

**Guide**  
**October 2010**



*A Guide for Registered Auditors*

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## **Access to Audit Working Papers**

***Warning to Readers***

*Registered auditors are alerted to the fact that this Guide has not been amended to include current legislation.*

**Independent Regulatory Board for Auditors  
Committee for Auditing Standards  
P O Box 751595, Garden View 2047  
Johannesburg**

The *Guide for Registered Auditors: Access to Audit Working Papers (the “Guide”)* deals with the circumstances in which registered auditors (“auditors”) or registered audit firms (“firms”) are requested or required to grant access to audit working papers which support an auditor’s opinion on financial statements or other financial or non-financial information. This guidance applies when auditors are requested to provide access, in particular circumstances, to their audit working papers to the client, to another auditor or to a third party. Guidance is provided in respect of access requested in the following circumstances:

1. Access required by law;
2. Access required in compliance with *International Standards on Auditing* and the Independent Regulatory Board for Auditors (the “IRBA”) *Code of Professional Conduct for Registered Auditors*; and
3. Access requested by third parties.

The mission of the IRBA is to endeavour to protect the financial interests of the South African public and international investors in South Africa through the effective and appropriate regulation of audits conducted by registered auditors, in accordance with internationally recognized standards and processes.

In line with the IRBA’s legislative mandate, its objectives are to create the framework and principles to contribute to the protection of members of the public who rely on the services of registered auditors, and to support registered auditors who carry out their duties competently, fearlessly and in good faith. The goal is to help create an ethical, value-driven financial sector that encourages investment and confidence and promotes sound practices by developing and maintaining auditing standards which are internationally comparable.

The statutory responsibility of the Committee for Auditing Standards (CFAS) is to assist the IRBA to:

- develop, maintain, adopt, issue or prescribe auditing pronouncements,;
- consider relevant changes internationally by monitoring developments by other auditing standard-setting bodies and sharing information where requested; and
- promote and ensure the relevance of auditing pronouncements.

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**October 2010**

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## Introduction

- 1 Audit working papers are prepared by registered auditors (“auditors”) for purposes of planning and performing an audit, supervision and review of audit work, and recording audit evidence to support the auditor’s opinion. It may therefore not be appropriate for third parties, whose objectives and requirements might be different from those of the auditor, to rely on audit working papers to obtain information that they might require. A third party who wishes to obtain information about an audit client should obtain the information directly from the client. Circumstances may, however, arise, where the information which is sought cannot be obtained from the client and therefore may be sought from the auditor. This guide is intended to provide guidance to auditors in these circumstances.

## Purpose of the Guide

- 2 The Guide deals with the circumstances in which auditors or registered firms (“firms”) are requested or required to grant access to audit working papers which support an auditor’s opinion on financial statements or other financial or non-financial information. This guidance applies when auditors are requested to provide access, in particular circumstances, to their audit working papers to the client, to another auditor or to a third party.
- 3 Guidance is provided where auditors are required by law, or by auditing pronouncements prescribed or issued by the IRBA, or on request, or where the auditor may agree to be contractually bound to provide access to audit working papers in the following circumstances:
  - 3.1. *Access required by law*, including circumstances where this is required by the IRBA, or where access is sought by the Auditor-General South Africa (the “AGSA”) to audit working papers of an authorised auditor performing an audit engagement on behalf of the AGSA in terms of the Public Audit Act.
  - 3.2. *Access required in compliance with International Standards on Auditing (“ISAs”)<sup>1</sup>*, or the IRBA *Code of Professional Conduct for Registered Auditors* (the “Code”) and any other auditing pronouncements prescribed or issued by the IRBA, by the group engagement partner or component auditors in a group audit engagement; and by a successor auditor where there is a change from the predecessor auditor.
  - 3.3. *Access requested from third parties* where an auditor agrees to be contractually bound, for example, where investigators are conducting a due diligence or similar engagement.

## Definitions

- 4 For purposes of this Guide the following terms have the meanings attributed below:
  - 4.1. *Access to audit working papers* – means granting the client, another auditor, or other third party the right to inspect the audit working papers which were prepared by the auditor in support of a particular audit engagement, in their entirety or in part.

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<sup>1</sup> References to ISAs in this Guide refer to the *Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements 2010 Edition Part I*.

- 4.2. *Audit*<sup>2</sup> means the examination of, in accordance with prescribed or applicable auditing standards –
- financial statements with the objective of expressing an opinion as to their fairness of or compliance with an identified financial reporting framework and any applicable statutory requirements; or
  - financial and other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on the financial and other information.
- 4.3. *Auditee* – means an institution or accounting entity referred to in section 4 of the Public Audit Act, and includes any group of such institutions or accounting entities whose financial statements are or are to be consolidated in terms of legislation referred to in section (4)(2) of the same Act.
- 4.4. *Authorised auditor* – means a person authorised in terms of section 12 of the Public Audit Act to perform or to assist in the performance of an audit referred to section 11 of the same Act.
- 4.5. *Auditor-General* (“AG”) – means the individual appointed as Auditor-General in terms of section 181(1)(e) of the Constitution.
- 4.6. *Auditor-General South Africa* (“AGSA”) - means the institution contemplated in section 181(1)(e) of the Constitution.
- 4.7. *Audit documentation*<sup>3</sup> —The record of audit procedures performed, relevant audit evidence obtained, and conclusions the auditor reached (terms such as “*working papers*” or “*workpapers*” are also sometimes used).
- 4.8. *Audit file* – One or more folders or other storage media, in physical or electronic form, containing the records that comprise the audit documentation for a specific engagement.
- 4.9. *Client* – means the person (or entity) for whom a registered auditor or registered firm is performing or has performed an audit engagement.
- 4.10. *Component auditor*<sup>4</sup> - an auditor who, at the request of the group engagement team, performs work on financial information related to a component for the group audit.
- 4.11. *Group engagement partner*<sup>5</sup> (or *principal auditor*<sup>6</sup>) - the partner or other person in the firm who is responsible for the group audit engagement and its performance, and for the auditor’s report on the group financial statements that is issued on behalf of the firm. Where joint auditors conduct the group audit, the joint engagement partners

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<sup>2</sup> As defined in the Auditing Profession Act, 2005

<sup>3</sup> The terms “*audit documentation*” and “*audit file*” are defined in the *Glossary of Terms in the Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements 2010 Edition Part I (the “Glossary”)*. The terms “*audit documentation*” and “*working papers*” are regarded as being synonymous and are used interchangeably throughout this Guide.

<sup>4</sup> *Component auditor* is defined in the *Glossary*. They include affiliated firms whether using the same name or not, as well as other unrelated auditors.

<sup>5</sup> *Group engagement partner* is defined in the *Glossary*

<sup>6</sup> The term *group engagement partner* or *principal auditor* is used interchangeably throughout the document and denotes the individual registered auditor responsible for the group audit engagement.

and their engagement teams collectively constitute the group engagement partner and the group engagement team.

- 4.12. *Group engagement team*—Partners, including the group engagement partner, and staff who establish the overall group audit strategy, communicate with component auditors, perform work on the consolidation process, and evaluate the conclusions drawn from the audit evidence as the basis for forming an opinion on the group financial statements.
- 4.13. *Predecessor auditor* – the auditor who was previously the auditor of an entity and who has been replaced by the successor auditor.
- 4.14. *Principal auditor* – see definition of *Group engagement partner*.
- 4.15. *Public Audit Act* – means the Public Audit Act, 2004 (Act No. 25 of 2004).
- 4.16. *Successor auditor* – an auditor replacing an existing auditor
- 4.17. *Third party* – means any person who is not a client as defined.
- 4.18. *Working papers*<sup>7</sup> (herein referred to as “*Audit working papers*”) means the material prepared by and for, or obtained and retained by, the auditor in connection with the performance of an audit. Working papers may be in the form of data stored on paper, film, electronic media or other media.

### **Ownership of audit working papers**

- 5 Except in circumstances described in paragraph 6, audit working papers are the property solely of the auditor or firm.
- 6 The AGSA is the owner of all information, documentation, advice, recommendations and reports furnished and/or compiled during an audit performed by or on behalf of the AGSA in terms of the Public Audit Act. These working papers do not form part of the information of the auditee.

### **Responsibility for granting access to audit working papers**

- 7 In most instances the individual auditor responsible for the audit engagement accepts responsibility for attending to requests for access to the audit working papers.
- 8 However, policies and procedures put in place by a firm regarding the granting of access to audit working papers usually assign responsibility for the granting of access to audit working papers of the firm to specified individuals within the firm. For example, a firm may have appointed a “Risk Management Partner” to attend to such requests.
- 9 Where audits are performed on behalf of the AGSA access to audit working papers can be granted only by the AGSA and not by its clients, or authorised auditors, performing functions on behalf of the AGSA.

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<sup>7</sup> “*Working papers*” are defined in the *Glossary of Terms (2008 Handbook) of International Standards on Auditing, Assurance and Ethics Pronouncements* but replaced in the 2010 *Glossary* with the definitions of “*audit documentation*” and “*audit file*”. The terms “*audit documentation*” and “*working papers*” are regarded as being synonymous and are used interchangeably throughout this Guide.

## Ethical requirements

- 10 An auditor is required to respect the confidentiality of information obtained during the performance of an audit, and may not disclose such information to third parties without proper and specific authority or unless there is a legal or professional right or duty to do so<sup>8</sup>. The duty of confidentiality extends to access granted to audit working papers and to other related documentation and information in the possession of the auditor.
- 11 When a client changes auditors, a successor auditor is required to ascertain whether there are any reasons professional or otherwise not to accept the engagement.<sup>9</sup> The extent to which the predecessor auditor can discuss the affairs of the client with the successor auditor depends on the client's permission and legal or ethical requirements. Without specific instructions from the client the predecessor auditor should not volunteer information about the client's affairs.
- 12 In order to promote cooperation and good relations between auditors and within the profession and to protect the public interest a proposed successor auditor is advised to:
  - 12.1. Inquire from the prospective client whether the predecessor auditor has permission to provide information relating to the client to the successor auditor; and
  - 12.2. Obtain written permission from the client to communicate with the predecessor auditor.
  - 12.3. Where the proposed client refuses, or fails, to give permission for the proposed successor auditor to communicate with the existing auditor the proposed successor auditor should decline the appointment, unless there are exceptional circumstances of which the proposed successor auditor has full knowledge and the proposed successor auditor is satisfied regarding all relevant facts by some other means<sup>10</sup>.
- 13 The auditor should consider the following when deciding whether to disclose confidential information:
  - 13.1. Whether the interests of any parties, including third parties whose interests might be affected, could be harmed;
  - 13.2. Whether all relevant information to which access is sought is known and substantiated, to the extent that that is possible; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any; and
  - 13.3. The type of communication that is expected of the auditor and to whom it is to be addressed; i.e. whether the parties to whom the communication is addressed are appropriate recipients.
- 14 The existing, or predecessor auditor, when providing access to audit working papers, is required to take care that no more information than is strictly necessary is made available,<sup>11</sup> and undertakes to provide that information honestly and unambiguously.

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<sup>8</sup> Sections 140 and 210 of the Code (effective from 1 January 2011)

<sup>9</sup> Section 210 of the Code

<sup>10</sup> Section 210.15 of the Code

<sup>11</sup> Section 210 of the Code



### **Circumstances where access to audit working papers is required by law**

- 15 Legal or regulatory authorities have the power to gain access to audit working papers in certain circumstances. Examples include tax authorities, the police and other government department officials. Guidance regarding situations where access is required by law is provided in **Appendix 1: Examples of typical situations where access is required by law**.
- 16 The legal requirements to be met by persons requesting access to audit working papers in such circumstances will vary, depending on the type of request and by whom it is made. Auditors who are unsure about the legal requirements to be met by the other party before granting access are advised to seek independent legal advice.
- 17 The auditor is required to inform the client, as soon as possible,<sup>12</sup> when access is requested to the audit working papers, unless prohibited by law from doing so.
- 18 Access is required by the IRBA for purposes of inspections, investigations and disciplinary hearings. Guidance in these circumstances is provided in **Appendix 2: Circumstances where access is required by the IRBA**.
- 19 The AGSA and authorised auditors have a statutory obligation to guard the AGSA against the disclosure of certain information. The Public Audit Act, 2004 also provides in Subsections 18(3) and (4) for protection of the AGSA and authorised auditors against proceedings instituted in this regard. Guidance in these circumstances is provided in **Appendix 3: Access to audit working papers of the Auditor General**.

### **Circumstances where access to audit working papers might be requested in terms of International Standards on Auditing**

- 20 When appointed as the group engagement partner the requirements of ISA 600 *Special Considerations—Audits Of Group Financial Statements (Including The Work Of Component Auditors)*<sup>13</sup> (ISA 600) are to be applied. ISA 600 contains requirements for the group engagement partner, when considered necessary, to have access to relevant audit documentation of component auditors of significant components in order to obtain sufficient appropriate audit evidence regarding identified and assessed risks of material misstatement affecting the group financial statements.
- 21 Where access is requested by a group engagement partner in complying with the requirements of ISA 600<sup>14</sup> and group audit instructions have been issued<sup>15</sup> setting out the relevant working papers and information to which access is required and for which inter – office reports are required, it is inappropriate to request a “*Hold Harmless*”<sup>16</sup> letter as the component auditor is aware that the group engagement partner intends to use the information in connection with the audit of the group financial statements. A refusal to provide access or to respond to group audit instructions may result in non-compliance with requirements in ISA 600.

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<sup>12</sup> Section 140 in the Code

<sup>13</sup> In addition to its Requirements and Application Material, ISA 600 contains useful guidance in the Appendices for a group engagement partner, group engagement team and component auditors.

<sup>14</sup> ISA 600 paragraphs 13, 19-20, 24-25, 26, 30 and 31 are relevant

<sup>15</sup> ISA 600 paragraphs 40, 41, 42, 49 and 50 are relevant

<sup>16</sup> Refer Appendix 5

- 22 When auditors accept an initial engagement they are required in terms of *ISA 510 Initial engagements – Opening Balances* to develop an overall audit strategy and audit plan to obtain sufficient appropriate audit evidence regarding opening balances and the appropriateness and consistency of accounting policies<sup>17</sup> applied.

**Circumstances where an auditor agrees to be contractually bound to provide access to audit working papers**

- 23 Where the auditor has contracted to give access to audit working papers, access is granted in terms of the contract.

**Considerations to be taken into account where access is at the discretion of the auditor**

- 24 In the course of business auditors are often requested to grant access to their audit working papers other than for legal, regulatory or contractual reasons.

- 25 In such circumstances the auditor should consider the following:

- 25.1. the confidentiality of client information;
- 25.2. the duty of care to third parties; and
- 25.3. limitation on reliance by third parties.

The ways in which each aspect may be addressed with the respective parties are set out in paragraphs 26 to 27 below:

***Confidentiality of client information***

- 26 Auditors should obtain the written consent of the client prior to granting access to audit working papers.

- 27 Consideration should be given to including the following matters in the authorisation letter<sup>18</sup> from the client:

- 27.1. name/s of the party/parties by whom access to the audit working papers is requested.
- 27.2. the purpose for which the access to the audit working papers has been requested.
- 27.3. Any specific terms relating to the granting of access, such as:
  - any audit working papers to which the auditor may decide not to provide access; and
  - conditions under which the access will be granted - for example, under supervision at the auditor's offices.
- 27.4. Reference to the acknowledgement letter which the auditor will request from the third party, in which the third party agrees to the terms imposed by the auditor.
- 27.5. Confirmation of the client's authorisation to grant access, and the client's understanding of the terms.

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<sup>17</sup> ISA 510 paragraphs 6 and 7; ISA 300 *Planning an Audit of Financial Statements* paragraph 13 and ISA 710 *Comparative Information-Corresponding Figures and Comparative Financial Statements* paragraphs 17 and 18.

<sup>18</sup> Refer to **Appendix 4: Specimen Client Authorisation Letters** for illustrative examples.

- 27.6. A clear statement that the auditor is indemnified, and by whom, against any claims which may arise from granting access to that auditor's audit working papers.
- 27.7. The signatures of all relevant parties, who must be duly authorised.

***Duty of care to third parties***

- 27.8. The granting of access to audit working papers might give rise to a duty of care to third parties that may not otherwise have existed. When audit working papers are prepared, the auditor applies professional judgement, considers issues of materiality and examines amounts and disclosures in the financial statements on a test basis for specific purposes. Third parties however, might interpret the audit working papers differently because of their different objectives and requirements. The auditor should make it clear to third parties that it would be inappropriate for them to place reliance on audit working papers for purposes other than for which they were created.

***Limitation on reliance by third parties***

- 27.9. Other than in circumstances of a component auditor in response to a request by a group engagement partner, an auditor can manage the risk of creating a duty of care to third parties when granting access to audit working papers, by:
- obtaining a signed *acknowledgement letter* (also referred to as “*hold harmless*”<sup>19</sup> or “*release*” letters) from the third party. The acknowledgement letter documents the terms under which access is granted and the third party's acceptance of those terms; and
  - including a *disclaimer notice* with the audit working papers to explain the purpose for which they were prepared and stating that no reliance should be placed on them for any other purpose.
- 27.10. Consideration should be given to including the following matters in the acknowledgement letter, depending on the circumstances of the request:
- the purpose for which the access to the audit working papers is requested.
  - an acknowledgement that the third party understands the purpose for which the audit working papers were brought into existence, that they were not created for use by third parties and that they may therefore not be suitable for the purposes which the third party intends.
- 27.11. Agreement on any terms regarding the granting of access, for example:
- any audit working papers to which the auditor may decide not to provide access;
  - conditions under which the access will be granted, e.g. under supervision at the auditor's offices; and
  - an acknowledgement that the audit working papers will not be made available to other parties without the auditor's written permission.
- 27.12. An acknowledgement by the third party that the auditor does not owe a duty of care to persons who use the audit working papers and to third parties merely by reason of

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<sup>19</sup> Refer to **Appendix 5: Specimen Acknowledgement (“Hold Harmless”) Letters** for illustrative examples.

granting access to the audit working papers, and a clear statement that the auditor is indemnified by the persons requiring access to the audit working papers against any claims which may result from the granting of access. Claims arising from causes other than the granting of access are not covered by this indemnity.

27.13. Confirmation of the third party's understanding and acceptance of the terms.

27.14. The signatures of all relevant parties, who must be duly authorised.

**Potential risks to auditors when granting access to audit working papers to third parties**

28 The auditor should establish the reason for a request for access to working papers and should consider the risks associated with such a request before granting access.

29 The following circumstances and associated risks might arise when an auditor grants access to audit working papers to third parties, other than a group engagement partner where access is granted to relevant audit working papers in accordance with ISA 600:

***Access granted to the client***

29.1. The client may request to review the audit working papers to obtain evidence to support a claim against the auditor for damages allegedly suffered by the client.

***Access granted to an successor auditor***

29.2. The successor auditor might claim compensation from the predecessor auditor for expressing an incorrect auditor's opinion on the financial statements, in circumstances where the successor auditor relied on the audit working papers of the predecessor auditor for purposes of planning the initial audit engagement.

***Access granted to prospective purchasers, investors or lenders***

29.3. The client might claim compensation for losses incurred due to the cancellation of a transaction, in circumstances where third parties relied on the audit working papers to reach conclusions regarding the existence of positive or negative indicators, which in turn influenced their decisions regarding the intended transaction.

29.4. Prospective purchasers, investors or lenders and their representatives might claim compensation for losses incurred due to the implementation of a transaction, in circumstances where they relied on the audit working papers to reach conclusions regarding the existence of positive or negative indicators, which in turn influenced their decisions regarding the intended transaction.

**Policies and procedures regarding access to audit working papers**

30 Many firms have established policies and procedures to assist them in managing the risks associated with granting access to their audit working papers. Guidance is included in **Appendix 6: Establishing policies and procedures regarding access to audit working papers** to assist auditors wishing to establish such policies and procedures. This guidance is illustrative only and is not exhaustive.

## Appendix 1

### Examples of typical situations where access is required by law

The information provided below serves as general guidance and a summary of requirements when the circumstances referred to arise. The guidance is not intended to replace the advice of legal counsel nor does the guidance intend to spell out the exact legal requirements. Auditors are encouraged to seek legal advice and/or review the appropriate legislation to ensure that appropriate action is taken in any given circumstances.

#### 1 Subpoena

Auditors should not provide access to audit working papers unless they are legally required to do so. However, auditors should not provide access to audit working papers merely because they are presented with a subpoena. They should follow certain procedures to ensure that the subpoena is valid.

##### 1.1 In civil proceedings

In civil proceedings a third party (or, indeed, the client of an auditor) may issue a subpoena requiring an auditor to attend court rather than merely to seek disclosure of documents. The subpoena could take one of two forms: either requiring the auditor to attend in person and give oral evidence, or requiring the auditor to attend and to bring certain specified documents to the court.

An auditor will be in contempt of court if the auditor fails to attend court at the time specified. The subpoena must be specific regarding the documents required. The auditor should seek legal advice as to whether the categories of documents included in the subpoena can be challenged on the grounds of relevance or admissibility. Any challenge to the terms of a subpoena should be made before the trial date. In complying with the terms of a subpoena to produce documents, the auditor should take the documents to court, although the power to order their production ultimately rests with the court alone.

If an auditor is served with a subpoena by a third party the auditor should inform the client. Where the person serving the subpoena is seeking documents and not oral evidence, the client may consider it appropriate to authorise the auditor to make the documents available in advance of the trial date, if to do so would reduce the inconvenience to the auditor and would not otherwise prejudice the client's interests.

##### 1.2 In public sector civil proceedings

The position in respect of a subpoena for access to audit working papers where the audit is performed on behalf of the AG is significantly different. Access to these working papers is regulated by the Public Audit Act. Section 18(3) of the Public Audit Act protects authorised auditors against proceedings instituted for the purpose of gaining access to audit working papers. If an auditor is served with a subpoena where the audit is performed on behalf of the AG the auditor should refrain from granting access to working papers and inform the engagement manager in the AGSA immediately. Refer to Appendix 3 for the complete AG position on access to audit working papers.

### 1.3 In criminal proceedings

In criminal proceedings, an auditor may be served with a subpoena requiring attendance at court to give oral evidence and/or to produce specified documents. The considerations which apply in such circumstances are similar to those relating to subpoenas in civil proceedings. An auditor will be held to be in contempt of court if the auditor fails to comply with the subpoena. Similarly, the ultimate right to require production of documents to the court rests with the court, although a client may authorise the auditor to produce documents confidential to the client in advance of compliance with the subpoena. If an auditor is in any doubt, legal advice should be sought as to the auditor's obligations.

### 1.4 In public sector criminal proceedings

The protection provided by the Public Audit Act against proceedings instituted to gain access to audit working papers does not apply to proceedings before a court in a criminal matter. The authorised auditor should inform the engagement manager in the AGSA immediately upon receipt of a subpoena in a criminal matter.

### 1.5 Instruction or request by a legislature or an internal committee of a legislature

The protection provided by the Public Audit Act against proceedings instituted to gain access to audit working papers does not apply to proceedings before a legislature or an internal committee of a legislature. The authorised auditor should inform the engagement manager in the AGSA immediately upon receipt of such a subpoena, instruction or request.

## 2 South African Revenue Service

### 2.1 Requesting information

Representatives of the South African Revenue Service (SARS) may, in terms of section 74A and 74B of the Income Tax Act, 58 of 1962, and section 57A and 57B of the VAT Act, 89 of 1991, require the taxpayer or any other person to furnish information to SARS for purposes of inspection, audit or examination. This information will include audit working papers or related information.

The request for information is made in terms of section 74B and section 57B respectively, which requires an authorisation letter<sup>20</sup> granted by the Commissioner or his or her designate.

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<sup>20</sup> Section 74(1), inter alia, defines the following:

"**authorisation letter**" means a written authorisation granted by the Commissioner or by any person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner for this purpose, to an officer to inspect audit, examine or obtain, as contemplated in section 74B, any information, documents or things;

"**documents**" include any document, book, record, account, deed, plan, instrument, trade list, stock list, affidavit, certificate, photograph, map, drawing and any printout of information generated, sent, received, stored, displayed or processed by electronic means;

"**information**" includes any electronic representations of information in any form;

"**judge**" means a judge of the High Court and includes a judge in chambers;

"**premises**" include any building, premises, aircraft, vehicle, vessel or place;

"**things**" include any corporeal or incorporeal thing and any document relating thereto;

Auditors who are presented with such a request should, before granting access to the information:

- determine whether the authorisation letter meets the requirements of section 74(1) and section 57(1) as the case may be;
- inform the client of the request; and
- put the necessary safeguards in place to limit access solely to the specific information requested.

Sometimes the request will be made to the client who will then request the auditor to provide certain audit working papers. Under such circumstances the auditor should consider the guidance below.

## 2.2 Inquiry

In terms of section 74C(9) of the Income Tax Act, 58 of 1962, and section 57C(9) of the VAT Act, 89 of 1991, any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry. Any person contemplated in section 74C(9) and 57C(12) as the case may be, has the right to legal representation during the time that he appears before the presiding officer. The person whose affairs are investigated in the course of the enquiry shall be entitled to be present at the inquiry.

## 2.3 Search and seizure

In terms of section 74D of the Income Tax Act, 50 of 1962 and section 57D of the VAT Act, 89 of 1991, a judge, on application by the Commissioner or any officer as contemplated in the Income Tax Act and the VAT Act may grant, a warrant authorising the officer named therein, without prior notice and at any time to:

- search any premises; and
- seize any information, documents or things.

Auditors who are presented with such a warrant should:

- determine whether the warrant is valid before granting access to their premises;
- inform the relevant client of the search and seizure; and
- take the necessary steps to limit access solely to the specific information covered by the warrant.

## 3 South African Police Service

South African Police Service (SAPS) officials may search and seize documents in terms of a warrant.

Where the police official wishes to remove documents from the auditor's office, regard should be had to the following:

- No legal privilege exists between an auditor and the auditor's client as exists in the case of certain other professional relationships. Section 140 of the Code read

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"Warrant" means a written authorisation issued by a judge to search for and seize any information, documents or things under section 74D.

with Rule 2.6 of the Rules Regarding Improper Conduct<sup>21</sup>, does not create legal privilege in favour of an auditor's client. Therefore, an auditor may not lawfully refuse to hand over documents of relevance when called upon to do so by the SAPS, provided the latter have shown that they are acting within the ambit of their powers.

- The relevant sections of the Criminal Procedure Act, 51 of 1977 are the following:  
“Section 21 – Article to be seized under search warrant:
  - (1) Subject to the provisions of sections 22, 24 and 25, an article referred to in section 20 shall be seized only by virtue of a search warrant issued –
    - (a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person or upon or at any premises within his area of jurisdiction; or
    - (b) by a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or at any premises is required in evidence at such proceedings.
  - (2) A search warrant issued under subsection (1) shall require a police official to seize the article in question and shall to that end authorise such police official to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.
  - (3)(a) A search warrant shall be executed by day, unless the person issuing the warrant in writing authorises the execution thereof by night.
    - (b) A search warrant may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.
  - (4) A police official executing a warrant under this section or section 25 shall, after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant.”

Articles may be seized without a search warrant if the person concerned consents thereto, or if the police official believes a search warrant would be issued if he applied for one and the delay in obtaining one would defeat the object of the search (section 22).

Any police official requesting documentary evidence should be asked to produce a search warrant as envisaged by section 21 of the Criminal Procedure Act. Auditors should not consent to search or seizure without the production of this written search warrant. However, if the police official maintains that he would be issued with a search warrant if it were applied for and that the delay in obtaining such a warrant would defeat the object of the search, auditors may not lawfully refuse to allow the police official to search and seize any documents.

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<sup>21</sup> Effective from 1 January 2011



In summary, where the auditor is presented with a warrant by the SAPS the auditor may need to:

- determine whether the warrant is valid before granting access to the auditors premises;
- inform the relevant client of the search and seizure; and
- take the necessary steps to limit access solely to the specific information covered by the warrant.

#### **4 Persons in terms of the Promotion of Access to Information Act (Act 2 of 2000)**

The purpose of the Promotion of Access to Information Act (PAIA) is to give effect to the constitutional right of access to any information held by the State and any information held by another person and which is required for the exercise or protection of any rights.

Section 50 of the PAIA provides that a person must be given access to any record of a private body if:

- (a) that record is required for the exercise or protection of any of the person's constitutional rights;
- (b) that person complies with the procedural requirements laid down in the Act relating to a request for access to that record; and
- (c) the request for information does not fall within any of the grounds laid down in the PAIA upon which access to information may be refused.

In terms of a legal opinion obtained by the IRBA, audit working papers are the property of the auditor and do not form part of company information. Accordingly a request for access to audit working papers cannot be made in terms of the PAIA.

#### **5 Section 417 Enquiries in terms of the Companies Act, 1973<sup>22</sup>**

##### **5.1 Summoning and examination of persons as to affairs of the company<sup>23</sup>**

In any winding-up of a company unable to pay its debts, the Master or the Court, or any person appointed by the Master or the Court as a commissioner, may, at any time after a winding-up order has been made, summon before him or it, any director or officer of the company or person known or suspected to have in his possession any property of the company or believed to be indebted to the company, or any person whom the Master or the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

Any person summoned under subsection 417(1) may be represented, and should consider obtaining representation by an attorney, with or without counsel, at his attendance before the Master or the Court.

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<sup>22</sup> The references in this Guide to the Companies Act 1973 will be updated with the references to the Companies Act, 2008 once the final Amendments thereto have been published and the date when of the 2008 Act comes into effect is known.

<sup>23</sup> Section 417 of the Companies Act, 1973 will remain in force after the Companies Act, 2008 comes into effect, until the Minister determines, by notice in the Gazette that it will cease to have effect.

The Master or the Court may examine any person summoned under subsection (1) on oath or affirmation concerning any matter referred to in that subsection, either orally or on written interrogatories, and may reduce his answers to writing and require him to sign them.

Any such person is required to answer any question put to him at the examination, notwithstanding that the answer could incriminate him and shall, if he does so refuse on those grounds, be obliged to so answer at the instance of the Master or the Court; provided that the Master or the Court may only oblige the person in question to so answer after the Master or the Court has consulted with the Director of Public Prosecutions who has jurisdiction.

Any incriminating answer or information directly obtained, or incriminating evidence directly derived from, an examination in terms of this section shall not be admissible as evidence in criminal proceedings in a court of law against the person concerned or the body corporate of which he is or was an officer, except in criminal proceedings where the person concerned is charged with an offence relating to-

- i) The administering or taking of an oath or the administering or making of an affirmation;
- ii) The giving of false evidence;
- iii) The making of a false statement; or
- iv) A failure to answer lawful questions fully and satisfactorily.

The Master or the Court may require any such person to produce any books or papers in his custody or under his control relating to the company but without prejudice to any lien claimed with regard to any such books or papers, and the Court shall have power to determine all questions relating to any such lien.

If any person who has been duly summoned under subsection (1) and to whom a reasonable sum for his expenses has been tendered and agreed between the parties, fails to appear before the Master or the Court at the time appointed by the summons without lawful excuse made known to the Master or the Court at the time of the sitting and accepted by the Master or the Court, the Master or the Court may cause such person to be apprehended and brought before him or it for examination.

Any person summoned by the Master under subsection (1) shall be entitled to such witness fees as he would have been entitled to if he were a witness in civil proceedings in a magistrate's court.

Any person who applies for an examination or enquiry in terms of this section or section 418 shall be liable for the payment of the costs and expenses incidental thereto, unless the Master or the Court directs that the whole or any part of such costs and expenses shall be paid out of the assets of the company concerned.

Any examination or enquiry under this section or section 418 and any application therefore shall be private and confidential, unless the Master or the Court, either generally or in respect of any particular person, directs otherwise.

## **6 Inspection of company's affairs in terms of the Companies Act, 1973**

In terms of sections 247 and 258 of the Companies Act, 1973 the Minister may appoint one or more inspectors to investigate the affairs of a company. In terms of section 260 an inspector may, for the purpose of an investigation conducted by him, summon any

director, officer, employee, member or agent of the company to appear before him at a time and place specified in the summons, to be interrogated or to produce any book or document so specified. The reference to “agent” includes a reference to the auditor of the company.

For practical purposes the provisions of paragraph 1.5 above relating to section 417 enquiries apply also to an auditor on whom a summons has been served on his working papers.

There is no direct equivalent in the Companies Act, 2008 of sections 257 and 258 of the Companies Act, 1973. However, in terms of section 176 of the Companies Act, 2008 the Companies and Intellectual Property Commission or the Takeover Regulation Panel may issue a summons to any person to appear before the Commission or Panel or to deliver or produce documents, for purposes of an investigation or inspection carried out by them. The powers of the Commission and the Panel, and the duties of the auditor, are largely the same as those applicable under a section 417 enquiry.

#### **7 Information requested by the Auditor-General South Africa (the AGSA)**

Section 16 of the Public Audit Act provides that the AGSA may, under the authority of a warrant issued by a judge or magistrate, enter any property, premises or vehicle on reasonable suspicion that a document, book or written or electronic record or information, or asset which the AGSA needs to inspect for the purpose of an audit is hidden or kept on such property, premises or in that vehicle. Section 16 further provides that the AGSA may search the location and seize any information or asset that is needed for inspection during the course of an audit.

#### **8 Inspections by the Public Company Accounting Oversight Board (the PCAOB)**

Section 104 of the Sarbanes-Oxley Act of 2002 of the United States of America (the SOX Act) requires the PCAOB to conduct a continuing programme of inspections of registered public accounting firms. All firms of auditors worldwide, who perform audits of Securities Exchange Commission Registrants (SEC Registrants) are required to register with the PCAOB, and comply with PCAOB Board’s Rules. Section 4 of the Rules provides for inspection of PCAOB registered firms, including foreign firms, and auditors performing audits of SEC Registrants.

The SOX Act requires the PCAOB to prepare a written report concerning each inspection. Under the Act and the PCAOB's rules, the PCAOB provides a copy of each report, in appropriate detail, to the Securities and Exchange Commission and to certain state regulatory authorities. The PCAOB also makes portions of those reports available to the public, subject to restrictions in the Act that prohibit, or require a delay in, the public disclosure of certain information.

The auditor is advised to seek independent legal advice when granting the PCAOB access to audit working papers.

#### **9 Inspections in terms of Article 27 of the European Commission’s Statutory Audit Directive**

Article 27 of the Directive contains certain requirements regarding delivery by group auditors, to their oversight authorities, of documentation regarding audit work performed by third country auditors. Article 27 provides that if working arrangements between competent authorities have not been agreed, group auditors within the European Economic Area (“EEA”) are responsible for ensuring proper delivery, when

requested, of certain documentation regarding the audit work performed by auditors in third countries. If the group auditor does not retain a copy of such documentation, Article 27 provides that the group auditor shall “agree with the third country auditor ... [to] proper and unrestricted access on request, or take any other appropriate action”.

The precise requirements resulting from the transposition of Article 27 into law in specific member states will be known only when that EEA member state’s transposition process is complete.

## **Appendix 2:**

### **Examples where access is required by the IRBA**

#### **1. Inspections**

Section 47 of the Auditing Profession Act 26 of 2005, (“the APA”) gives the IRBA, or any person authorised by it, the power to inspect or review the practice of an auditor at any time and may for these purposes inspect and make copies of any information, including but not limited to any working papers, statements, correspondence, books or other documents, in the possession or under the control of an auditor.

An auditor may not refuse to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents, and, subject to the provisions of the Promotion of Access to Information Act 2 of 2000 or any other law, requested by the IRBA even though the registered auditor is of the opinion that the information contains confidential information about a client.

An auditor who acts in good faith during an inspection of the practice of that auditor and who produces information requested by the IRBA will not be held liable civilly or criminally for producing the information.

Subject to the Constitution and any other law, no person who is or was concerned with the performance of any function under this section may disclose any information obtained in the performance of that function except –

- for the purpose of an investigation into, or a hearing of, improper conduct;
- if the person of necessity supplies it in the performance of functions under the APA;
- when required to do so by order of a court of law;
- at the written request of, and to, any appropriate regulator which requires it for the institution, or an investigation with a view to the institution of any disciplinary action or criminal prosecution; or
- at the written request of, and to, any appropriate international regulator of audits and auditors, that requires it for the purpose of inspection, with the consent of the auditor.

#### **2. Investigations**

Section 48(5)(a)(i) of the APA provides that when investigating a charge of improper conduct the Investigating Committee may require the auditor to whom the charge relates, or any other person to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that auditor or other person and which relates to the subject of matter of the charge, including specifically, but without limitation, any working papers of the auditor.

Section 48(5)(b) provides that the provisions of section 48(5) apply regardless of whether the auditor is of the opinion that such information contains confidential information about a client.

### **3. Disciplinary hearings**

Section 50(5) of the APA provides that the Disciplinary Committee may, for the purposes of a hearing, subpoena any person who might be able to provide material information concerning the subject of the hearing or who it suspects or believes has in his or her possession or custody or under such person's control any information, including but not limited to any working papers, statements, correspondence, books or other documents, which has any bearing on the subject of the hearing, to appear before the disciplinary committee at the time and place specified in the subpoena, to be questioned or to produce any information, including but not limited to, any working papers, statements, correspondence, books or other documents.

## **Appendix 3:**

### **Access to audit working papers of the Auditor-General South Africa**

#### **1. Statutory mandates and objectives of the AGSA**

The Guide provides a clear description of the IRBA's mandate, mission and objectives. In support of its statutory mandate, the IRBA's objectives are to create the framework and principles to contribute to the protection of members of the public who rely on the services of registered auditors, and to support registered auditors who carry out their duties competently, fearlessly and in good faith.

There is significant difference between the mandates and objectives of IRBA and those of the AGSA. Whereas the IRBA's mandate is to protect the public and registered auditors, the mandate of the AGSA is to support constitutional democracy through auditing and reporting. It is therefore logical that the position of these bodies may differ regarding the granting of access to working papers.

#### **2. Legal position of the AGSA**

Audit working papers are prepared with a specific purpose in mind, namely to assist the AGSA to plan, perform and conclude on the audit. Audit working papers also assist the AGSA to review the work done during the audit and to record evidence that supports the audit opinion. Access to these audit working papers is often required by the client or third parties for other purposes, for example litigation. The AGSA is therefore very conscious about the risks involved in granting access to its working papers.

The AGSA is the owner of all information, documentation, advice, recommendations and reports furnished and/or compiled during an audit. The audit working papers do not form part of the information of the auditee. Access can therefore only be granted by the AGSA and not by its clients or those performing functions on behalf of the AGSA (authorised auditors).

The AGSA and authorised auditors have a statutory obligation to guard the AGSA against the disclosure of certain information. The Public Audit Act also provides for protection of the AGSA and authorised auditors against proceedings instituted in this regard. Section 18 of the Public Audit Act is reproduced in point 3.3 that follows.

#### **3. Extracts from relevant sections of the Public Audit Act**

##### ***Section 18 : Protection of information***

Section 18 provides that:

“18.(1) The Auditor-General must take precautionary steps to guard against the disclosure of secret or classified information obtained in terms of section 15(1), (2) or (3) or section 16.

18.(2) Steps taken in terms of subsection (1) may not prevent the disclosure of any audit finding by the Auditor-General or an authorised auditor on any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure within the meaning of the Public Finance Management Act or the Municipal Finance Management Act, or any other legislation as applicable to the auditee which is the subject of the audit, or on any other irregular or criminal conduct relating to the financial affairs of an auditee, but any such

disclosure may not include facts the disclosure of which would harm the national interest.

18.(3) The Auditor-General, an authorised auditor or an assistant or other person referred to in section 17, is competent but may not be compelled to disclose information obtained in the course of official duties in any proceedings in which the Auditor-General is not a party, before—

- a court in a civil matter; or
- any other body or institution established in terms of legislation.

18.(4) Subsection (3) does not apply in any proceedings before—

- a legislature or an internal committee of a legislature; or
- a court in a criminal matter.”

The AGSA has exercised its discretion in terms of subsection 18(3) and directed that no staff member or authorised auditor may disclose information obtained during the course of an audit or the execution of official duties, save for when required to do so before a legislature, a legislature committee or a criminal court.

***Section 50: Disclosure of information***

Section 50 provides that: “No authorised auditor, person assisting an authorised auditor or a member of the staff of the Auditor-General may, without the permission of the Auditor-General, disclose information obtained in the course of an audit or the carrying out of duties in terms of this Act otherwise than in an audit report or in accordance with section 18(4).”

***Section 51: Offences and penalties***

Section 51 provides inter alia:

“51.(1) A person is guilty of an offence if that person—

.....

(d) contravenes section 50”

“(4) Any person convicted of an offence in terms of this Act, is liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.”



## Appendix 4

### Specimen client authorisation letters

**Appendix 4** provides examples of the letters which a firm may use when granting access to its audit working papers in the circumstances indicated. The illustrative letters do not contain an exhaustive list of matters that might be included, and firms are advised to take care to prepare letters that provide for their particular circumstances and requirements.

#### 1. Client's authorisation to the auditor to provide access to a group engagement partner<sup>24</sup>

This letter can be sent to the client to obtain authorisation to provide access to the auditor's audit working papers, to a group engagement partner, or to respond to the group engagement partner's inquiries. Management of the client should confirm their authorisation by signing in the space provided and returning a copy of the letter to the auditor. The letter is generally addressed to and accepted and agreed to by the chief executive officer or chief financial officer of the client (or the person who holds a similar position within the relevant organisation). Modifications to the letter should be made where considered necessary.

*Name and Title of Individual*

*XYZ Company*

[Address]

[Date]

Dear [Name of Individual]

We have previously audited the financial statements of *XYZ Company* (the "Company") for the year ended <insert date>, and issued our report thereon dated <insert date>. We have not audited any financial statements for any dates or periods subsequent to <insert year-end date>.

You have informed us that *ABC Firm*, as auditors of *DEF Company* (the parent company of *XYZ Company*), has asked you to authorise us to provide access to our audit working papers prepared in connection with the audit referred to above and to respond fully to its inquiries in connection with its audit of *DEF Company's* group financial statements and its investment in *XYZ Company*. In response to that request, you have authorised us to provide access to our audit working papers to *ABC Firm* and to respond fully to its inquiries.

Audit working papers that we consider proprietary will not be made available. We will obtain a letter from *ABC Firm*, substantially in the form attached hereto, prior to permitting access to the audit working papers.

Please confirm your understanding and agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

Yours faithfully

[Firm]

#### **Enclosure**

Accepted and agreed to by *XYZ Company*:

By:

Title: / Date:

<sup>24</sup> This letter is still considered appropriate in terms of providing ongoing access to the group engagement partner when requested in terms of ISA 600. The component auditor might consider providing for such authorisation when establishing the terms of the engagement for the audit of the component company.

**2. Client’s authorisation to the predecessor auditor to provide access to the successor auditor**

This letter can be sent to existing or former clients to obtain authorisation to provide access to the existing or predecessor auditor’s audit working papers to a successor auditor or to respond to the successor auditor’s inquiries. Management of the client should confirm their authorisation by signing in the space provided and returning a copy of the letter to the auditor. The letter is generally addressed to and accepted and agreed to by the chief executive officer or chief financial officer of the client (or the person who holds a similar position within the relevant organisation). Modifications to the letter should be made where considered necessary.

*Name and Title of Individual*  
*XYZ Company*  
[Address]

[Date]

Dear [Name of Individual]

We have previously audited the financial statements of *XYZ Company* (the “Company”) for the year ended <insert date>, and issued our report thereon dated <insert date>. We have not audited any financial statements for any dates or periods subsequent to <insert year-end date>.

You have consented to our responding fully to the inquiries of *ABC Firm*, as successor independent auditors for *XYZ Company* and to providing access to our audit working papers prepared in connection with the audit referred to above. You understand and agree that access to our audit working papers is undertaken solely for the purpose of obtaining an understanding about *XYZ Company* and that certain information about our audit will be made available to assist *ABC Firm* in planning the audit of the <insert year-end date> financial statements of *XYZ Company*.

*XYZ Company* also agrees to indemnify and hold harmless [*Name of auditor*] and its personnel from any claim by *ABC Firm* or any other third party that arises as a result of [*Name of auditor*] permitting access to its audit working papers in connection with this request other than those claims that may arise directly and indirectly as a result of disclosures required to be made by *ABC Firm* in terms of the requirements of any law, regulation, accounting or auditing standard.

Our rights and obligations in this letter will be governed by South African Law.

Please confirm your understanding and agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

Yours faithfully

[Firm]

Enclosure

Accepted and agreed to by *XYZ Company*:

By:

Title:

Date:

**3. Client’s authorisation to the auditor to provide access to prospective purchasers, investors or lenders**

This letter can be sent to the client to request authorisation to provide access to the auditor’s audit working papers to prospective purchasers, prospective investors or prospective lenders. Management of the client should confirm their authorisation by signing in the space provided and returning a copy of the letter to the auditor. The letter is generally addressed to and accepted and agreed to by the chief executive officer or chief financial officer of the client (or the person who holds a similar position within the relevant organisation). Modifications to the letter should be made where considered necessary.

*Name and Title of Individual*

*XYZ Company*

[Address]

[Date]

Dear [Name of Individual]

We have previously audited the financial statements of *XYZ Company* (the “Company”) for the year ended *<insert date>*, and issued our report thereon dated *<insert date>*. We have not audited any financial statements for any dates or periods subsequent to *<insert year-end date>*.

In connection with the proposed [*describe transaction (e.g. “sale of xx shares of the Company to ABC Purchaser)*], you have informed us that you have been requested by *ABC Purchaser* to allow *ABC Purchaser* and its independent auditors, *DEF Firm*, access to our audit working papers prepared in connection with the audit referred to above, and you have authorised our firm to permit *ABC Purchaser* and *DEF Firm* to review such audit working papers and, if requested, to respond to inquiries in relation to our audit working papers by *ABC Purchaser* and its representatives.

The audit working papers were prepared in connection with our audit of the Company’s *<insert year>* financial statements, taken as a whole, and to aid in the conduct and supervision of our audit. The audit working papers are the primary records kept by an auditor of the procedures applied, the tests performed, the information obtained and the pertinent conclusions reached in the audit. They will not address all the questions that a prospective [*investor*] may have. They also generally contain sensitive and candid comments about the Company that may be subject to interpretation. You acknowledge that we will have no responsibility to you if access by *ABC Purchaser* or *DEF Firm* results in the termination of, or change in, the proposed transaction, any other action against the Company, or misuse of any confidential information obtained from a review of our audit working papers or by way of explanations from us.

Audit working papers that we consider proprietary will not be made available. We will obtain a letter from *ABC Purchaser*, substantially in the form attached hereto, prior to permitting access to the audit working papers.

Our rights and obligations in this letter will be governed by South African Law.

Please confirm your understanding and agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

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Yours faithfully

[Firm]

Enclosure

Accepted and agreed to by *XYZ Company*:

By:

Title:

Date:

## Appendix 5

### Specimen third party acknowledgement (“Hold Harmless”) letters

**Appendix 5** provides examples of the “**hold harmless**” letters which a firm may obtain when granting access to its audit working papers in the circumstances indicated. The illustrative letters do not contain an exhaustive list of matters that might be included, and firms are advised to take care to prepare letters that provide for their particular circumstances and requirements. The auditor is also advised to obtain authorisation from the former client to provide access to the auditor’s audit working papers to a successor auditor or to respond to its inquiries.

#### 1. Acknowledgement from group engagement partner

This letter can be sent to the group engagement partner to obtain acknowledgment of and agreement to conditions precedent to obtaining access to the component auditor’s audit working papers.<sup>25</sup>

Where access is requested by a group engagement partner in complying with the requirements of ISA 600 *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)* and group audit instructions have been issued setting out the relevant audit working papers and information of component auditors of significant components to which access is requested and inter – office reports are required, it is inappropriate to request a “hold harmless” letter as the component auditor is aware that the group engagement partner intends to use the information in connection with the audit of the group financial statements. A refusal to provide access or to respond to group audit instructions may result in non-compliance with the requirements of ISA 600.

Where however, group audit instructions have not been issued by the group engagement partner, in accordance with ISA 600, it may be appropriate for the component auditor to issue an illustrative letter such as this to clarify what access is required.

*Principal Auditor*

[Address]

[Date]

Dear [Name of individual]

We have previously audited, in accordance with International Standards on Auditing [or other auditing standards applicable to the audit], the <insert date> financial statements of ABC Company (the “Company”). We issued a report dated <insert date> on those financial statements and have not performed any audit procedures since that date. In connection with your <insert year> audit of the group financial statements of XYZ Company, you have requested access to our relevant audit working papers in accordance with ISA 600 *Special Considerations — Audits Of Group Financial Statements (including the Work Of Component Auditors)* prepared in connection with our audit of the Company. The Company has authorised our firm to provide you with access to those audit working papers.

We understand that the purpose of you having access to our relevant audit working papers is to obtain information about the Company and our <insert year> audit results to assist you in performing your <insert year> audit of the group financial statements of XYZ Company,

<sup>25</sup> Auditors are referred to Appendix 5 of ISA 600 for “Required and Additional Matters Included in the Group Engagement Team’s Letter of Instruction” for guidance.

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which include the Company as a group subsidiary [*or explain relationship*], and that you will not be making reference to our report in your report on the group financial statements. For that purpose only, we will provide you access to those of our audit working papers which are relevant to that objective. Audit working papers that we consider proprietary will not be made available.

Our audit, and the audit working papers prepared in connection therewith, of the Company's financial statements were not planned or conducted for your purposes<sup>26</sup>. Therefore, items of possible interest to you may not have been specifically addressed. Our use of professional judgment and the assessment of materiality for the purpose of our audit means that circumstances may have existed that would have been assessed differently by you. We make no representations as to the sufficiency or appropriateness of the information in our audit working papers for your purposes. In addition, any notations, comments, and individual conclusions appearing on any of the audit working papers do not stand alone, and should not be read as an opinion on any individual amounts, accounts, balances, or transactions.

Because your review of our audit working papers is undertaken solely for the purpose described above, and will not entail inspection of all our audit working papers, you agree that:

- (1) the information obtained will not be used by you for any other purpose;
- (2) you are unable to and will not comment orally or in writing to anyone as to whether our audit was performed in accordance with *International Standards on Auditing* [or other jurisdictions' auditing standards applicable to the audit];
- (3) the audit results documented in our audit working papers will not be used<sup>27</sup> other than as audit evidence in expressing your opinion on the <insert year> group financial statements of *XYZ Company* and subsidiaries; and
- (4) you will not make reference to our report in your report on *XYZ Company's* group financial statements.

In the event of a third party request for access to your audit working papers prepared in connection with your audit of *XYZ Company*, you agree to request and obtain our permission before allowing any such access to any copies of documents or information derived from our audit working papers (“[*Company Auditor*] Working Paper Information”), and to obtain on our behalf any releases that you obtain from such third party with respect to your own audit working papers. Furthermore, in the case of a subpoena or other court order seeking access to any [*Company auditor*] Working Paper Information, you agree to notify us upon receipt of the subpoena or other court order and to provide us with a copy thereof.

Our rights and obligations in this letter will be governed by South African Law.

Please confirm your agreement to the foregoing by signing and dating a copy of this letter and returning it to us.

Yours faithfully

[Firm]

Enclosure

Accepted and agreed to by *Group engagement partner*:

By:

Date:

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<sup>26</sup> Refers to those circumstances where the group engagement partner has not issued instructions which the component auditor has agreed to follow.

<sup>27</sup> Except as contemplated by Local Laws [or in the absence of these, International Standards on Auditing],

**When signing an audit report on group financial statements reporting in a legal jurisdiction that does require reference to the component auditor’s report in the audit report on the group financial statements**

Auditors signing an audit report on group financial statements in South Africa do not refer to the report of a component auditor in their report. However, if registered auditors are signing an audit report on group financial statements reporting in a legal jurisdiction that does require such reference to be made the paragraph below should replace the second and fourth paragraphs of illustrative letter **5.1** above.

*[If the principal auditor intends to refer to the auditor’s report, and the auditor has agreed to provide access to the audit working papers, **paragraph 2** should be replaced with the following:*

“We understand that the purpose of your having access to our audit working papers is to obtain information about the Company and our <insert year> audit results to assist you in performing your <insert year> audit of the group financial statements of XYZ Company, which include the Company as a group subsidiary [*or explain relationship*], and that you will be making reference to our report in your report on the group financial statements. For that purpose only, we will provide you access to those of our audit working papers which relate to that objective. Audit working papers that we consider proprietary will not be made available.” ]

*[If the principal auditor intends to refer to the auditor’s report, and the auditor has agreed to provide access to his or her audit working papers, **paragraph 4** should be replaced with the following:*

“Because your review of our audit working papers is undertaken solely for the purpose described above, and will not entail inspection of all our audit working papers, you agree that:

- (1) the information obtained will not be used by you for any other purpose,
- (2) you are unable to and will not comment orally or in writing to anyone as to whether our audit was performed in accordance with International Standards on Auditing [*or other auditing standards applicable to the audit*], and
- (3) the audit results documented in our audit working papers will not be used<sup>28</sup> when making reference to the report of component auditors, as audit evidence in expressing your opinion on the <insert year> group financial statements of XYZ Company and subsidiaries.”]

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<sup>28</sup> Other than circumstances when a successor auditor refers to a modified audit opinion of the predecessor auditor as required by ISA 510

## 2. Acknowledgement from successor auditor

This letter can be sent to a successor auditor to obtain that auditor's acknowledgment of and agreement to conditions precedent to its obtaining access to the audit working papers.

*Successor Auditor*

[*Address*]

[*Date*]

Dear [*Name of individual*]

We have previously audited, in accordance with International Standards on Auditing [or other auditing standards applicable to the audit], the financial statements of *XYZ Company* (the "Company") for the year ended <*insert date*>. We issued a report dated <*insert date*> on those financial statements and have not performed any audit procedures since that date. In connection with your <*insert year*> audit of *XYZ Company*, you have requested access to our audit working papers prepared in connection with our <*insert year*> audit of the Company's financial statements. The Company has authorised our firm to provide you with access to those audit working papers.

Our audit, and the audit working papers prepared in connection therewith, of the Company's financial statements were not planned or conducted for your purposes. Therefore, items of possible interest to you may not have been specifically addressed. Our use of professional judgment and the assessment of audit risk and materiality for the purpose of our audit means that circumstances may have existed that would have been assessed differently by you. We make no representations as to the sufficiency or appropriateness of the information in our audit working papers for your purposes.

We understand that the purpose of your having access to our audit working papers is to obtain information about the Company and our <*insert year*> audit results to assist you in planning your <*insert year*> audit of the Company. For that purpose only, we will provide you access to those of our audit working papers that relate to that objective. You agree that the audit results documented in the audit working papers will not be used, except as contemplated by ISA510 – Initial Engagements – opening balances.

Because your review of our audit working papers is undertaken solely for the purpose described above, and will not entail inspection of all our audit working papers, you agree that:

- (1) the information obtained will not be used by you for any other purpose,
- (2) you are unable to and will not comment orally or in writing to anyone as to whether our audit was performed in accordance with International Standards on Auditing [or other auditing standards applicable to the audit],
- (3) you will not provide expert evidence or litigation support services or otherwise accept an engagement to comment on issues relating to the quality of our audit, and
- (4) you will not use the audit procedures or results thereof documented in our audit working papers as evidential matter in rendering your opinion on the <*insert year*> financial statements of *XYZ Company*, except as contemplated in the International Standards on Auditing [or other auditing standards applicable to the audit].

Upon request, we will consider providing you with copies of certain audit documentation. You agree to subject any such copies or information otherwise derived from our audit working papers ("[*Previous auditor firm name*] Working Paper Information") to your normal policy for retention of audit working papers [*if more restrictive retention is requested, so*



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*describe*] and protection of confidential client information. In the event of a third party request for access to your audit working papers prepared in connection with your audits of the Company, you agree to request and obtain our permission before allowing any such access to any copies of [*Previous auditor firm name*] audit documentation, and to obtain on our behalf any releases that you obtain from such third party with respect to your own audit working papers. Furthermore, in the case of a subpoena or other court order seeking access to any copies of [*Previous auditor firm name*] audit documentation, you agree to notify us promptly upon receipt of the subpoena or other court order and to provide us a copy thereof.

You also agree to indemnify and hold harmless [*Previous auditor firm name*] and its personnel from any claim by *XYZ Company* or any other third party that arises directly and indirectly as a result of [*Name of auditor*] permitting access to its audit working papers other than those claims that may arise as a result of disclosures required to be made by [*Successor auditor firm name*] in terms of the requirements of any law, regulation, accounting or auditing standard.

Our rights and obligations in this letter will be governed by South African Law.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Yours faithfully

[Firm]

Enclosure

Acknowledged and agreed to by *Successor Auditor*:

By:

Date:

**3. Acknowledgement from prospective purchasers, investors, lenders and an independent accounting firm**

This letter can be sent to a prospective purchaser, prospective investor, or prospective lender (the “third party”) who has requested access to the auditor’s audit working papers. The third party should indicate its acceptance of and agreement with the terms of the letter by signing in the space provided and returning a copy of the letter to the auditor. The letter is accepted and agreed to by the chief executive officer, chief financial officer, or other appropriate third party representative. Additionally, the independent accounting firm to which the auditor may be providing access to the audit working papers and/or the information contained therein should also sign the letter to accept and agree to it.

*Name and title of individual/s*

*ABC prospective purchaser, prospective investor or prospective lender*

*[Address]*

*[Date]*

Dear *[Name of individual]*

In connection with the proposed [*describe transaction (e.g., “proposed acquisition of sale of XX shares of XYZ Company (the “Company”) to ABC Purchaser”)*], the Company has requested that we allow *ABC Purchaser* and *DEF Firm*, which has been engaged by *ABC Purchaser* to assist it in evaluating the proposed transaction, access to our audit working papers prepared in connection with our audit of the *<insert year>* financial statements of the Company and to the taxation computations together with access to copies of the correspondence and related formalities between us and the South African Revenue Service in respect of the computations, and to provide them with whatever explanations are necessary. We have received authorisation from management of the Company to allow *ABC prospective purchaser, prospective investor, or prospective lender* and *DEF Firm* such access to audit working papers prepared in the course of the audit, but audit working papers that we consider proprietary will not be made available.

The financial statements are the responsibility and representations of the Company’s management. We have conducted our audit of the *<insert year>* financial statements of the Company in accordance with International Standards on Auditing [or other auditing standards applicable to the audit], the objective of which is to form an opinion as to whether the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the Company in conformity with International Financial Reporting Standards [or other accounting standards applicable to the audit]. International Standards on Auditing [or other auditing standards applicable to the audit] require that we plan and perform our audit to obtain reasonable assurance that the financial statements are free of material misstatement. Because an audit incorporates the concept of selective testing of data, which is judgmental both as to the selection of accounts and the number of transactions to be tested, our audit is subject to the inherent risks that material misstatements that may exist will not be detected. Further, the audit does not address the possibility that material misstatements may occur in the future. Nothing in this letter is intended to alter the terms or scope of our audit beyond that contemplated by an audit in accordance with International Standards on Auditing<sup>29</sup>.

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<sup>29</sup> If the audit for the year is not yet completed the following wording could be included: “As you are aware, this firm has not yet completed this year’s statutory audit of the “XYZ Company” (and its subsidiaries) financial statements, and therefore, the audit working papers for this year are incomplete. We are presently not able to

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Also, our use of professional judgment and the assessment of materiality for the purpose of our audit of the financial statements means that circumstances may have existed that would have been assessed differently by *ABC prospective purchaser, prospective investor, or prospective lender* or *DEF Firm*. We make no representation as to the sufficiency or appropriateness for your purposes of the information included in our audit working papers. The auditing procedures that we performed were limited to those that we considered necessary under International Standards on Auditing [or other auditing standards applicable to the audit] to enable us to form and express an opinion on the fairness of presentation of the Company's *<insert year>* financial statements taken as a whole as described above; thus, any notations, comments, and individual conclusions appearing on any of our audit working papers do not stand alone, and do not represent and should not be read as an opinion, conclusion, or other form of assurance with respect to any individual amounts, accounts, balances, transactions, or other information related to the Company.

Our audit of the Company's *<insert year>* financial statements was performed (and the audit working papers were prepared) for the purpose stated above and was not planned or conducted in contemplation of the proposed transaction between the Company and *ABC Purchaser*. Therefore, items of possible interest to *ABC prospective purchaser, prospective investor, or prospective lender* may not have been specifically addressed. In addition, we have not audited any subsequent financial statements of the Company and significant subsequent events may have occurred. Accordingly, our audit and the audit working papers prepared in connection therewith were not intended for the benefit of *ABC Purchaser* and should not be taken to supplant other inquiries and procedures that *ABC Purchaser* should undertake for the purpose of considering the transaction described above.

In consideration of [*Name of auditor*] allowing *ABC prospective purchaser, prospective investor, or prospective lender* and *DEF Firm* access to the audit working papers referred to above, and to the information contained therein, *ABC Purchaser* agrees that it does not acquire, and will not assert that it has acquired, any right as a result of such access that it would not otherwise have had. *ABC Purchaser* also agrees that [*Name of auditor*] has not assumed any duties or obligations that it would not otherwise have had.

*ABC prospective purchaser, prospective investor, or prospective lender* also agrees to indemnify and hold harmless [*Name of auditor*] and its personnel from any claim by *ABC prospective purchaser, prospective investor, or prospective lender, DEF Firm* or any other third party that arises directly and indirectly as a result of [*Name of auditor*] permitting access to its audit working papers in connection with this transaction.

No-one is authorised by [*Name of Audit Firm*], whether expressly or implicitly, to make representations which are inconsistent with or that vary the terms and conditions set out in this letter.

All explanations, representations or disclosures made to [*ABC prospective purchaser, prospective investor, or prospective lender*] or [*DEF Firm*] by [*Name of Audit Firm*] in relation to the audit working papers are no more than explanations of matters contained in the audit working papers. To the extent that any such explanations, representations or disclosures may be construed as relating to the affairs of the [*Company*], the onus will be on [*ABC prospective purchaser, prospective investor, or prospective lender*] or [*DEF Firm*] to verify the information with [*Company*] before relying thereon for the purpose of any decision relating to the proposed acquisition.

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give any opinion on the financial statements, and have not done so. We understand that the purchaser and the "DEF Firm" wish the accountants to review such audit working papers as are currently available."

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If [*ABC prospective purchaser, prospective investor, or prospective lender*] or [*DEF Firm*] wishes to rely upon the audit working papers or upon any such representation, statement, explanation or other information made by [*Name of Audit Firm*], it does so entirely at its own risk.

No copies are to be made of any audit working papers (whether by photocopying, copying of the electronic files, or in any other way) without the express consent of [*Name of Audit Firm*].

Further, it is understood and agreed that the use of the information obtained as a result of the review of the audit working papers will be limited to *ABC prospective purchaser, prospective investor, or prospective lender's* consideration of the transaction described above, and will not be shared with any person other than *DEF Firm*.

*DEF Firm* also agrees to indemnify and hold harmless [*Name of auditor*] against loss, damage and costs (including legal costs) as a consequence of the breach of its undertakings documented in this letter.

Our rights and obligations in this letter will be governed by South African Law.

Please confirm your agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

Yours faithfully

[Firm]

Enclosure

Accepted and agreed to by *ABC Purchaser*:

By:

Title:

Date:

Accepted and agreed to by *DEF Firm*:

By:

Title:

Date:

## Appendix 6

### **Establishing policies and procedures regarding access to audit working papers**

The items listed below serve as an illustration of the policies and procedures that could be implemented to manage the risks which arise when granting access to audit working papers. The illustration does not serve as an exhaustive list and firms are advised to take care to formulate policies and procedures specifically for their circumstances and requirements.

#### **1. Responsibility for granting access to audit working papers on behalf of the firm or engagement partner**

The policies and procedures should assign responsibility for the granting of access to audit working papers to (a) specific individual/s within the firm, for example the “Risk Management Partner”. The responsibility can also be retained by the engagement partner, possibly with the proviso that the engagement partner consult with another partner within the firm before granting access to the audit working papers.

#### **2. Circumstances where access is required by law**

The policies and procedures should provide the procedures to be followed where access is required in terms of law or contract. It should, for example, include that the firm does not contract to provide access to audit working papers. It should further describe the procedures to be followed in instances where the firm is presented with a subpoena or other similar legal instrument demanding access to specific audit working papers. These include, for example:

- obtaining legal advice;
- informing the client; and
- restricting access in terms of the subpoena.

##### **2.1. Circumstances under which the firm can elect to grant or deny access to audit working papers**

The policies and procedures should restrict access to audit working papers to certain circumstances or could be more general by listing safeguards and risk factors which need to be considered in each specific circumstance. It should further provide for certain terms which need to be met before access is granted.

##### **2.2. Obtaining authorisation and acknowledgement letters when access is granted and specimen authorisation and acknowledgement letters**

The policies and procedures should address the content of the authorisation and acknowledgement letters which are to be obtained before access is granted. Controlling the editing of the content of the letters needs to be considered. This includes review by a “Risk Management Partner” or other partner within the firm. These procedures also include consideration of the timing of obtaining the letters, (i.e. letters are obtained before access is granted), and from whom they need to be obtained.

##### **2.3. Audit working papers to which access is granted**

Policies and procedures should include the type of audit working papers to which access is granted, for example:

- Limited to audit working papers which disclose the results of the audit work performed, excluding those which relate to scope and design of the process that generated the audit working papers. Characteristics of audit working papers to which access is generally granted are:
  - Factual information about the client.
  - Information supporting the assessment of engagement risk, the control environment and risks of material misstatement.
  - Information about key audit issues, significant risks of material misstatement and their resolution.
  - Information concerning tests of control and substantive testing.

Professional judgement may need to be applied when assessing which audit working papers meet the criteria described above.

- Excluding, for example, administrative information such as time summaries and billing data.

### **3. Inspection of audit working papers**

Policies and procedures should require that the audit working papers be reviewed by a suitable person within the firm to identify any extraneous information and to determine whether they are in a suitable condition for review by a third party before the access is granted.

### **4. Format**

The auditor should determine the format in which to provide access. This may either be in hard copy or in electronic form, but should not put the confidentiality of the firm's audit methodologies or the information of other clients at risk.

### **5. Requests for copies**

The auditor is under no obligation to allow copying of the audit working papers. Policies and procedures regarding the copying of audit working papers need to be included. Such policies and procedures could provide that, as a minimum, the copying of extracts of the books and records of the client is allowed. It would also be reasonable and helpful to allow copying of papers such as a breakdown of analyses of financial statement figures and documentation of the client's systems and processes, but that any audit comments, legends, tick marks etc. are not provided on the copies or are covered prior to copying.

It is reasonable for the successor auditor to make notes of its review in support of its own documentation requirements.

The predecessor and the successor auditor should discuss and arrive at an agreement of what it is reasonable to copy.

Ultimately, the predecessor auditor will maintain control of which audit working papers can be and are copied. It would be sensible to check through any documents that the successor auditor requests to copy and keep a record of all the copied items.

### **6. Timing and period of access**

The timing of access should have regard to the following:

- the point at which the audit file will be complete; and
- the successor auditor's reporting timetable.

Requests for access need to be reasonable without causing either parties undue resourcing or timing difficulties.

There will need to be cooperation between the parties regarding the period of time during which access will be granted. The period needs to be reasonable.

#### **7. Location**

The auditor should determine the location at which access is to be provided, which will usually be the auditor's premises.

Whatever location is chosen, the auditor will need to be mindful of the confidentiality of other clients' information.

#### **8. Cost**

The recovery of actual costs is reasonable and acceptable.

Actual costs may be incurred in retrieving the information, gathering it together, extracting what is not relevant, and then making it available to the other party. Payment for these actual costs can be justified on the basis that without payment, disclosure could impose an unnecessary and unreasonable burden on the auditor, who would otherwise incur a financial loss through its compliance with its statutory obligations. Thus, it may be reasonable to charge for the cost of:

- copying documents;
- paying someone to make the copies;
- retrieving documents from archive sources; and
- paying someone to attend to such retrieval and to provide documents for inspection.

It is, however, unlikely to be reasonable if an element of profit is included in the cost

#### **9. Requirements of laws and professional standards**

The policies and procedures should take into account any legal or professional requirements regarding the granting of access to information.