!

We did not hear the end of the story but sincerely hope that it was a happy one. ■

– JANE O'CONNOR

*Director: Legal*



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LIST IS CURRENT AS AT TIME OF GOING TO PRESS

### INDIVIDUALS ADMITTED TO THE REGISTER OF THE BOARD

From 1 October 2004 to 31 January 2005

<i>Anthony Elizabeth</i>	<i>Hoek Andries Beyers</i>	<i>Pershad Nishan Kemraj</i>
<i>Bester Martelise</i>	<i>Kaidos Martins Helena Sevasti</i>	<i>Phaka Alphabet Malusi</i>
<i>Bhoola Naresh Nresee</i>	<i>Koekemoer Johannes Mattheus</i>	<i>Rossouw Johanna Susanna</i>
<i>Bikram Anesh</i>	<i>Lakhani Chirag Praful</i>	<i>Rossouw Louis</i>
<i>Boonzaaier Martha Margaretha</i>	<i>Le Roux Danielle</i>	<i>Salee Mansoor Ahmed</i>
<i>Botha Deon</i>	<i>Lesejane Motshwanedi Johannes</i>	<i>Sewchurran Amritha</i>
<i>Bouwer Christelle</i>	<i>Levey Donovan Bruce</i>	<i>Shelley Mark Robert</i>
<i>Bower Roy Graham</i>	<i>Levy Leanne Wendy</i>	<i>Stoman Christo</i>
<i>Branders Mynhardt Willem</i>	<i>Lötter Tertius Jurenus</i>	<i>Swanepoel Maria Elizabeth</i>
<i>Bromfield Kim Jo-Anne</i>	<i>Marsh Martin Graham</i>	<i>Terblanche Henno</i>
<i>Chikowore Courtney Mushambi</i>	<i>Maistry Egashnee</i>	<i>Van den Berg Ann Jeanette</i>
<i>Chogle Abdul Qadir</i>	<i>Mnganga Busisiwe Prisca</i>	<i>Van der Walt Barend Johannes</i>
<i>De Man Anko</i>	<i>Moodley Vengdajalam</i>	<i>Van Wyk Frederick Carel</i>
<i>De Villiers Vanessa Renee</i>	<i>Moore Dominique</i>	<i>Venter Elsabe</i>
<i>Der Kinderen Chantel</i>	<i>Ngwenya Siphwe Andrew</i>	<i>Volschenk Gert Jacobus</i>
<i>Derwin Trevor Austin</i>	<i>Oberholzer Machiel Adriaan</i>	<i>Whittle Craig Douglas</i>
<i>Du Preez Heleen</i>	<i>Parker William Devenish</i>	

### INDIVIDUALS RE-ADMITTED TO THE REGISTER OF THE BOARD

From 1 October 2004 to 31 January 2005

<i>Curr Stephen James</i>	<i>Mentz Willem Wouter</i>	<i>Snyman Frederick Jacobus</i>
<i>Dix Peter Grant</i>	<i>Maddock Basil William</i>	<i>Van Dyk Jacobus Cornelius</i>
<i>Englebrecht Gary Melvin</i>	<i>Pillay Prushothman Subramoney</i>	<i>Van Niekerk Michiel</i>
<i>Jugnarayan Charmaine</i>	<i>Raubenheimer Willem Johannes</i>	

### INDIVIDUALS REMOVED FROM THE REGISTER OF THE BOARD

From 1 October 2004 to 31 January 2005

<i>Alberts Johannes Petrus Lourens</i> (resigned)	<i>Herscovitz Nathan William</i> (emigrated)	<i>Potgieter Vivienne Helen</i> (resigned)
<i>Alexander Christopher Mark</i> (deceased)	<i>Howard Cornelius Naude</i> (resigned)	<i>Poultney Henry John</i> (resigned)
<i>Arbee Osman Suluman</i> (resigned)	<i>Hudson-Bennett Roland Meyrick</i> (resigned)	<i>Prophet Robert Ian</i> (resigned)
<i>Beaver Bernard Clive</i> (resigned)	<i>Impey Wayne John</i> (resigned)	<i>Pugh Donald Stanley</i> (resigned)
<i>Irvin Blumenfeld</i> (resigned)	<i>Jones Colin Mortimer</i> (resigned)	<i>Purnell Peter James</i> (resigned)
<i>Borcherds Johannes Barnard</i> (resigned)	<i>Koch Lodewyk Christiaan</i> (emigrated)	<i>Rahim Bashier Achmad</i> (resigned)
<i>Brink Philippus Albertus Kirstein</i> (resigned)	<i>Kurtzahn Dudley Allen Herman</i> (resigned)	<i>Robinson William Grant</i> (resigned)
<i>Brodziak Dion</i> (resigned)	<i>Le Roux Willem Jacobus</i> (resigned)	<i>Rossouw Wynand Hendrik</i> (emigrated)
<i>Buys Salmi</i> (resigned)	<i>Levene Terry Sydney</i> (resigned)	<i>Rupee Roma</i> (emigrated)
<i>Combrink Liezel</i> (resigned)	<i>Louw Wallenstein</i> (resigned)	<i>Scully Beverley Ann</i> (emigrated)
<i>Day Patricia Lyn</i> (resigned)	<i>Lowry Andrew Peter</i> (emigrated)	<i>Segal Julius</i> (resigned)
<i>Degni Raffaele Giuseppe</i> (emigrated)	<i>Lumb Robert Lees</i> (resigned)	<i>Shield David John Gordon</i> (resigned)
<i>De Jonge Martinus Philipus</i> (resigned)	<i>Marais Michiel Barend</i> (resigned)	<i>Sims-Handcock Howard Charles</i> (resigned)
<i>De Kock Johannes Nicolaas Willem</i> (resigned)	<i>Marais Richard Granville</i> (resigned)	<i>Smith Peter Maurice</i> (resigned)
<i>Delpport Ellana</i> (resigned)	<i>McCullough Michael William</i> (resigned)	<i>Spies Carolina Margeretha</i> (resigned)
<i>Dharmalingam Dhevendren</i> (resigned)	<i>Meyer Cecil Mannie</i> (resigned)	<i>Thornton John Julian</i> (resigned)
<i>Dobie William Edward</i> (resigned)	<i>Munday Noel Wayne</i> (resigned)	<i>Van Heerden Andre</i> (resigned)
<i>Du Toit Willem Hendrik</i> (resigned)	<i>Ncama Xolile</i> (resigned)	<i>Van Zuydam Bastiaan Juriaan</i> (resigned)
<i>Esterhuizen Walter Marius</i> (resigned)	<i>Neal Paul Anthony</i> (resigned)	<i>Venter Frans Richard</i> (resigned)
<i>Fraser Beryl Margaret</i> (resigned)	<i>Nel Pieter Cornelius</i> (resigned)	<i>Verwey Hermanus Johannes</i> (resigned)
<i>Fraser Cyril Hugh</i> (resigned)	<i>Niemoller Elizabeth Dorothea</i> (resigned)	<i>Walker Doreen Sylvia</i> (resigned)
<i>Gerber Anton Hendrik</i> (resigned)	<i>Oxford Stanley Vernon</i> (resigned)	<i>Wing David Arthur</i> (resigned)
<i>Gooden Colin Rodney Spry</i> (resigned)	<i>Paxton Brian Wilfred</i> (resigned)	<i>Young Robert Arthur Finlow</i> (emigrated)
<i>Hall Brian Claude</i> (deceased)	<i>Payne John Frank</i> (resigned)	



# MANEO

## FAREWELL AND THANK YOU

**Liza Verburg** left the PAAB in December 2004 to join one of the auditing firms.

We wish her every success in her new position and thank her for her invaluable contribution to the PAAB's communication endeavours in the past, particularly this newsletter.

## IN MEMORIAM

Many people, even in our country, have been touched by the Tsunami tragedy.

The PAAB was sad to learn of the death of one of our RAs, Mr Morris Isaacson, in this disaster.

Another practitioner, Mr Beny Sender, lost his son Paul.

Our sincere condolences to their families.

## PLEASE SEND ALL CORRESPONDENCE TO:

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Sirus Bhudan – Secretary

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Mandy Kirwin – Secretary  
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Carmen Walters – Membership Administrative Assistant  
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Christelle van der Merwe – Examinations Administrator  
Amanda Harris – Administrative Assistant

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Kreeson Naraidoo – IT Engineer  
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Priscilla Mlaba – Support Services  
Maria Maganedisa – Support Services  
Queen Maboshego – Support Services  
Moses Maruping – Transport/Mailroom Clerk