



# **Guidance on the provision of non-audit services by the auditor of a company**

**(Section 90 of the Companies Act, No. 71 of 2008)**

Issued March 2015

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## Important notice

1. Every effort is made to ensure that the information in this guide is correct. Nevertheless, this information is given purely as guidance to assist with particular problems relating to the subject matter of the guide and SAICA/IRBA will have no responsibility to any person for any claim of any nature whatsoever which may arise out of or relate to the contents of this guide.
2. The information provided in this document does not constitute legal advice and should be read in that context.
3. Where the document suggests a particular view, such a view is based on SAICA/IRBA interpretation, at that particular time, of the Companies Act and the relevant sections. Although SAICA and the IRBA have consulted widely, it is possible that a different view may ultimately be followed in practice; for example, in instances where the Companies and Intellectual Property Commission provides specific guidance.

**Reference: Revision 1**

**Released: 17 March 2015**

**Original guidance released: 14 May 2013**

**Original frequently asked questions released: 15 November 2013**

## **Guidance on the provision of non-audit services by the auditor of a company in terms of section 90(2) of the Companies Act, 2008**

### **1. Introduction**

The South African Institute of Chartered Accountants (“SAICA”) and the Independent Regulatory Board for Auditors (“the IRBA”) have undertaken to provide guidance to members on the interpretation of section 90(2) (b) of the Companies Act, No. 71 of 2008 (“the Act”). This document provides updated guidance on the applicability of section 90(2) of the Act and clarification on certain terminology used in section 90(2) (b). The original guidance was released on 14 May 2013 and the frequently asked questions were released on 15 November 2013. This guide replaces the previous two publications in an updated document.

### **2. Background**

Section 90(2) of the Act contains provisions applicable to the appointment of an auditor of a company or a close corporation (CC) when a company or CC is required to be audited by the Act in terms of section 30(2) (a) and (b)(i) or when audited voluntarily if the company’s Memorandum of Incorporation (MOI) so requires (collectively referred to in this document as “a company or a CC to which section 90 applies”). These provisions must be complied with in addition to those of the IRBA’s Code of Professional Conduct for Registered Auditors (“the Code”). References to the Code in this document relate to the version of the Code that was revised in 2014 and effective from 1 April 2014.

In summary, section 90(2) prohibits an auditor from being appointed where certain specified services were rendered to the same client. Senior Counsel opinion obtained jointly by the IRBA and SAICA states that the provisions of section 90(2) (b) regarding the prohibition from being validly appointed as auditor in respect of audit and certain non-audit services apply to both the *firm* appointed as auditor and the *individual* registered auditor.

Section 90 became effective on 1 May 2011. Compliance with section 90(2) (b) has been monitored by the IRBA from 1 January 2014. Registered auditors are required also to comply with the Code in respect of the provision of audit and other services. Extracts from the Code that are of particular relevance for purposes of this document are contained in [Appendix V](#) of this document.

[Appendix I](#) provides a flowchart for companies/CCs to use to decide whether section 90 applies to the company/CC.

[Appendix VI](#) contains frequently asked questions and answers regularly asked.

### 3. Applicability of section 90 to an independent review

The provisions of section 90 are not applicable to the independent review as defined in the Act. The only requirement as per the Companies Regulations, 2011 (“Companies Regulations”) is that the independent review of the company’s financial statements must not be carried out by the independent accounting professional who was involved in the preparation of the financial statements.

The practical implication of the fact that, depending on a company’s Public Interest (PI) Score, the company may require an audit in one year and a review in the next year should be considered by the company and the auditor should the auditor wish to perform certain additional services for an independent review client.

### 4. Scope of this document

This document provides guidance on the applicability of section 90 of the Act and clarification of certain terminology used in section 90(2) (b).

It does not address auditor rotation and requirements by foreign jurisdictions or apply to entities that are not governed by the Act, such as trusts, sectional titles and estates.

### 5. Definitions of terms for the purposes of this document

For **purposes of this document**, the following terms have the meanings attributed below.

“*Accounting records*” – means information in written or electronic form about the financial affairs of a company as required in terms of the Act, including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements.<sup>1</sup>

“*Auditor*” – includes an individual registered auditor and audit firm.

“*Financial statements*” include-

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company’s securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;...<sup>2</sup>

“*Network*” – is a larger structure:

- (a) That is aimed at co-operation; and

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<sup>1</sup> Companies Act, No. 71 of 2008

<sup>2</sup> Companies Act, No. 71 of 2008

- (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of common brand name, or a significant part of professional resources.<sup>3</sup>

“Network firm” – is a firm or entity that belongs to a network.<sup>4</sup>

## 6. Application of section 90

[Appendix I](#) to this document contains a schematic explanation of auditor appointments of a company or a CC to which section 90 applies.

Should a company or CC be audited voluntarily if a shareholders’ resolution so requires or if the company’s board or a CC’s members have so determined (“a company or a CC audited voluntarily by decision”), the provisions of section 90 do not apply. However, if such a decision is incorporated in the MOI of the company section 90 will apply.

Section 90(2) (b)(v) prohibits the auditor from being validly appointed if the auditor rendered any of the services contemplated in subsections (i) to (iv) during the five financial years immediately preceding the date of appointment as auditor.

## 7. Terminology on which clarification was required

This document explains the meaning of the terminology used in section 90 (2), which has been **highlighted** below.

Section 90(2) of the Act requires the following:

*“To be appointed as an auditor of a company, whether as required by subsection (1) or as contemplated in section 34(2), a person or **firm**—*

*a) .....,*

*b) in addition to the prohibition contemplated in section 84(5), must not be—*

*i) a director or prescribed officer of the company;*

*ii) an employee or consultant of the company who was or has been engaged for more than one year in the **maintenance of any of the company’s financial records or the preparation of any of its financial statements;***

*iii) a director, officer or employee of a person appointed as company secretary in terms of Part B of this Chapter;*

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<sup>3</sup> Glossary of terms of the Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements – 2014 Edition Part 1 (the Glossary) adopted by the IRBA and to be applied by Registered Auditors in South Africa read with paragraphs 290.13 – 290.24 of the IRBA Code of Professional Conduct for Registered Auditors

<sup>4</sup> Glossary of terms of the Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements – 2014 Edition Part 1 (the Glossary) adopted by the IRBA and to be applied by Registered Auditors in South Africa, paragraphs 290.13 – 290.24

*iv) a person who, alone or with a partner or employees, habitually or regularly performs **the duties of accountant or bookkeeper, or performs related secretarial work**, for the company;*

*v) a person who, at any time during the five financial years immediately preceding the date of appointment, was a person contemplated in any of subparagraphs (i) to (iv); or*

*vi) a person related to a person contemplated in subparagraphs (i) to (v); and*

*c).....*

## **8. Guidance**

### **a. Duties of accountant and bookkeeper**

In the context of section 90(2), the “duties of bookkeeper” would be limited to the maintenance of financial records as set out in paragraph (a1) below.

In the context of section 90(2), the “duties of accountant” would be limited to the preparation of financial statements as set out in paragraph (a2) below.

#### **a1. Maintenance of any of the company’s financial records**

The Act does not define “financial records”; “accounting records” is, however, defined in the Act. Regulation 25 also describes what is included in company accounting records. [Appendix IV](#) to this document contains an extract from Regulation 25.

Based on a contextual interpretation of section 90(2) (b)(ii) “financial records” refer to “accounting records” as described in the Act, Regulation 25 and the Glossary of terms of the Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements – 2014 Edition Part 1 (“Glossary”). In our view, the maintenance of any of the company’s financial records means preparing or changing source documents or originating data, in electronic or other form, that evidences the occurrence of a transaction.

[Appendix II](#) to this document contains examples of services that we would or would not regard as constituting “maintenance of any of the company’s financial records”.

#### **a2. Preparation of any of its financial statements**

The Act states what is included in the definition of financial statements. The term “financial statements” is also defined in the Glossary.

[Appendix II](#) to this document contains examples of services that we would or would not regard as constituting “preparation of any of its financial statements”.

### **b. Related secretarial work**

Section 90(2) (b)(iii) prohibits the company secretary from being appointed as the company’s auditor.

As set out in section 88 of the Act, a company secretary’s duties include, but are not restricted to-

- (a) providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;



- (b) making the directors aware of any law relevant to or affecting the company;
- (c) reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or this Act;
- (d) ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with this Act;
- (e) certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, and whether all such returns and notices appear to be true, correct and up to date;
- (f) ensuring that a copy of the company's annual financial statements is sent, in accordance with this Act, to every person who is entitled to it; and
- (g) carrying out the functions of a person designated in terms of Section 33(3).

From the above, we deduce that the Act imposes a governance, rather than an administrative, obligation on the company secretary.

We are therefore of the view that, in the context of section 90(2) (b)(iv), "related secretarial work" refers to services similar to those included in the duties of the company secretary in section 88, and excludes services of an administrative nature, such as the lodging of returns.

[Appendix II](#) to this document contains examples of services that we would or would not regard as constituting "related secretarial work".

## **9. Firm structures**

The Code defines a network as a larger structure that is aimed at co-operation and that is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, a common business strategy, the use of a common brand-name or a significant part of professional resources.<sup>5</sup>

The IRBA monitors compliance with the Code. Firms should therefore exercise caution when structuring their business to avoid the application of section 90(2) (b). If the auditor refers the client to another service provider for accounting/bookkeeping services, it will not be a breach of section 90 as long as the client retains responsibility for the final decision.

## **10. Disclosure requirements imposed by the Auditing Profession Act, No 26 of 2005**

Section 44(4) of the Auditing Profession Act, No. 26 of 2005 (APA) requires the auditor to state in the auditor's report that the auditor (or any other member of an audit firm where the auditor is a member of a firm) was responsible for keeping an entity's accounting records, if applicable. Section 44(4) and (5)

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<sup>5</sup> IRBA Code of Professional Conduct, paragraph 290.13 – 290.24

of the APA does not deal with the prohibition of the appointment of an auditor that has performed such services – it only deals with the disclosure by the auditor when such services have also been performed.

When an auditor has been appointed in contravention of section 90(2), the validity of such an appointment is a matter which is subject to legal determination.

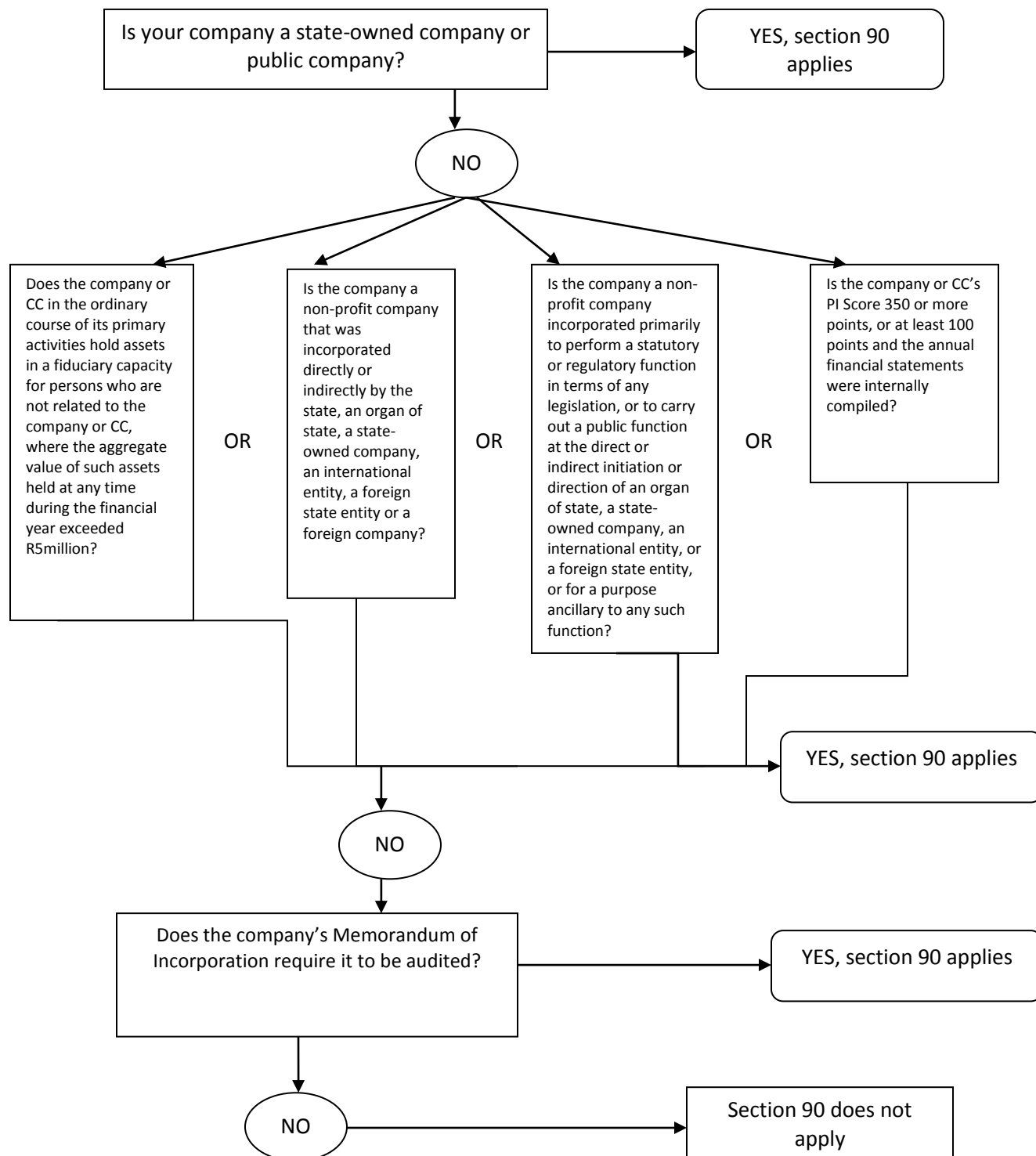
Therefore, when section 90(2) (b) of the Act, read with the relevant sections of the Close Corporations Act, No. 69 of 1984 (CC Act) prohibits (amongst others) an individual/firm that was or has been engaged for more than one year in the maintenance of any of a company's or a CC's financial records or who habitually or regularly performs the duties of bookkeeper for a company or a CC from being appointed as auditor of the particular company or CC for a company or a CC to which section 90 applies, it follows that the reporting requirement in section 44(4) of the APA is not relevant. This is because the provision of such services (keeping the company's or CC's accounting records) would prohibit the practitioner from validly being appointed as auditor of that particular company or CC in the first instance.

We read section 44(4)'s reference to "records" to mean "accounting records". We therefore regard "keeping the books, records or accounts" in section 44(4) of the APA as having the same meaning as "maintenance of financial records" in the Act.

[Appendix III](#) contains the extract of section 44(4) and (5) of the Auditing Profession Act, 2005.

## Appendix I – Application of section 90

### When does section 90 apply?



## Appendix II – Examples of activities classified in terms of section 90

Registered auditors should also refer to the Code, specifically the sections dealing with the provision of non-assurance services to audit clients.

The list provided is not exhaustive and auditors should use professional judgement and document any considerations and conclusions reached.

### Classification of terms

#### a. Maintenance of any of the company's financial records

##### *Examples of activities that would be classified as maintenance of financial records*

- Assisting clients with outsourced payroll systems
- Maintaining fixed asset registers
- Compiling purchase orders
- Preparing time records for payroll
- Compiling customer orders

##### *Examples of activities that would not be classified as maintenance of financial records*

- Where a company or CC's records are located at the offices of the auditor of the company or CC, this does not equate to the "maintenance of financial records" by the auditor
- Completing Compensation Commission forms
- Suggesting adjusting journal entries as a result of audit findings

#### b. Preparation of any of its financial statements

##### *Examples of activities that would be classified as preparation of financial statements*

- Preparing the Statement of Financial Performance (income statement), Statement of Financial Position (balance sheet), cash flow statement and notes to the financial statements
- Converting financial information from a trial balance or a reporting package to financial statements
- Using an automated system (software) to produce financial statements
- Posting journal entries to ensure compliance with International Financial Reporting Standards (IFRS)

***Examples of activities that would not be classified as preparation of financial statements***

- Should the auditor provide adjusting journal entries or suggest improvements to the financial statements, this is not seen as preparing the financial statements, provided the client takes responsibility for those journal entries. In this regard, also refer to the Code sections 290.166 and 290.167 (refer to Appendix V to this document)
- Suggesting adjusting journal entries as a result of audit findings
- Reformatting client/externally prepared financial statements (including notes)
- Providing illustrative examples of financial statements

**c. Related secretarial work*****Examples of activities that would be classified as related secretarial work***

- Taking responsibility for ensuring that the company complies with legislation

***Examples of activities that would not be classified as related secretarial work***

- Taking minutes of directors', shareholders' or members' meetings
- Drafting shareholders', directors' or members' resolutions on instruction from the directors, members or company secretary
- Completing Companies and Intellectual Property Commission (CIPC) forms and filing those forms
- Providing advice to the company secretary/directors with regard to secretarial matters, e.g. the maintenance of statutory books and records, or the submission of forms with the CIPC
- Maintaining statutory books and records
- Keeping of the share register
- Corresponding with the CIPC on behalf of a client in terms of specific instructions received from the company secretary/directors/other client representatives to bring resolutions to outstanding matters
- Providing ad-hoc advice on legislation relating to statutory records

## **Appendix III – Extract from the Auditing Profession Act**

### **Section 44 of Auditing Profession Act, 2005**

Section 44 of the Auditing Profession Act, 2005 states the following:

*"(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 purposes 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."*

## Appendix IV – Extract from Regulation 25

### Extract from Regulation 25 – Company financial year and financial records

“25(3) To the extent necessary for a particular company to comply with section 28(1), read with section 29(1), the accounting records of that company must include -

- (a) a record of the company’s assets and liabilities including, but not limited to -
  - (i) a record of the company’s non-current assets, showing for each such asset or, in the case of a group of relatively minor assets, each such group of assets -
    - (aa) the date the company acquired it, and the acquisition cost;
    - (bb) the date the company re-valued it, if applicable, and the amount of the re-valuation and, if it was re-valued after the Act took effect, the basis of, and reason for, the re-valuation; and
    - (cc) the date the company disposed of or retired it, once it has been disposed of or retired, and the value of the consideration, if any, received for it and, if it was disposed of after the Act took effect, the name of the person to whom it was transferred;
  - (ii) a record of any loan by the company to a shareholder, director, prescribed officer or employee of the company, or to a person related to any of them, including the amount borrowed, the interest rate, the terms of re-payment, and material details of any breach, default or re-negotiation of any such loan; and
  - (iii) a record of any liabilities and obligations of the company including, but not limited to -
    - (aa) a record of any loan to the company from a shareholder, director, prescribed officer or employee of the company, or from a person related to any of them, including the amount borrowed, the interest rate, and the terms of re-payment, and material details of any breach, default or re-negotiation of any such loan; and
    - (bb) a record of any guarantee, suretyship or indemnity granted by the company in respect of an obligation to a third party incurred by a shareholder, director, prescribed officer or employee of the company, or by a person related to any of them, including the amount secured, the interest rate, the terms of re-payment, the expiry date, and the circumstances in which the company may be called upon to honour the guarantee, suretyship or indemnity;
- (b) a record of any property held by the company -
  - (i) in a fiduciary capacity; or
  - (ii) in any capacity or manner contemplated in section 65(2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

- (c) a record of the company's revenue and expenditures, including-
    - (i) daily records of all money received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash transactions, the names of the parties to the transactions to be identified;
    - (ii) daily records of all goods purchased or sold on credit, and services received or rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and
    - (iii) statements of every account maintained in a financial institution in the name of the company, or in any name under which the company carries on its activities, together with vouchers or other supporting documents for all transactions recorded on any such statement; and
  - (d) if the company trades in goods, a record of inventory and stock in trade, statements of the annual stocktaking, and records to enable the value of stock at the end of the financial year to be determined.
- (4) In addition to the requirements set out above, a non-profit company must maintain adequate records of all revenue received from donations, grants, and member's fees, or in terms of any funding contracts or arrangements with any party."



## **Appendix V – Extracts from the Code of Professional Conduct for Registered Auditors**

### ***“Serving as a Director or Officer of an Audit Client***

- 290.144 If a partner or employee of the firm serves as a director or officer of an audit client, the self-review and self-interest threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Accordingly, no partner or employee shall serve as a director or officer of an audit client.
- 290.145 The position of Company Secretary has different implications in different jurisdictions. Duties may range from administrative duties, such as personnel management and the maintenance of company records and registers, to duties as diverse as ensuring that the company complies with regulations or providing advice on corporate governance matters. Generally, this position is seen to imply a close association with the entity.
- 290.146 If a partner or employee of the firm serves as Company Secretary for an audit client, self-review and advocacy threats are created that would generally be so significant that no safeguards could reduce the threats to an acceptable level. Despite paragraph 290.144, when this practice is specifically permitted under local law, professional rules or practice, and provided management makes all relevant decisions, the duties and activities shall be limited to those of a routine and administrative nature, such as preparing minutes and maintaining statutory returns. In those circumstances, the significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level.
- 290.147 Performing routine administrative services to support a company secretarial function or providing advice in relation to company secretarial administration matters do not generally create threats to independence, as long as client management makes all relevant decisions.

### ***Preparing Accounting Records and Financial Statements***

#### **General Provisions**

- 290.164 Management is responsible for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework. These responsibilities include:
- Originating or changing journal entries, or determining the account classifications of transactions; and
  - Preparing or changing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders).
- 290.165 Providing an audit client with accounting and bookkeeping services, such as preparing accounting records or financial statements, creates a self-review threat when the firm subsequently audits the financial statements.

290.166 The audit process, however, necessitates dialogue between the firm and management of the audit client, which may involve:

- (a) the application of accounting standards or policies and financial statement disclosure requirements,
- (b) the appropriateness of financial and accounting control and the methods used in determining the stated amounts of assets and liabilities, or
- (c) proposing adjusting journal entries.

These activities are considered to be a normal part of the audit process and do not, generally, create threats to independence.

290.167 Similarly, the client may request technical assistance from the firm on matters such as resolving account reconciliation problems or analysing and accumulating information for regulatory reporting. In addition, the client may request technical advice on accounting issues such as the conversion of existing financial statements from one financial reporting framework to another (for example, to comply with group accounting policies or to transition to a different financial reporting framework such as International Financial Reporting Standards). Such services do not, generally, create threats to independence provided the firm does not assume a management responsibility for the client.

#### **Audit Clients that are Not Public Interest Entities**

290.168 The firm may provide services related to the preparation of accounting records and financial statements to an audit client that is not a public interest entity where the services are of a routine or mechanical nature, so long as any self-review threat created is reduced to an acceptable level. Examples of such services include:

- Providing payroll services based on client-originated data;
- Recording transactions for which the client has determined or approved the appropriate account classification;
- Posting transactions coded by the client to the general ledger;
- Posting client-approved entries to the trial balance; and
- Preparing financial statements based on information in the trial balance.

In all cases, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Arranging for such services to be performed by an individual who is not a member of the audit team; or
- If such services are performed by a member of the audit team, using a partner or senior staff member with appropriate expertise who is not a member of the audit team to review the work performed.

## Audit Clients that are Public Interest Entities

### General Provisions

290.169 Except in emergency situations, a firm shall not provide to an audit client that is a public interest entity accounting and bookkeeping services, including payroll services, or prepare financial statements on which the firm will express an opinion or financial information which forms the basis of the financial statements.

290.170 Despite paragraph 290.169, a firm may provide accounting and bookkeeping services, including payroll services and the preparation of financial statements or other financial information, of a routine or mechanical nature for divisions or related entities of an audit client that is a public interest entity if the personnel providing the services are not members of the audit team and:

- The divisions or related entities for which the service is provided are collectively immaterial to the financial statements on which the *registered auditor* will express an opinion; or
- The services relate to matters that are collectively immaterial to the financial statements of the division or related entity.

### Emergency Situations

290.171 Accounting and bookkeeping services, which would otherwise not be permitted under this section, may be provided to audit clients in emergency or other unusual situations when it is impractical for the audit client to make other arrangements.

This may be the case when:

- (a) only the firm has the resources and necessary knowledge of the client's systems and procedures to assist the client in the timely preparation of its accounting records and financial statements, and
- (b) a restriction on the firm's ability to provide the services would result in significant difficulties for the client (for example, as might result from a failure to meet regulatory reporting requirements).

In such situations, the following conditions shall be met:

- (a) Those who provide the services are not members of the audit team;
- (b) The services are provided for only a short period of time and are not expected to recur; and
- (c) The situation is discussed with those charged with governance. “

## Appendix VI – Frequently asked questions

### Frequently asked questions relating to the implementation of section 90(2) of the Companies Act, 2008

#### 1. Which companies/close corporations are required to be audited in terms of the Act?

An audit that is required by the Act or the Companies Regulations in terms of section 30(2) (a) and (b)(i) includes the audit of the following:

- public companies;
- state-owned companies;
- any profit or non-profit company/CC if, in the ordinary course of its primary activities, it holds assets in a fiduciary capacity for persons not related to the company/CC and the aggregate value of the assets exceeds R5million at any time during the financial year;
- a private/non-profit/personal liability company or CC if its PI Score is 350 or more;
- a private/non-profit/personal liability company or CC if its PI Score is at least 100 but below 350 and the annual financial statements were internally compiled;
- any non-profit company or CC if it was incorporated by the state, an organ of the state, a state-owned company, an international entity, foreign state entity or a foreign company; or a non-profit company or CC that was incorporated to perform a statutory or regulatory function (refer to Regulation 28(2)(b)(i) and (ii)).

Also refer to Appendix I for more information.

#### 2. To which companies/close corporations does section 90 apply?

Section 90 applies to all companies and CCs that are mandated to have an audit in terms of the Act's requirements. This includes:

- companies/CCs that require an audit in terms of the Act, as identified in the answer to Question 1 of this document's "Frequently asked questions";

AND

- companies audited voluntarily in terms of section 30(2) (b)(ii) of the Act if the company's MOI so requires.

#### 3. To which companies/close corporations does section 90 not apply?

Section 90 does not apply to a company or CC that chooses to have an audit voluntarily by a decision of the board, shareholders or members, or where an audit is required by a CC's association agreement.

If a company or a CC is required to be audited because of the requirements in the Estate Agency Affairs Act, No. 112 of 1976, then section 90 would not apply unless the company or CC meets the requirements as stated in the answer to Question 1 of the “Frequently asked questions”. Similarly, if, for example, an audit is required by any other law such as the Financial Advisory and Intermediary Services Act, No. 37 of 2002, the same principle applies.

If an attorney’s trust account is required to be audited because of the rules of the various law societies, then section 90 would not apply as the trust account is not subject to the provisions of the Act.

**4. Does section 90 apply to entities that are not companies; for example, trusts, partnerships, sole proprietorships and non-profit organisations?**

No, section 90 only applies to companies (including non-profit companies) or CCs that are incorporated under the Act or the Close Corporations Act, No. 69 of 1984.

**5. Does section 90 apply to close corporations?**

Yes, section 90 applies to CCs that are registered under the CA Act, as per the amendments in Schedule 3 of the Act.

Section 62A has been included in the CC Act, and it states the following:

*(1) Section 34(2) of the Companies Act, read with the changes required by the context, apply to a close corporation.*

*(2) Chapter 3 of the Companies Act, read with the changes required by the context –*

*(a) Applies to a corporation that has voluntarily determined to take any action contemplated in section 34(2) of the Companies Act; and*

*(b) Prevails over any conflicting provision of this Act, with respect to a corporation contemplated in paragraph (a).*

Therefore these sections apply to CCs.

**6. May the auditor/audit firm compile the annual financial statements when an audit is voluntarily required by decision (where section 90 does not apply)?**

The Act does not prohibit the auditor/audit firm from being validly appointed if the auditor compiled the annual financial statements of a company or CC that is audited voluntarily by decision. The auditor/audit firm has to consider the Code, specifically the sections dealing with the provision of non-assurance services to audit clients, section 290.154 to 290.216.

**7. The effective date of the Act was 1 May 2011. From when is section 90 effective?**

Section 90 is effective from 1 May 2011. The CIPC has confirmed that the section does not apply retrospectively. The date of monitoring compliance by the IRBA was extended to 1 January 2014.

**8. Section 90(2) (b)(v) of the Act also states that the person or firm appointed as the auditor could not have performed the prohibited services at any time during the previous five financial years. When does the five years commence?**

Section 90 is effective from 1 May 2011. With the extension of the monitoring of section 90 from 1 May 2011 to 1 January 2014, the counting of the five-year period has also been postponed and commenced on 1 January 2014.

**9. Section 90(2) (b)(v) of the Act also states that the person or firm appointed as the auditor could not have performed the prohibited services at any time during the previous five financial years immediately preceding the date of appointment as auditor. How is this interpreted?**

Although these provisions are applicable from 1 May 2011, the CIPC has indicated that it will monitor these provisions prospectively from 1 January 2014.

- Since the Act became effective on 1 May 2011, services provided by the auditor prior to this date will not disqualify the auditor from appointment after the effective date. “Prospective application” means that, on *1 May 2011*, the auditor was not in contravention of the section if they had also performed the accounting/bookkeeping services since *1 May 2006* (preceding five years). This interpretation relies on the presumption against retrospective application.
- Where an auditor provides any of the prohibited services after 1 May 2011, this would prohibit the auditor from being validly appointed for the next five financial years. However, services rendered by the auditor FROM 1 January 2014 will be considered to determine whether or not the auditor is prohibited from being validly appointed. In terms of this approach, all prohibited services provided prior to 1 January 2014 will be disregarded. Thus, according to the enforcement approach of the IRBA and the CIPC:
  - Prohibited services rendered between 1 May 2011 and 31 December 2013 will not be considered when determining the validity of the appointment as auditor; and
  - Where the auditor provides any of the prohibited services after 31 December 2013, the auditor will be prohibited from being appointed validly for the following five financial years.

**Illustrative example**

Company’s financial year-end: 30 June

The auditor provided prohibited services until 31 January 2014. The auditor would be prohibited from being appointed as the auditor until the end of the June 2019 financial year. Therefore, if the prohibited services are rendered to a client during January 2014, the auditor will only qualify for appointment at the same client on or after 1 July 2019 for the financial year beginning on 1 July 2019.

### Illustration for auditor who has performed prohibited services

X identifies years that the auditor cannot be appointed as the auditor due to the provision of the prohibited services.

|         | 31 Jan 2014                   | 1 July 2013 – 31 July 2014                                     | 1 July 2014 – 31 June 2015 | 1 July 2015 – 31 June 2016 | 1 July 2016 – 31 June 2017 | 1 July 2017 – 31 June 2018 | 1 July 2018 – 31 June 2019 | 1 July 2019 – 31 June 2020 |
|---------|-------------------------------|--|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Auditor | Performed prohibited services | X<br>Services performed from 1 January 2014 will be considered | X                          | X                          | X                          | X                          | X                          | Appointed                  |

The auditor therefore needs also to take into account the provision of these prohibited services to clients where the auditor envisages that the auditor may potentially provide auditing services to the same clients in future.

If the auditor performed the prohibited services during December 2013 and is then appointed as the auditor of the company, then for IRBA monitoring purposes the work performed by the auditor prior to 1 January 2014 will not be taken into account.

Companies and auditors must, however, be aware that performing the prohibited services after 1 May 2011 and being appointed as the auditor are in breach of the Act's requirements as the Act has been effective from 1 May 2011.

- Note: The prohibition on being validly appointed is dependent on the length or frequency of the services provided ("for more than one year" or "regularly or habitually"). Provision of the service "one off" will not prohibit the auditor from being appointed validly.

#### 10. Is this five years a rolling window?

Yes, at any date that an auditor is considered for appointment of an audit where section 90 applies, the auditor should refer back to the five financial-year period prior to the appointment date, up to 1 January 2014.

Example: If the auditor is requested to be appointed as the auditor from 1 January 2015, where the company's financial year-end is 31 December 2014, then the auditor has to refer back to the financial year from 1 January 2014 to 31 December 2014 to review whether the auditor has performed any of the prohibited services.

Example: If the auditor is requested to be appointed as the auditor from 1 January 2020, where the company's financial year-end is 31 December, then the auditor has to refer back to the five

years from 1 January 2015 to 31 December 2019 to review whether the auditor has performed any of the prohibited services. The auditor will not have to refer back to 1 January 2014 as that is more than five financial years from the date of appointment.

- 11. A company has a June financial year-end. The company approaches an auditor to audit the June 2010 to June 2014 audits in January 2014. If the auditor is also requested to perform prohibited services regarding the June 2010 financial year, would this affect the appointment as auditor for the 2011 to 2014 financial years?**

The performance of prohibited services for a financial year that is subject to the previous Act, Companies Act, No. 61 of 1973, (in this example, the June 2010 financial year-end) does have bearing on the eligibility for appointment as auditor for future financial years to which the Companies Act, 2008 applies. If prohibited services are performed for the June 2010 financial year in 2014, for example, the auditor will not be eligible for appointment as the company's auditor for the 2011 to 2014 financial years as this would be in breach of section 90. The prohibition is not linked to the year-end for which the financial statements are being prepared, but rather to the period in which the services are provided.

The client is in breach of the Companies Act, No. 61 of 1973, as all companies were to prepare audited financial statements under this Act. There is no transitional provision in the Companies Act, 2008 with regard to the appointment of the auditor to perform services under the Companies Act, 1973.

Auditors must also refer to the Code with regard to the provision of these services.

- 12. The Code states in section 290 that the auditor must evaluate their independence and threats to their independence. Can this section be used to override the independence requirements of section 90 of the Act?**

No, the Act is the overriding legislation for companies, although the Act states in section 5 that where a conflict exists between requirements of the APA and the Act, the APA will prevail. However, in our view, there is no conflict between the APA and the Act and it is possible to comply with both Acts simultaneously.

- 13. If a person performed accounting work and compiled the annual financial statements for a client and the client grows so that their Public Interest Score is now above 350 points, can the person be appointed as the auditor?**

If a client grows and now requires an audit in terms of the Act's requirements, then the person who compiled the annual financial statements will not be allowed to be appointed as the auditor as this will be in contravention of section 90(2) (b)(ii) and (v) as the person was compiling the financial statements during the previous five financial years prior to being requested to be the auditor.



**14. Does the IRBA apply any transitional arrangements regarding the monitoring of section 90 to assist auditors during this period?**

There are no transitional arrangements and compliance with the section is monitored from 1 January 2014. The IRBA communicated this in December 2013.

**15. When the auditor is performing an audit engagement and the auditor identifies misstatements in the financial statements prepared either internally or by another independent accounting professional, what must the auditor do?**

The auditor is allowed in terms of the Code to propose audit adjustments. The adjustments must be processed by the company or can be processed by the auditor with the authorisation/approval of the company.

The distinction therefore depends on the authorisation/approval of the accounting entries.

**16. Does the use of computerised financial statement preparation software indicate that the auditor has prepared the annual financial statements?**

Many auditors use a computerised system to prepare a company's annual financial statements; for example, by importing/capturing the company's trial balance into the system.

The Companies Regulations define the independent compilation of financial statements as annual financial statements that are prepared –

- (i) By an independent accounting professional;
- (ii) On the basis of financial records provided by the company; and
- (iii) In accordance with any relevant financial reporting standards.

If the auditor used a computerised system to compile financial statements in accordance with a relevant framework and by using the company's information, the auditor would be disqualified from being appointed as the auditor.

**17. Would it be a breach of section 90 where the auditor prepares the annual financial statements and is appointed as auditor, but the client signs as the preparer of the annual financial statements?**

Yes, it would be a breach of the Act because the auditor prepared and audited the annual financial statements.

This would also be viewed as a breach of the Code and the fundamental principles that deal with integrity, objectivity, professional competence and due care and professional behaviour.

**18. Company and audit committee responsibility**

- a. **If the company requests the auditor to perform an audit, although the auditor is in breach of section 90, can the auditor accept the engagement?**

No, the company and the auditor must comply with the relevant legislation.

**b. Can the audit committee decide to appoint an auditor who is in breach of section 90?**

No, the audit committee has a duty in terms of section 94(7) (a) of the Act to nominate a registered auditor for appointment who is sufficiently independent of the company. The prospective auditor also has the responsibility to evaluate the auditor's independence in terms of the Code and the Act, before accepting the appointment. The prospective auditor has a duty to bring any disqualification to the attention of the committee.

**c. Can the shareholders decide to appoint an auditor who is in breach of section 90 of the Act?**

No, the shareholders have a duty to comply with the Act. The auditor also has the responsibility to evaluate the auditor's independence in terms of the Code and the Act, before accepting the appointment, and should inform the shareholders of the breach of section 90.

**19. My client does not have anybody who can compile the annual financial statements. Section 90 is applicable to the company. From a practical perspective, can I assist the client in these circumstances?**

If you have been preparing your client's financial statements and the client now requires an audit in terms of the Act requirements, then you will not be allowed to be appointed as the auditor.

If you have not been preparing your client's financial statements, but the client now requires the compilation of the annual financial statements, you will have to consider whether you would prefer to compile the annual financial statements or perform the audit. The Act does not allow you to perform both functions.

**20. Can one of our partners or any other firm employee be responsible for the compilation of the annual financial statements and another partner for the audit of the set of annual financial statements?**

*Companies/Close corporations that fall within the scope of section 90*

Section 90 provides that the auditor is prohibited from being validly appointed if the auditor provided any of the prohibited services to the company/CC. Therefore, if an employee of the firm prepared the annual financial statements, the firm would be considered to have prepared the annual financial statements and would be prohibited from being appointed as auditor. The legal opinion obtained by SAICA and the IRBA confirms that section 90 applies to the individual and firm appointed as the auditor.

*Companies/Close corporations that do not fall within the scope of section 90*

Although the audit of a company or CC audited voluntary by decision is not subject to section 90, unless by choice, the auditor will have to consider the Code, specifically section 290's independence requirements.

**21. A state-owned company which is a public entity is audited by the Auditor General (AG)**

**a. Where an auditor is contracted by the AG to perform audits on its behalf, does section 90 apply?**

Where the auditor is contracted by the AG to perform audits on its behalf, the AG signs the audit report. Although the IRBA does not have jurisdiction over these audits, the same principle should apply; i.e. the same firm cannot provide the accounting and audit services to the auditee. The audit firm confirms its independence prior to accepting the audit engagement and remains independent throughout the audit.

**b. In certain cases where the AG has opted not to perform the audit and allocates the audit to the auditor (Section 4(3) of the Public Audit Act, Act No. 25 of 2004) and the auditor signs off on the audit, would section 90 apply?**

Where the AG allocates the audit to a private sector firm, the private sector auditor signs the audit report. These audits fall under the jurisdiction of the IRBA and section 90 will apply.

**22. Was an impact analysis conducted by the Department of Trade and Industry (DTI) before the Act was implemented?**

As far as we are aware an impact analysis was not conducted. The Companies Bill, B61 of 2008, stated that various stakeholders were consulted and that the DTI believes that funding would be required for the Companies Ombud to be created. No other impacts were identified.

**23. If I perform VAT services to my clients (which, in most instances, require the posting of transactions), will this be permitted?**

There is a distinct difference between accounting and taxation services. Where auditors intentionally describe services in a manner which will avoid the application of section 90, the Code will apply.

**24. Where does the auditor need to document the fact that they considered compliance with section 90?**

The auditor should ensure that they have documented policy and procedures at firm and engagement level as evidence of compliance with section 90.

The auditor is responsible for completing certain processes prior to accepting a client.

The auditing pronouncement *“Quality control for firms that perform audits and reviews of financial statements, and other assurance and related services engagements”* (ISQC1) states that the firm shall establish policies and procedures for the acceptance and continuance of client

relationships and specific engagements. Therefore firms should have policies in place to document evidence of compliance with section 90.

Auditors may consider the following **as examples** of ways to document compliance:

- document considerations and conclusions that section 90 has been considered before accepting or continuing an engagement;
- independence declaration (firm and engagement);
- engagement letter;
- management representation letter; and
- proof of independent compilation of annual financial statements to be included on file.

- 25. On section 290.168 of the Code, what would be seen as a breach? Conversions from one framework to another are very technical and the auditors are normally very involved in proposing the accounting entries/journals and then auditing those same records. Would assisting the client with converting from one framework to another framework be seen as a breach of the Code and the Act?**

Providing the advice on the conversion is technical advice, the auditor can provide technical advice, but needs to ensure that the auditor does not take over management's responsibility or prepare the financial statements.

Section 290.167 of the Code states the following:

*"290.167 Similarly, the client may request technical assistance from the firm on matters such as resolving account reconciliation problems or analysing and accumulating information for regulatory reporting. In addition, the client may request technical advice on accounting issues such as the conversion of existing financial statements from one financial reporting framework to another (for example, to comply with group accounting policies or to transition to a different financial reporting framework such as International Financial Reporting Standards). Such services do not, generally, create threats to independence provided the firm does not assume a management responsibility for the client."*

- 26. If the Act overrides the Code, will section 290.171 (Emergency Situations) fall away or can it still be used in very difficult circumstances?**

If the audit is performed for a company or CC that falls within the scope of section 90, the Act will apply and the auditor will not be able to utilise the exemption in section 290.171 in any situation.

- 27. What are the implications for the auditor/audit firm if it is in breach of section 90(2)?**

The IRBA will investigate the breach in terms of a breach of the Code and institute the necessary disciplinary proceedings if required.

**28. Can the auditor still perform the audit if the auditor is prohibited from being appointed as the auditor in terms of section 90(2)?**

No, the auditor is prohibited from being validly appointed as the auditor. The consequence is that the auditor does not hold office validly and the auditor cannot perform the audit or be appointed as the auditor.

**29. An auditor is appointed to compile the financial statements of a subsidiary company that does not fall within the scope of section 90. Does this prohibit the auditor from being appointed as auditor of the subsidiary's holding company (which falls within the scope of section 90)?**

No, the prohibition to be appointed as the auditor only extends to the appointment of the auditor/audit firm for the company for which it has provided the services identified in section 90(2) (b).

The Act does not refer to a group of companies but rather the individual company's meeting the requirements of the Act.

**30. Can an auditor render an invoice to the client for the provision of the audit service and preparation of the annual financial statements, although the preparation was done by another accountant/firm? The client would prefer a seamless service.**

No, the engagement to prepare the annual financial statements and the audit engagement are two different types of engagements.

For compilation of annual financial statements, the proposed/suggested standard is the "*International Standard on Related Services 4410 (Revised), Compilation engagements*" ISRS 4410.

For an audit engagement, the International Standards on Auditing must be used.

Therefore the preparer of the annual financial statements needs to engage with the client and the auditor needs to engage with the client separately so as to ensure that the auditor is independent.

**31. If an auditor places staff at a company to perform prohibited services and continues to remunerate the staff directly or indirectly, will this constitute a breach of section 90, if the audit firm is appointed to perform the audit of the company's annual financial statements?**

Yes, the firm would be in breach of section 90. This situation is not different from that of a secondment.