

AUDITING PROFESSION ACT NO. 26 OF 2005

[View Regulation]

[ASSENTED TO 12 JANUARY, 2006]
[DATE OF COMMENCEMENT: 1 APRIL, 2006]

(English text signed by the President)

This Act has been updated to *Government Gazette 44493* dated 26 April, 2021.

amended by

Auditing Profession Amendment Act, No. 2 of 2015

[Auditing Profession Amendment Act](#), No. 5 of 2021

ACT

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

[Long Title substituted by s. 13 of Act No. 2 of 2015.]

ARRANGEMENT OF SECTIONS

[Arrangement of Sections amended by s. 22 of Act No. 5 of 2021.]

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

CHAPTER I
INTERPRETATION AND OBJECTS OF ACT

1. Definitions.—In this Act, unless the context indicates otherwise—

“**accreditation**” means the status afforded to a professional body in accordance with Part 1 of Chapter III,

which status may be granted in full or in part;

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

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

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

“auditing pronouncements” means those standards, practice statements, guidelines and circulars developed, adopted, issued or prescribed by the Regulatory Board which a registered auditor must comply with in the performance of an audit; “Auditor-General” has the meaning assigned in section 1 of the Public Audit Act, 2004 (Act No. 25 of 2004);

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

“company” has the meaning assigned to it in the Companies Act, 2008 (Act No. 71 of 2008);

[Definition of “company” substituted by s. 1 (a) of Act No. 2 of 2015.]

“Constitution” means the Constitution of the Republic of South Africa, 1996;

[Definition of “Constitution” inserted by s. 1 of Act No. 5 of 2021.]

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

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

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

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

“management board”, in relation to an entity which is a company, means the board of directors of the company and, in relation to any other entity, means the body or individual responsible for the management of the business of the entity;

“Minister” means the Minister of Finance;

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

“prescribe” means prescribe by notice in the *Gazette*, and “prescribed” and “prescribing” have corresponding meanings;

“professional body” means a body of, or representing—

- (a) registered auditors and registered candidate auditors; or
 - (b) accountants, registered auditors and registered candidate auditors;
- [Definition of “professional body” substituted by s. 1 (b) of Act No. 2 of 2015.]

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

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

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

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

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

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

“registered candidate auditor” means an individual who has obtained a professional accountant designation from an accredited professional body, who is registered as a candidate auditor with the Regulatory Board and

who is serving under the supervision of a registered auditor;

[Definition of "registered candidate auditor" inserted by s. 1 (c) of Act No. 2 of 2015.]

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

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

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

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

"third party" means any person other than a client; and

"this Act" includes an regulations promulgated under section 55;

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

2. Objects of Act.—The objects of this Act are—

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

CHAPTER II

INDEPENDENT REGULATORY BOARD FOR AUDITORS

Part 1

Establishment and legal status of Regulatory Board

3. Establishment and legal status.—(1) The Independent Regulatory Board for Auditors is hereby established, and—

- (a) is a juristic person; and
- (b) must exercise its functions in accordance with this Act and any other relevant law.

(2) The Regulatory Board is subject to the Constitution and the law, specifically, the Public Finance Management Act.

Part 2

Functions of Regulatory Board

4. General functions.—(1) The Regulatory Board must, in addition to its other functions provided for in this Act

- (a) take steps to promote the integrity of the auditing profession, including—
 - (i) investigating alleged improper conduct;
 - (ii) conducting disciplinary hearings;
 - (iii) imposing sanctions for improper conduct; and
 - (iv) conducting practice reviews or inspections;
- (b) take steps it considers necessary to protect the public in their dealings with registered auditors;
- (c) prescribe standards of professional competence, ethics and conduct of registered auditors;

(d) encourage education in connection with, and research into, any matter affecting the auditing profession; and

(e) prescribe auditing standards.

(2) The Regulatory Board may—

(a) participate in the activities of international bodies whose main purpose is to develop and set auditing standards and to promote the auditing profession;

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

(c) cooperate with international regulators in respect of matters relating to audits and auditors; and

(d) take any measures it considers necessary for the proper performance and exercise of its functions or duties or to achieve the objects of this Act.

(3) (a) The Regulatory Board must determine a regulatory strategy for performing its functions in terms of subsection (1).

(b) The Regulatory Board must submit the regulatory strategy to the Minister for approval within three months after the date that the Auditing Profession Amendment Act, 2021, takes effect.

(c) The Minister—

(i) may, after consulting the Regulatory Board, make amendments to the strategy referred to in paragraph (b); and

(ii) must publish in the *Gazette* the approved regulatory strategy within six months after the date that the Auditing Profession Amendment Act, 2020, takes effect.

(d) The Minister or the Regulatory Board may request an amendment to the regulatory strategy published in terms of paragraph (c) or a new regulatory strategy be determined in accordance with paragraph (c).

[Sub-s. (3) added by s. 2 of Act No. 5 of 2021.]

5. Functions with regard to accreditation of professional bodies.—The Regulatory Board must, subject to this Act—

(a) prescribe minimum requirements for accreditation of professional bodies in addition to those provided for in this Act;

(b) consider and decide on any application for accreditation and grant such accreditation in full or in part;

(c) prescribe the period of validity of the accreditation;

(d) keep a register of accredited professional bodies and decide on—

(i) the register to be kept;

(ii) the maintenance of the register; and

(iii) the reviewing of the register and the manner in which alterations thereto may be effected; and

(e) terminate the accreditation of professional bodies in accordance with this Act.

6. Functions with regard to registration of auditors and candidate auditors.—The Regulatory Board must, subject to this Act—

(a) prescribe minimum qualifications, competency standards and requirements for registration of auditors and candidate auditors in addition to those provided for in this Act;

(b) consider and decide on any applications for registration of auditors and candidate auditors;

(c) prescribe the period of validity of the registration of a registered auditor and a registered candidate auditor;

(d) keep registers of registered auditors and registered candidate auditors and decide on—

(i) the registers to be kept;

(ii) the maintenance of the registers; and

(iii) the reviewing of the registers and the manner in which alterations thereto may be effected;

(e) ensure that the registers of registered auditors and registered candidate auditors are at all reasonable times open to inspection by any member of the public;

(f) terminate the registration of registered auditors and registered candidate auditors in accordance with this Act; and

- (g) prescribe minimum requirements for the renewal of registration and re-registration of registered auditors and registered candidate auditors.

[S. 6 substituted by s. 2 of Act No. 2 of 2015.]

7. Functions with regard to education, training and professional development.—(1) The Regulatory Board must—

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

(2) The Regulatory Board may—

- (a) establish mechanisms for registered auditors to gain recognition of their qualifications and professional status in other countries;
- (b) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
- (c) establish and administer an education fund for the purpose of education, training, professional development and continued education, training and professional development of registered auditors and students in the auditing profession; and
- (d) give advice to, render assistance to, consult with or interact with any organ of state, statutory body, educational institution, professional body or examining body with regard to educational facilities for and the education, training and professional development of registered auditors and prospective registered auditors.

(3) (a) The Regulatory Board must, prior to withdrawing of recognition referred to in subsection (1) (a) or (b), give notice in writing to the educational institution or accredited professional body concerned of its intention to withdraw and the reasons on which it is based, and must afford the educational institution or accredited professional body a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with withdrawal.

(b) If the Regulatory Board considers that withdrawal of recognition would not be in the best interests of the public, the auditing profession or the members of an accredited professional body, it may extend the recognition of the educational institution or accredited professional body concerned on such conditions as it considers appropriate.

(c) The Regulatory Board must publish the withdrawal of recognition in terms of this subsection.

8. Functions with regard to fees and charges.—(1) The Regulatory Board must prescribe—

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

(2) The Regulatory Board may prescribe—

- (a) any fees payable for the purposes of the education fund referred to in section 7 (2);
- (b) fees payable for an inspection or review undertaken by the Regulatory Board in terms of section 47; and
- (c) fees payable for any other service rendered by the Regulatory Board.

(3) The Regulatory Board may grant exemption from payment of any fees referred to in subsection (1) or (2).

9. General powers.—The Regulatory Board may—

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

10. Powers to make rules.—(1) The Regulatory Board may, by notice in the *Gazette*, prescribe rules with regard to—

- (a) any matter that is required or permitted to be prescribed in terms of this Act; and
- (b) any other matter for the better execution of this Act or a function or power provided for in this Act.

(2) (a) Before the Regulatory Board prescribes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on the public to comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.

(b) If the Regulatory Board alters a draft rule because of any comment, it need not publish the alteration before prescribing the rule.

(3) The Regulatory Board may, if circumstances necessitate the immediate publication of a rule, publish that rule without the consultation contemplated in subsection (2).

Part 4
Governance of Regulatory Board

11. Appointment of members of Regulatory Board.—(1) The Regulatory Board consists of not less than six but not more than 10 non-executive members appointed by the Minister.

(2) The Minister must appoint competent persons who are independent of the auditing profession to effectively manage and guide the activities of the Regulatory Board, based on their knowledge and experience.

[Sub-s. (2) substituted by s. 3 (a) of Act No. 5 of 2021.]

(2A) The members appointed in terms of subsection (2) must include—

- (a) two persons with at least 10 years' experience in auditing who were formerly registered as auditors; and
- (b) two advocates or attorneys with at least 10 years' experience in practicing law.

[Sub-s. (2A) inserted by s. 3 (b) of Act No. 5 of 2021.]

(3) When making the appointments, the Minister must take into consideration, amongst other factors—

- (a) the need for transparency and representivity within the broader demographics of the South African population;

(b) any nominations received in terms of subsection (5); and

(c) the availability of persons to serve as members of the Regulatory Board.

(4) None of the members appointed in terms of this section may be a registered auditor or registered candidate auditor.

[Sub-s. (4) substituted by s. 3 (c) of Act No. 5 of 2021.]

(5) Before the Minister makes the appointments, the Regulatory Board must, by notice in the *Gazette* and in any national newspaper, invite nominations from members of the public.

(6) The Minister may appoint an alternate member for every member of the Regulatory Board, and an alternate member may attend and take part in the proceedings at any meeting of the Regulatory Board whenever the member for whom he or she has been appointed as an alternate is absent from that meeting.

(7) The Regulatory Board, as soon as practicable after the appointment of its members, must publish by notice in the *Gazette*—

(a) the name of every person appointed;

(b) the date from which the appointment takes effect;

[Para. (b) amended by s. 3 (d) (i) of Act No. 5 of 2021.]

(c) the period for which the appointment is made; and

[Para. (c) amended by s. 3 (d) (ii) of Act No. 5 of 2021.]

(d) the qualifications of every person appointed.

[Para. (d) added by s. 3 (d) (iii) of Act No. 5 of 2021.]

(8) No member may—

(a) share, directly or indirectly, in any of the profits or interests of a registered auditor or any person related to a registered auditor; or

(b) receive payments, excluding pension benefits, from a registered auditor.

[Sub-s. (8) added by s. 3 (e) of Act No. 5 of 2021.]

(9) For purposes of subsection (8) (a), 'related' means persons who are connected to one another in any manner contemplated in section 2 (1) (a) to (c), read with section 2 (2), of the Companies Act, 2008 (Act No. 71 of 2008)."

[Sub-s. (9) added by s. 3 (e) of Act No. 5 of 2021.]

12. Term of office of members of Regulatory Board.—(1) A member of the Regulatory Board appointed in terms of section 11 holds office for such period, but not exceeding three years, as the Minister may determine at the time of his or her appointment.

[Sub-s. (1) substituted by s. 4 of Act No. 5 of 2021.]

(2) A member of the Regulatory Board may be reappointed, but, subject to subsection (3), may not serve more than two consecutive terms of office.

(3) Despite subsections (1) and (2), the Minister may, by notice in the *Gazette* and after consultation with the Regulatory Board, extend the period of office of all the members of the Regulatory Board for a maximum period of 12 months.

(4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the Regulatory Board, terminate the period of office of a member of the Regulatory Board—

(a) if the performance of the member is unsatisfactory;

(b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively; or

(c) if the member, whilst holding office, has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.

(5) Despite subsection (1), the Minister may, if the performance of the Regulatory Board is unsatisfactory, terminate the period of office of all the members of the Regulatory Board.

(6) (a) In the event of the dismissal of all the members of the Regulatory Board, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of section 11.

(b) The Minister must appoint new members in terms of section 11 within three months of the dismissal referred to in paragraph (a).

13. Disqualification from membership and vacation of office.—(1) A person may not be appointed as a member of the Regulatory Board if that person—

(a) is not a South African citizen;

- (b) is not resident in the Republic;
- (c) is an unrehabilitated insolvent;
- (d) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine or, in the case of fraud, to a fine or imprisonment or both;
- (e) subject to subsection (2), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine or, in the case of fraud, to a fine or imprisonment or both;
- (f) has, as a result of improper conduct, been removed from an office of trust; or
- (g) has in terms of this Act been found guilty of improper conduct.

(2) For the purposes of subsection (1) (d), the Minister must, as far as reasonably possible, take cognisance of the prevailing circumstances in a foreign country relating to a conviction.

(3) The membership of a member of the Regulatory Board ceases if he or she—

- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the Regulatory Board;
- (b) resigns by written notice addressed to the Regulatory Board;
- (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
- (d) has, without the leave of the Regulatory Board, been absent from more than two consecutive meetings of the Regulatory Board; or
- (e) ceases to be permanently resident in the Republic.

(4) If a member of the Regulatory Board becomes disqualified on a ground mentioned in subsection (1) or (3), such member ceases to be a member of the Regulatory Board from the date of becoming disqualified.

(5) (a) If a member of the Regulatory Board dies or vacates his or her office before the expiration of his or her term of office, the Minister must consider appointing a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.

(b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

14. Chairperson and deputy chairperson.—(1) (a) The Regulatory Board must elect a chairperson and a deputy chairperson from among its members.

(b) The chairperson and deputy chairperson each hold office for a period of three years from the date of their appointment.

[Para. (b) substituted by s. 5 of Act No. 5 of 2021.]

(2) If the chairperson is absent or for any reason unable to perform his or her functions as chairperson, the deputy chairperson must act as chairperson, and while he or she so acts he or she has all the powers and must perform all the duties of the chairperson.

(3) If both the chairperson and deputy chairperson are absent or for any reason unable to preside at a Regulatory Board meeting, the members present must elect another member to act as chairperson at that meeting and while he or she so acts has all the powers and must perform all the duties of the chairperson.

15. Meetings.—(1) The Regulatory Board meets as often as circumstances require, but at least four times every year, at such time and place as the Regulatory Board may determine.

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

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

(4) A majority of the members of the Regulatory Board constitutes a quorum at a meeting.

(5) (a) Every member of the Regulatory Board, including the chairperson, has one vote.

(b) In the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

16. Decisions.—(1) A decision of the majority of members present at a duly constituted meeting is a decision of the Regulatory Board.

(2) No decision taken by or act performed under the authority of the Regulatory Board is invalid only by reason of—

- (a) a casual vacancy on the Regulatory Board; or
- (b) the fact that any person who was not entitled to sit as a member of the Regulatory Board participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present and acted at the time followed the required procedure for decisions.

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

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

18. Chief executive officer.—(1) The chief executive officer is responsible for the day-to-day management of the Regulatory Board and is accountable to the Regulatory Board.

(2) The chief executive officer must enter into a performance agreement with the Regulatory Board on acceptance of his or her appointment.

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

- (a) may—
 - (i) in writing delegate appropriate powers, excluding the power to prescribe rules to a committee, the chief executive officer, an employee or any member of the Regulatory Board; and
 - (ii) assign any committee, the chief executive officer, any employee or member of the Regulatory Board to perform any of its duties; and
- (b) in respect of sections 48, 48A, 48B, 49, 50, 51 and 51B with due regard to the varying nature and seriousness of matters arising from these sections, in writing delegate or assign appropriate powers or duties, and oblige the investigating, enforcement and disciplinary committees to delegate or assign appropriate powers or duties to the chief executive officer, any employee or any member of the Regulatory Board.

[Para. (b) substituted by s. 6 (a) of Act No. 5 of 2021.]

(2) A delegation or assignment in terms of subsection (1)—

- (a) is subject to such limitations and conditions as the Regulatory Board may impose;
- (b) may authorise subdelegation; and
- (c) does not divest the Regulatory Board of the delegated power or the performance of the assigned duty.

(3) The powers and duties of the investigating, enforcement and disciplinary committees referred to in sections 48A, 48B, 49, 50 and 51B are deemed delegated and assigned by the Regulatory Board to the committees and are subject to this section.

[Sub-s. (3) substituted by s. 6 (b) of Act No. 5 of 2021.]

(4) The Regulatory Board may confirm, vary or revoke any decision taken by a committee, the chief executive officer, a member of the Regulatory Board or an employee as a result of a delegation or assignment in terms of subsection (1).

Part 5 Committees of Regulatory Board

20. Establishment of committees.—(1) The Regulatory Board, subject to subsection (2), may establish committees to assist it in the performance of its functions and it may at any time dissolve or reconstitute any such committee.

(2) The Regulatory Board must, at least, establish the following permanent committees:

- (a) A committee for auditor ethics in accordance with section 21;

- (b) a committee for auditing standards in accordance with section 22;
- (c) an education, training and professional development committee;
- (d) an inspection committee;
- (e) an investigating committee; and
- (f) a disciplinary committee.

(3) (a) A committee consists of as many members as the Regulatory Board considers necessary.

(b) The Regulatory Board, subject to sections 21, 22, 24 and 24A and taking into account, amongst other factors, the need for transparency and representivity within the broader demographics of the South African population, may appoint any person as a member of a committee, on such terms and conditions as the Regulatory Board may determine.

[Para. (b) substituted by s. 7 (a) of Act No. 5 of 2021.]

- (c) The Regulatory Board may terminate the membership of a member of a committee if—
 - (i) the performance by the member of the powers and functions of that committee is unsatisfactory;
 - (ii) the member, either through illness or for any other reason, is unable to perform the functions of the committee effectively; or
 - (iii) the member has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.

(d) If the Regulatory Board does not designate a chairperson for a committee, other than a disciplinary committee, the committee may elect a chairperson from among its members.

(4) The Regulatory Board must provide funding to its committees in such a way that the committees are able to perform their functions effectively.

(5) Sections 15 and 16 relating to meetings and decisions of the Regulatory Board, respectively, with the necessary changes apply in respect of any committee.

[Sub-s. (5) substituted by s. 7 (b) of Act No. 5 of 2021.]

21. Committee for auditor ethics.—(1) The committee for auditor ethics must consist of at least the following members appointed by the Regulatory Board:

- (a) Three registered auditors;
- (b) three persons representing users of audits;
- (c) one person representing an exchange which is the holder of a stock exchange licence issued under the Securities Services Act, 2004 (Act No. 36 of 2004); and
- (d) one advocate or attorney with at least 10 years' experience in the practice of law.

(2) The committee for auditor ethics must assist the Regulatory Board—

- (a) to determine what constitutes improper conduct by registered auditors and registered candidate auditors by developing rules and guidelines for professional ethics, including a code of professional conduct;

[Para. (a) amended by s. 3 of Act No. 2 of 2015.]

- (b) to interact on any matter relating to its functions and powers with professional bodies and any other body or organ of state with an interest in the auditing profession; and
- (c) to provide advice to registered auditors on matters of professional ethics and conduct.

22. Committee for auditing standards.—(1) The committee for auditing standards must consist of at least the following members appointed by the Regulatory Board:

- (a) Five registered auditors;
- (b) one person with experience of business;
- (c) an incumbent of the office of the Auditor-General, or a person nominated by that incumbent;
- (d) an incumbent of the office of the Executive Officer of the Financial Services Board, or a person nominated by that incumbent;
- (e) one person with experience in the teaching of auditing at a university recognised or established under the Higher Education Act, 1997 (Act No. 101 of 1997);
- (f) one person nominated by any stock exchange licensed under the Securities Services Act, 2004 (Act No. 36 of 2004);

- (g) the Commissioner of the South African Revenue Services established in terms of the South African Revenue Services Act, 1997 (Act No. 34 of 1997), or a person nominated by the Commissioner; and
 - (h) an incumbent of the office of the Registrar of Banks, or a person nominated by that incumbent.
- (2) The committee for auditing standards must assist the Regulatory Board—
- (a) to develop, maintain, adopt, issue or prescribe auditing pronouncements;
 - (b) to consider relevant international changes by monitoring developments by other auditing standard-setting bodies and sharing information where requested; and
 - (c) to promote and ensure the relevance of auditing pronouncements by—
 - (i) considering the needs of users of audit reports;
 - (ii) liaising with the other committees of the Regulatory Board on standards to be maintained by registered auditors and by receiving feedback from such committees on areas where auditing pronouncements are needed;
 - (iii) ensuring the greatest possible consistency between auditing pronouncements and accepted international pronouncements; and
 - (iv) consulting with professional bodies on the direction and appropriateness of auditing pronouncements.
- (3) The committee for auditing standards may assist the Regulatory Board to influence the nature of international auditing pronouncements by—
- (a) preparing comment on exposure drafts or discussion papers and replies to questionnaires prepared by the International Auditing and Assurance Standards Board or a successor body; and
 - (b) nominating representatives to committees of the International Auditing and Assurance Standards Board or a successor body when requested to do so by the Regulatory Board.

23. Matters relating to appointment of members to committees for auditor ethics and for auditing standards.—(1) When the need for an appointment to the committees for auditor ethics or for auditing standards arises and the appointment depends on a nomination referred to in section 22, the committees for auditor ethics or for auditing standards must provide the Regulatory Board with the name of the nominated person, the name of any nominated alternate and any further relevant information, whereupon the Regulatory Board must in writing appoint the nominated persons within three months of receipt of the nominations.

(2) Where any person's appointment to the committees for auditor ethics or for auditing standards is dependent on a nomination referred to in section 22, the Regulatory Board may make the duration of the appointment terminable on notice given by the nominating office-holder to the Regulatory Board that the nominated person has left its employment.

(3) A member of the committees for auditor ethics or for auditing standards whose term has expired continues to serve until a successor has been appointed.

24. Investigating committee.—(1) The investigating committee referred to in section 20 (2) (e) must be independent of the auditing profession and include—

- (a) two persons with at least 10 years' experience in auditing who were formerly registered as auditors; and
- (b) an advocate or attorney with at least 10 years' experience in practicing law.

(2) No member of the investigating committee may—

- (a) share, directly or indirectly, in any of the profits or interests of a registered auditor or any person related to a registered auditor; or
- (b) receive payments, excluding pension benefits, from a registered auditor.

(3) For purposes of subsection (2) (a) 'related' means persons who are connected to one another in any manner contemplated in section 2 (1) (a) to (c), read with section 2 (2), of the Companies Act, 2008 (Act No. 71 of 2008).

[S. 24 substituted by s. 8 of Act No. 5 of 2021.]

24A. Disciplinary committee.—(1) The Regulatory Board must appoint a disciplinary committee, referred to in section 20 (2) (f), whose members are independent of the auditing profession, consisting of as many competent members as it may determine necessary to deal with disciplinary hearings in terms of this Act.

(2) The disciplinary committee must have one third of its members being—

- (a) persons with at least 10 years' experience in auditing who were formerly registered as auditors;
- (b) advocates or attorneys with at least 10 years' experience in practicing law; and
- (c) other suitably qualified persons as determined by the Regulatory Board.

(3) (a) No member of the disciplinary committee may—

- (i) share, directly or indirectly, in any of the profits or interests of a registered auditor or any person related to a registered auditor; or
- (ii) receive payments, excluding pension benefits, from a registered auditor.

(b) For purposes of paragraph (ii) 'related' means persons who are connected to one another in any manner contemplated in section 2 (1) (a) to (c), read with section 2 (2), of the Companies Act, 2008 (Act No. 71 of 2008).

(4) The Regulatory Board must appoint a retired judge or senior counsel as chairperson of the disciplinary committee.

(5) The functions of the chairperson of the disciplinary committee are to—

- (a) appoint from among the members of the disciplinary committee a disciplinary hearing panel for every hearing;
- (b) monitor consistency in the application of disciplinary hearing rules by disciplinary hearing panels;
- (c) facilitate efficient disciplinary hearings; and
- (d) perform any other function as prescribed by rules by the Regulatory Board.

(6) Despite section 20 (5), read with section 15 (4), when the disciplinary committee convenes a disciplinary hearing under section 50, the hearing must be conducted by a panel of at least three members including a member referred to in subsection (2) (a) and a member referred to in subsection (2) (b).

(7) (a) The chairperson of the disciplinary committee must appoint a member referred to subsection (2) (b) to chair the proceedings of the disciplinary hearing.

(b) The *power* to appoint a member to chair the proceedings of a disciplinary hearing referred to in paragraph (a) may not be delegated in terms of section 19.

(8) A member of the disciplinary committee may not participate in a panel contemplated in subsection (6) if he or she has an interest in a matter considered by the disciplinary hearing panel.

(9) A person may resign as a member of the disciplinary committee by giving at least three months' written notice to the Regulatory Board or a shorter period of notice approved by the Regulatory Board.

(10) A member of the disciplinary committee may not use his or her position or any information by virtue of his or her work for the committee to—

- (a) improperly benefit himself or herself or another person;
- (b) impede the committee's ability to perform its functions.

[S. 24A inserted by s. 9 of Act No. 5 of 2021.]

24B. Subcommittees of Regulatory Board.—(1) The Regulatory Board—

- (a) must establish an enforcement committee to deal with recommendations made by the investigating committee on matters investigated; and
- (b) may establish other subcommittees to assist with the performance of its functions.

(2) The Regulatory Board must appoint the members of a subcommittee referred to in subsection (1) from among its members.

(3) The enforcement committee must include—

- (a) a person with at least 10 years' experience in auditing who was formerly registered as an auditor; and
- (b) an advocate or attorney with at least 10 years' experience in practising law.

[S. 24B inserted by s. 9 of Act No. 5 of 2021.]

Part 6

Funding and financial management of Regulatory Board

25. Funding.—The Regulatory Board is funded from—

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

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

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

Part 7
National government oversight and executive authority

28. Executive authority.—(1) The Minister is the executive authority for the Regulatory Board in terms of the Public Finance Management Act and the Regulatory Board is accountable to the Minister.

(2) The Minister must—

- (a) ensure that the Regulatory Board complies with this Act, the Public Finance Management Act and any other applicable legislation;
- (b) ensure that the Regulatory Board is managed responsibly and transparently and meets its contractual and other obligations;
- (c) establish and maintain clear channels of communication between him or her and the Regulatory Board; and
- (d) monitor and annually review the performance of the Regulatory Board.

29. Ministerial representatives.—(1) The Minister may designate officials of the National Treasury as his or her representatives to the Regulatory Board.

(2) Ministerial representatives designated in terms of subsection (1) represent the Minister as participating observers at meetings of the Regulatory Board.

(3) The Minister or his or her designated representative or representatives may at any time call or convene a meeting of the Regulatory Board in order for the Regulatory Board to give account for actions taken by it.

(4) (a) A ministerial representative must represent the Minister faithfully at meetings of and with the Regulatory Board, without consideration of personal interest or gain, and must keep the Minister informed of what transpired at meetings of the Regulatory Board.

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

30. Investigations.—(1) The Minister may at any time request the Regulatory Board to investigate any matter at its own cost or against full or partial payment.

(2) The Minister, at any time, may investigate the affairs or financial position of the Regulatory Board and may recover from the Regulatory Board reasonable costs incurred as a result of an investigation.

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

CHAPTER III
ACCREDITATION AND REGISTRATION

Part 1
Accreditation of professional bodies

32. Application for accreditation.—(1) A professional body must apply, on the prescribed application form, to the Regulatory Board for accreditation in terms of Section 33 or 34.

(2) If the Regulatory Board is satisfied that the professional body complies with its requirements for accreditation, it must grant the application on payment of the prescribed fee.

33. Requirements for accreditation.—In order to qualify for accreditation, a professional body must demonstrate, to the satisfaction of the Regulatory Board that—

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

- (f) it has in place appropriate programmes and structures to ensure that it is actively endeavouring to achieve the objective of being representative of all sectors of the South African population; and
- (g) it meets any other requirement prescribed by the Regulatory Board from time to time.

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

35. Termination of accreditation.—(1) The accreditation of a professional body lapses automatically if—

- (a) it ceases to exist; or
- (b) it fails to pay any prescribed fee or portion thereof within such period as may be prescribed by the Regulatory Board.

(2) (a) The Regulatory Board, subject to subsection (3), must cancel the accreditation by it of a professional body if that body ceases to comply with any requirement for accreditation.

(b) The Regulatory Board must, prior to cancelling of accreditation, give notice in writing to the professional body concerned of its intention to cancel and the reasons on which it is based, and must afford the professional body a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with cancellation.

(c) The Regulatory Board, pending the outcome of the process referred to in paragraph (b), may suspend the accreditation of a professional body if it considers it in the best interests of the public or the auditing profession and may make such alternative arrangements to accommodate the needs of the members of such body during the period of suspension as it may consider necessary.

(d) If the Regulatory Board considers that cancellation of accreditation would not be in the best interests of the public, the auditing profession or the members of a professional body referred to in subsection (3), it may extend the accreditation of the professional body concerned on such conditions as it considers appropriate.

(3) A professional body may by written notice to the Regulatory Board renounce its accreditation.

(4) (a) On the termination of the accreditation of a professional body, the professional body must inform all the registered auditors who were its members at the time of the termination—

- (i) of the termination of its accreditation; and
- (ii) of their duty to provide the Regulatory Board with the written proof referred to in section 36 (2).

(b) On the termination of the accreditation of a professional body, the Regulatory Board must publish a notice informing all the registered auditors who were members of the professional body at the time of the termination—

- (i) of the termination of its accreditation; and
- (ii) of their duty to provide the Regulatory Board with the written proof referred to in section 36.

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

36. Effect of termination of accreditation on registered auditors and registered candidate auditors.—(1) Subject to this section, the fact that the accreditation of a professional body has ended in terms of section 35 does not affect the registration under this Act of any registered auditor or registered candidate auditor who was a member of the professional body at the time of the termination.

[Sub-s. (1) substituted by s. 10 (a) of Act No. 5 of 2021.]

(2) Registered auditors or registered candidate auditors referred to in subsection (1) who were members of the professional body referred to in subsection (1) must, within six months of the termination of the accreditation of the professional body or within such other period as may be prescribed by the Regulatory Board, provide written proof to the satisfaction of the Regulatory Board that they have become members of another accredited professional body.

[Sub-s. (2) substituted by s. 10 (b) of Act No. 5 of 2021.]

(3) Where a registered auditor or registered candidate auditor referred to in subsection (1) fails to comply with the requirements of subsection (2), the Regulatory Board, subject to subsection (4), may cancel the registration of the registered auditor or registered candidate auditor under this Act.

(4) The Regulatory Board must, prior to the cancelling of the registration of a registered auditor or registered candidate auditor, give notice in writing to the registered auditor or registered candidate auditor concerned of its intention to cancel and the reasons on which it is based, and must afford the registered auditor or registered candidate auditor a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding to cancellation.

[S. 36 substituted by s. 4 of Act No. 2 of 2015.]

37. Registration of individuals as registered auditors and registered candidate auditors.—(1) An individual must apply on the prescribed application form to the Regulatory Board for registration as an auditor or a candidate auditor.

(1A) An individual may only be registered with the Regulatory Board if he or she is a member of a professional body accredited in terms of section 32 (2).

[Sub-s. (1A) inserted by s. 11 (a) of Act No. 5 of 2021.]

(2) If, after considering an application, the Regulatory Board is satisfied that the applicant—

(a) has complied with the prescribed education, training and competency requirements for a registered auditor or registered candidate auditor;

(b)

[Para. (b) deleted by s. 11 (b) of Act No. 5 of 2021.]

(c) is resident within the Republic;

(d) is a fit and proper person to practise the profession;

(e) has met any additional requirements for registration as prescribed under section 6,

the Regulatory Board must, subject to subsections (3) and (5), register the applicant, enter the applicant's name in the applicable register and issue to the applicant a certificate of registration on payment of the prescribed fee.

(3) The Regulatory Board may not register an individual as a registered auditor or registered candidate auditor if that individual—

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

(b) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery, uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty, other than an offence committed prior to 27 April 1994 associated with political objectives;

[Para. (b) substituted by s. 11 (c) of Act No. 5 of 2021.]

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

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

(4) For the purposes of subsection (3) (b), the Regulatory Board must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.

(5) The Regulatory Board may decline to register as a registered auditor or registered candidate auditor an individual who is an unrehabilitated insolvent, has entered into a compromise with creditors, has applied for debt review or has been provisionally sequestered.

[S. 37 substituted by s. 5 of Act No. 2 of 2015.]

38. Registration of firms as registered auditors.—(1) The only firms that may become registered auditors are—

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

(b) sole proprietors where the proprietor is a registered auditor; and

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

(2) On application by a firm which is a partnership fulfilling the conditions in subsection (1) (a) or a sole proprietor, on the prescribed application form, the Regulatory Board must register the firm as a registered auditor on payment of the prescribed fee.

(3) The Regulatory Board must register a company as a registered auditor on the payment of the prescribed fee if—

(a) the company has a share capital and its memorandum of incorporation provides that its directors and past directors shall be liable jointly and severally, together with the company, for its debts and liabilities contracted during their periods of office;

[Para. (a) substituted by s. 6 (a) of Act No. 2 of 2015.]

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

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

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

and provided that—

- (aa) no voting rights attach to any share contemplated in paragraph (c) (i) and (ii); and
- (bb) a shareholder mentioned in that paragraph does not act as a director of the company or receive, directly or indirectly, any director's fees or remuneration or participate in the income of or profits earned by the company in its business; and
- (d) the memorandum of incorporation of the company provides that—
 - (i) the company may, without confirmation by a court, purchase on such terms as it may consider expedient any shares held in it and the shares purchased are available for allotment in accordance with the company's memorandum of incorporation; and
 - (ii) despite any provision to the contrary in any other law, a member of the company may not appoint a person who is not a member of the company to attend, speak or vote on behalf of the member at any meeting of the company.

[Para. (d) substituted by s. 6 (b) of Act No. 2 of 2015.]

(4) In its application to a company which is a registered auditor, section 8 (2) (c) of the Companies Act, 2008 (Act No. 71 of 2008), has effect.

[Sub-s. (4) substituted by s. 6 (c) of Act No. 2 of 2015.]

39. Termination of registration of registered auditors and registered candidate auditors.—(1) Subject to subsection (3), the Regulatory Board must cancel the registration of any registered auditor that is an individual or any registered candidate auditor, and—

- (a) who subsequent to registration becomes subject to any of the disqualifications mentioned in section 37 (3);
- (b) whose registration was made in error or on information subsequently proved to be false; or
- (c) who prior to registration has been guilty of improper conduct because of which the registered auditor or registered candidate auditor is, in the opinion of the Regulatory Board not a fit and proper person to be registered.

(2) Subject to subsection (3), the Regulatory Board may cancel the registration of any registered auditor that is an individual or any registered candidate auditor, and—

- (a) whose estate is sequestered or provisionally sequestered or who enters into a compromise with creditors or who has applied for debt review; or
- (b) who ceases to be a member of an accredited professional body.

[Sub-s. (2) substituted by s. 12 of Act No. 5 of 2021.]

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

(4) The registration of a registered auditor that is a partnership, sole proprietor or company automatically lapses if it no longer complies with section 38 (1).

(5) The registration of a registered auditor or registered candidate auditor automatically lapses if such registered auditor or registered candidate auditor fails to pay a prescribed fee or portion thereof within the period prescribed by the Regulatory Board.

(6) At the written request of a registered auditor or registered candidate auditor, the Regulatory Board must remove the name of the registered auditor or registered candidate auditor from the applicable register, but the removal does not affect any liability incurred by the registered auditor or registered candidate auditor prior to the date of the removal.

(7) The fact that the registration of a registered auditor or registered candidate auditor has been cancelled or removed does not prevent the Regulatory Board from instituting disciplinary proceedings for conduct committed prior to the cancellation or removal.

(8) As soon as practicable after the registration of a registered auditor or registered candidate auditor has been cancelled or removed the Regulatory Board must publish a notice of the cancellation or removal, specifying the name of the registered auditor or registered candidate auditor.

[S. 39 substituted by s. 7 of Act No. 2 of 2015.]

40. Renewal of registration and re-registration.—(1) A registered auditor or registered candidate auditor must apply in the prescribed manner to the Regulatory Board for the renewal of his or her registration.

[Sub-s. (1) amended by s. 8 of Act No. 2 of 2015.]

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

[Sub-s. (2) amended by s. 8 of Act No. 2 of 2015.]

CHAPTER IV CONDUCT BY AND LIABILITY OF REGISTERED AUDITORS

41. Practice.—(1) Only a registered auditor may engage in public practice or hold out as an registered auditor in public practice or use the registered auditor description “public accountant”, “certified public accountant”, “registered accountant and auditor”, “accountant and auditor in public practice” or any other designation or description likely to create the impression of being a registered auditor in public practice.

(2) (a) A person who is not registered in terms of this Act may not—

- (i) perform any audit;
- (ii) pretend to be, or in any manner hold or allow himself or herself to be held out as, a person registered in terms of this Act;
- (iii) use the name of any registered auditor or any name or title referred to in subsection (1); or
- (iv) perform any act indicating or calculated to lead persons to believe that he or she is registered in terms of this Act.

(b) Paragraph (a) (i) may not be construed as prohibiting any individual from performing an audit if such audit are performed in the service of or by order of and under the direction, control, supervision of or in association with a registered auditor entitled to perform the audit identified and who must assume responsibility for any audit so performed.

(3) Nothing in this section prohibits—

- (a) any person from using description “internal auditor” or “accountant”;
- (b) any member of a not-for-profit club, institution or association from acting as auditor for that club, institution or association if he or she receives no fee or other consideration for such audit; or
- (c) the Auditor-General from appointing any person who is not a registered auditor to carry out on his or her behalf any audit which he or she is in terms of the Public Audit Act, 2004 (Act No. 25 of 2004), required to undertake.

(4) Except with the consent of the Regulatory Board, a registered auditor may not knowingly employ—

- (b) any person who is no longer registered as a registered auditor as a result of the termination of his or her registration in terms of section 39 (1) (c) or the cancellation of his or her registration in terms of section 51B (3) (a) (iv) or (v); or
- (c) any person who applied for registration under section 37 (3), but whose application the Regulatory Board declined.”; and

[Sub-s. (4) substituted by s. 13 (a) of Act No. 5 of 2021.]

(Editorial Note: Numbering as per original *Government Gazette*.)

(5) A registered auditor who is not in public practice as an individual practitioner may practise as a member of a firm only if, by virtue of section 40, the firm is itself a registered auditor.

(6) A registered auditor may not—

- (a) practise under a firm name or title unless on every letterhead bearing the firm name or title there appears—
 - (i) the registered auditor’s present first names, or initials, and surname; or
 - (ii) in the case of a partnership, at least the present first names, or initials, and surnames of the managing partners or, if there are no managing partners, of the active partners or, where such a letterhead is used only by a branch office of the partnership, at least the present first names, or initials, and surnames of the managing partners at that branch office or, if there are no such resident partners, of the partners assigned to that branch office; or
 - (iii) in the case of a company, the present first names, or initials, and surnames of the directors;

[Sub-para. (iii) substituted by s. 9 (a) of Act No. 2 of 2015.]

- (b) sign any account, statement, report or other document which purports to represent an audit performed by that registered auditor, unless the audit were performed by that registered auditor, under the personal supervision or direction of that registered auditor or by or under the personal supervision or directions of that registered auditor and one or more of the partners, co-directors or co-members of the registered auditor, as the case may be, in accordance with prescribed auditing standards;
- (c) perform audits unless adequate risk management practices and procedures are in place;
- (d) engage in public practice during any period in respect of which the registered auditor has been disqualified from registration; or

[Para. (d) substituted by s. 13 (b) of Act No. 5 of 2021.]

- (e) share any profit derived from performing an audit with a person that is not a registered auditor.

(7) The provisions of subsection (6) (b) do not apply in respect of an audit performed by another registered auditor in a partially completed assignment which the previous registered auditor was unable to complete as a result of death, disability or other unforeseen cause not under the control of the previous registered auditor, and which assignment the successor registered auditor is engaged to complete.

(8) Nothing in subsection (6) (b) prevents any registered auditor from signing the firm name or title under which the registered auditor practises.

- (9)

[Sub-s. (9) deleted by s. 9 (b) of Act No. 2 of 2015.]

- (10) In order to engage in public practice, a registered auditor must have paid all applicable prescribed fees.

42. Compliance with rules.—All registered auditors or registered candidate auditors must comply with rules prescribed by the Regulatory Board.

[S. 42 amended by s. 10 of Act No. 2 of 2015.]

43. Information to be furnished.—(1) Every firm that is a registered auditor must notify the Regulatory Board of any change in its name, composition or address not later than 30 days after the date on which the change takes place.

(2) Within 14 days of the receipt of a written request from any client for whom a registered auditor acts as auditor or person who proposes to appoint the registered auditor as its auditor, the registered auditor must furnish the following information:

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

(3) In subsection (2) and where, under that subsection, a registered auditor is required to supply information relating to a firm, the supply of the information in the name of the firm must be a sufficient compliance with the obligation of the individual registered auditor.

44. Duties in relation to audit.—(1) (a) Where a registered auditor that is a firm is appointed by an entity to perform an audit, that firm must immediately after the appointment is made, take a decision as to the individual registered auditor or registered auditors within the firm that is responsible and accountable for that audit.

(b) The first name and surname of the individual registered auditor referred to in paragraph (a) must be made available to the entity on taking of the decision and to the Regulatory Board on request.

(2) The registered auditor may not, without such qualifications as may be appropriate in the circumstances, express an opinion to the effect that any financial statement or any supplementary information attached thereto which relates to the entity—

- (a) fairly presents in all material respects the financial position of the entity and the results of its operations and cash flow; and
- (b) are properly prepared in all material aspects in accordance with the basis of the accounting and financial reporting framework as disclosed in the relevant financial statements,

unless a registered auditor who is conducting the audit of an entity is satisfied about the criteria specified in subsection (3).

- (3) The criteria referred to in subsection (2) are—

- (a) that the registered auditor has carried out the audit free from any restrictions whatsoever and in compliance, so far as applicable, with auditing pronouncements relating to the conduct of the audit;

- (b) that the registered auditor has by means of such methods as are reasonably appropriate having regard to the nature of the entity satisfied himself or herself of the existence of all assets and liabilities shown on the financial statements;
- (c) that proper accounting records in at least one of the official languages of the Republic have been kept in connection with the entity in question so as to reflect and explain all its transactions and record all its assets and liabilities correctly and adequately;
- (d) that the registered auditor has obtained all information, vouchers and other documents which in the registered auditor's opinion were necessary for the proper performance of the registered auditor's duties;
- (e) that the registered auditor has not had occasion, in the course of the audit or otherwise during the period to which the auditing services relate, to send a report to the Regulatory Board under section 45 relating to a reportable irregularity or that, if such a report was so sent, the registered auditor has been able, prior to expressing the opinion referred to in subsection (1), to send to the Regulatory Board a notification under section 45 that the registered auditor has become satisfied that no reportable irregularity has taken place or is taking place;
- (f) that the registered auditor has complied with all laws relating to the audit of that entity; and
- (g) that the registered auditor is satisfied, as far as is reasonably practicable having regard to the nature of the entity and of the audit carried out as to the fairness or the correctness, as the case may be, of the financial statements.

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

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

(6) A registered auditor may not conduct the audit of any financial statements of an entity, whether as an individual registered auditor or as a member of a firm, if, the registered auditor has or had a conflict of interest in respect of that entity, as prescribed by the Regulatory Board.

45. Duty to report on irregularities.—(1) (a) An individual registered auditor referred to in section 44 (1) (a) of an entity that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that entity must, without delay, send a written report to the Regulatory Board.

(b) The report must give particulars of the reportable irregularity referred to in subsection (1) (a) and must include such other information and particulars as the registered auditor considers appropriate.

(2) (a) The registered auditor must within three days of sending the report to the Regulatory Board notify the members of the management board of the entity in writing of the sending of the report referred to in subsection (1) and the provisions of this section.

(b) A copy of the report to the Regulatory Board must accompany the notice.

(3) The registered auditor must as soon as reasonably possible but no later than 30 days from the date on which the report referred to in subsection (1) was sent to the Regulatory Board—

- (a) take all reasonable measures to discuss the report referred to in subsection (1) with the members of the management board of the entity;
- (b) afford the members of the management board of the entity an opportunity to make representations in respect of the report; and
- (c) send another report to the Regulatory Board, which report must include—
 - (i) a statement that the registered auditor is of the opinion that—
 - (aa) no reportable irregularity has taken place or is taking place; or
 - (bb) the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant; or
 - (cc) the reportable irregularity is continuing; and
 - (ii) detailed particulars and information supporting the statement referred to in subparagraph (i).

(4) The Regulatory Board must as soon as possible after receipt of a report containing a statement referred to in paragraph (b) (i) (cc) of subsection (3), notify any appropriate regulator in writing of the details of the reportable irregularity to which the report relates and provide it with a copy of the report.

(5) For the purpose of the reports referred to in subsections (1) and (3), a registered auditor may carry out such investigations as the registered auditor may consider necessary and, in performing any duty referred to in the preceding provisions of this section, the registered auditor must have regard to all the information which comes to the knowledge of the registered auditor from any source.

(6) Where any entity is sequestered or liquidated, whether provisionally or finally, and a registered auditor referred to in section 44 (1) (a) at the time of the sequestration or liquidation—

- (a) has sent or is about to send a report referred to in subsection (1) or (3), the report must also be submitted to a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, at the same time as the report is sent to the Regulatory Board or as soon as reasonably possible after his or her appointment; or
- (b) has not sent a report referred to in subsection (1) or (3), and is requested by a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, to send a report, the registered auditor must as soon as reasonably possible—
 - (i) send the report together with a motivation as to why a report was not sent; or
 - (ii) submit a notice that in the registered auditor's opinion no report needed to be submitted, together with a justification of the opinion.

(7) If an individual registered auditor has reported an irregularity to the Regulatory Board in terms of subsection (1)—

- (a) the individual registered auditor may not be removed; and
- (b) the entity may not remove the registered auditor,

until subsection (3) is complied with.

[Sub-s. (7) added by s. 14 of Act No. 5 of 2021.]

(8) Where an individual registered auditor has reported an irregularity in terms of subsection (1) and resigns from the firm before subsection (3) is complied with, that auditor must do the necessary handover to the incoming auditor regardless of when the resignation takes effect.

[Sub-s. (8) added by s. 14 of Act No. 5 of 2021.]

46. Limitation of liability.—(1) (a) The application of this section is limited to an audit performed within the meaning of paragraph (a) of the definition of "audit" in section (1).

(b) Despite section 44 (1) (a), for purposes of this section registered auditor means both the individual registered auditor and the firm referred to in that section.

(2) In respect of any opinion expressed or report or statement made by a registered auditor in the ordinary course of duties the registered auditor does not incur any liability to a client or any third party, unless it is proved that the opinion was expressed, or the report or statement made, maliciously, fraudulently or pursuant to a negligent performance of the registered auditor's duties.

(3) Despite subsection (2), a registered auditor incurs liability to third parties who have relied on an opinion, report or statement of that registered auditor for financial loss suffered as a result of having relied thereon, only if it is proved that the opinion was expressed, or the report or statement was made, pursuant to a negligent performance of the registered auditor's duties and the registered auditor—

- (a) knew, or could in the particular circumstances reasonably have been expected to know, at the time when the negligence occurred in the performance of the duties pursuant to which the opinion was expressed or the report or statement was made—
 - (i) that the opinion, report or statement would be used by a client to induce the third party to act or refrain from acting in some way or to enter into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or
 - (ii) that the third party would rely on the opinion, report or statement for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or

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

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

(5) For the purposes of subsection (3) the fact that a registered auditor performed the functions of a registered auditor is not in itself proof that the registered auditor could reasonably have been expected to know that—

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

(6) Subsections (2) or (3) do not affect any additional or other liability of a registered auditor arising from—

(a) a contract between a third party and the registered auditor; or

(b) any other statutory provision or the common law.

(7) A registered auditor may incur liability to any partner, member, shareholder, creditor or investor of an entity if the registered auditor fails to report a reportable irregularity in accordance with section 45.

(8) A registered auditor may not through an agreement or in any other way limit or reduce the liability that such auditor may incur in terms of this section.

CHAPTER V ACCOUNTABILITY OF REGISTERED AUDITORS

47. Inspections.—(1) (a) The Regulatory Board, or any person authorised by it, may at any time inspect or review the practice of a registered auditor and the effective implementation of any training contracts and may for these purposes inspect and make copies of any information, including but not limited to any working papers, statements, correspondence, books or other documents, in the possession or under the control of a registered auditor.

(b) Despite the generality of paragraph (a), the Regulatory Board, or any person authorised by it, must at least every three years inspect or review the practice of a registered auditor that audits a public company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008).

[Para. (b) substituted by s. 11 of Act No. 2 of 2015.]

(2) The Regulatory Board may recover the costs of an inspection under this section from the registered auditor concerned.

(3) A registered auditor must, at the request of the Regulatory Board or the person authorised by it, produce any information, including but not limited to any working papers, statements, correspondence, books or other documents, and, subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) or any other law, may not refuse to produce such information even though the registered auditor is of the opinion that the information contains confidential information about a client.

(4) A registered auditor who acts in good faith during an inspection of the public practice of the registered auditor and who produces information under subsection (3) may not be held liable criminally or under civil law because of the production of the information.

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

(a) for the purpose of an investigation or a hearing under this Chapter;

(b) if the person of necessity supplies it in the performance of functions under this Act;

(c) when required to do so by order of a court of law;

(d) at the written request of, and to, any appropriate regulator which requires it for the institution, or an investigation with a view to the institution, of any disciplinary action or criminal prosecution: or

(e) at the written request of, and to, any appropriate international regulator of audits and auditors, that requires such for the purpose of inspection with the consent of the registered auditor.

(6) A registered auditor must annually submit to the Regulatory Board such information or returns as may be requested by the Regulatory Board.

48. Investigation of charge of improper conduct.—(1) The Regulatory Board must refer a matter brought against a registered auditor to the investigating committee appointed under section 20 if the Regulatory Board—

(a) on reasonable grounds suspects that a registered auditor has committed an act which may render him or her guilty of improper conduct; or

(b) is of the opinion that a complaint or allegation of improper conduct, whether prescribed or not, which has been made against a registered auditor by any person appears to be justified.

[Sub-s. (1) amended by s. 15 (a) of Act No. 5 of 2021.]

(1A) (a) Despite subsection (1), the enforcement committee referred to in section 24B may, if considered appropriate, refer a non-audit matter brought against a registered auditor to the relevant professional body accredited in terms of section 32 (2) for investigation and disciplinary proceedings.

(b) The enforcement committee may only refer a non-audit matter in terms of paragraph (a) if it is a matter that falls within the constitution and rules of the professional body.

[Sub-s. (1A) inserted by s. 15 (b) of Act No. 5 of 2021.]

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

(b) Despite the provisions of any other law, whenever it appears to an appropriate regulator that there is *prima facie* proof of improper conduct on the part of a registered auditor, the official must forthwith send a report of that conduct to the Regulatory Board.

(c) The Regulatory Board must refer to the investigation committee any record or report received by it under this subsection.

[Para. (c) substituted by s. 15 (c) of Act No. 5 of 2021.]

(3) At the request of the Regulatory Board, the investigating committee must—

- (a) investigate the matter; and
- (b) obtain evidence to determine whether or not in its opinion the registered auditor concerned should be charged and, if so, recommend to the enforcement committee the charge or charges that may be preferred against that registered auditor.

[Para. (b) substituted by s. 15 (d) of Act No. 5 of 2021.]

(4) The investigating committee may not question the registered auditor concerned unless the investigating committee informs the registered auditor that he or she—

- (a) has the right to be assisted or represented by another person; and
- (b) is not obliged to make any statement and that any statement made may be used in evidence against the registered auditor.

(5) (a) In investigating a charge of improper conduct the investigating committee may—

- (i) require or, if necessary, subpoena, the registered auditor to whom the charge relates or any other person with specific knowledge of the matter under investigation to produce to the committee any object or information, including but not limited to any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that registered auditor or other person and which relates to the subject matter of the charge, including specifically, but without limitation, any working papers of the registered auditor;
- (ii) inspect and, if the investigating committee considers it appropriate, retain any such information for the purposes of its investigations; and
- (iii) make copies of and take extracts from such information.

(b) The obligation to produce any information under paragraph (a) (i) may not be excused by reason of any alleged confidential information of a client contained therein.

(c) A subpoena issued in terms of paragraph (a) (i) must—

- (i) be in the prescribed form;
- (ii) be signed by an authorised official of the Regulatory Board; and
- (iii) be served on the person concerned.

(d) For purposes of this section, service contemplated in paragraph (c) (iii)—

- (i) at the last known address appearing from the Regulatory Board's records; or
- (ii) effected in any manner agreed upon between the an employee authorised by or the investigating committee and the person or registered auditor being subpoenaed,

constitutes proper service.

(e) A person who has been issued with a subpoena under paragraph (a) (i) may not, without just cause, fail to provide the information, working paper, statement, correspondence, book or other document specified in the subpoena, in his or her possession or custody or control which he or she has been required to produce.

(f) The law relating to privilege, as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court applies, with the necessary changes, in relation to the production of any object or information, including but not limited to any working papers, statements, correspondence, books or other documents, to the investigating committee.

(g) A person subpoenaed in terms of this section is not entitled to payment by the Regulatory Board for providing information to the investigating committee.

[Sub-s. (5) substituted by s. 15 (e) of Act No. 5 of 2021.]

(6) Nothing in this section limits or affects the right of any professional body to take disciplinary or other action against any of its members in accordance with its constitution and rules after the finalisation of the matter by the Regulatory Board.

[Sub-s. (6) substituted by s. 15 (e) of Act No. 5 of 2021.]

(7) The investigating committee must, after the conclusion of the investigation, submit a report stating its recommendations to the enforcement committee regarding any matter referred to it in terms of this section."

(8) The Regulatory Board and investigating committee must in exercising their powers or performing their duties in terms of this section consider the delegation or assignment of such powers and duties in accordance with section 19.

48A. Powers to enter and search premises.—(1) The investigating committee, referred to in section 20 (2) (e) may, for the purposes of investigating alleged improper conduct, authorise one or more suitably qualified persons (herein referred to as 'the authorised person') to enter any premises—

(a) with the prior consent of—

(i) in the case of a private residence, the person apparently in control of the business reasonably believed to be conducted at the private residence, and the occupant of the private residence or the part of the private residence to be entered; or

(ii) in the case of any other premises, the person apparently in control of the premises, after informing that person that—

(aa) granting consent will enable the authorised person to enter the premises and for the authorised person to subsequently search the premises and to do anything contemplated in subsection (7); and

(bb) he or she is under no obligation to admit the authorised person in the absence of a warrant; or

(b) without prior consent and without prior notice to any person if the entry is authorised by a warrant.

(2) (a) The chairperson of the investigating committee must issue the authorised person with a certificate in the prescribed form stating that the person has been authorised in terms of subsection (1).

(b) When exercising powers in terms of this section, the authorised person must—

(i) be in possession of a certificate of appointment; and

(ii) immediately show that certificate to any person who is affected by the authorised person's actions in terms of this section or who requests to see the certificate.

(3) The authorised person has the authority to search the premises and to do anything contemplated in subsection (7).

(4) The authorised person exercising powers in terms of this section must do so with strict regard to—

(a) an affected person's right to—

(i) dignity;

(ii) freedom and security;

(iii) privacy; and

(iv) other constitutional rights; and

(b) decency and good order as the circumstances require, in particular by—

(i) entering and searching only such areas or objects as are reasonably required for the purposes of the investigation;

(ii) conducting the search discreetly and with due decorum;

(iii) causing as little disturbance as possible; and

(iv) concluding the search as soon as possible.

(5) An entry or search of premises in terms of this section must be done, at a reasonable time within ordinary business hours—

(a) unless the warrant authorising it expressly authorises entry at night; or

(b) in the case of a search contemplated in subsection (1) (a) (ii), if the authorised person on reasonable grounds believes that the purpose for which the entry and search is sought, is likely to be defeated by a delay, as close to ordinary business hours as the circumstances reasonably permit.

(6) The authorised person may be accompanied and assisted during the entry and search of any premises for an investigation by a member of the investigating committee or an employee of the Regulatory Board.

(7) (a) While on the premises in terms of this section, the authorised person has access to any part of the premises and to any document or item on the premises, and may do any of the following—

(i) Open or cause to be opened any strongroom, safe, cabinet or other container in which the authorised person reasonably suspects there is a document or item that may afford evidence of the alleged improper conduct;

- (ii) examine, make extracts from and copy any document on the premises;
- (iii) question any person on the premises to find out information relevant to the investigation;
- (iv) require a person on the premises to produce to the authorised person any document or item that is relevant to the investigation and is in the possession or under the control of the person;
- (v) require a person on the premises to operate any computer or similar system on or available through the premises to—
 - (aa) search any information in or available through that system; and
 - (bb) produce a record of that information in any media that the authorised person reasonably requires;
- (vi) if it is not practicable or appropriate to make a requirement in terms of subparagraph (v), operate any computer or similar system on or available through the premises for a purpose set out in that subparagraph; and
- (vii) take possession of, and take from the premises, a document or item that may afford evidence of the contravention concerned or be relevant to the request.

(b) The authorised person must, on request, allow the person apparently in charge of the premises a reasonable opportunity to make copies of any document or item before it is taken as mentioned in paragraph (a) (vii).

(c) The authorised person must give the person apparently in charge of the premises a written receipt for documents or items taken as mentioned in paragraph (a) (vii).

(d) Subject to paragraph (e), the chairperson of the investigating committee must ensure that any document or item taken by the authorised person as mentioned in paragraph (a) (vii) is returned to the person when—

- (i) retention of the document or item is no longer necessary to achieve the object of the investigation; or
- (ii) all proceedings arising out the investigation have been finally disposed of.

(e) A document or item need not be returned to the person who produced it if it is not in the best interest of the public or any member or members of the public for the documents or items to be returned.

(f) A person from whose premises a document or item was taken as mentioned in paragraph (a) (vii), or its authorised representative, may, during normal office hours and under the supervision of the chairperson of the investigating committee, examine, copy and make extracts from the document or item.

(8) The authorised person or any person assisting that person as provided for in subsection (6), may use reasonable force to exercise any power in terms of this section.

(9) The law relating to privilege, as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court applies, with the necessary changes, in relation to the production of any information, including but not limited to any working papers, statements, correspondence, books or other documents, to the investigating committee acting in accordance with this section.

(10) (a) A person who is questioned, or required to produce a document or information during an investigation in terms of this section, may object to answering the question or to producing the document or the information on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

(b) The authorised person must inform the person of the right to object in terms of this section at the commencement of the investigation.

(c) On such an objection, the authorised person may require the question to be answered or the document or information to be produced, in which case the person must answer the question or produce the document.

(d) An answer given or a document or information produced, as required in terms of paragraph (c), may be used for the purposes of an investigation or disciplinary process by the investigating committee or the disciplinary committee in terms of this Act.

(e) An incriminating answer given, and an incriminating document or information produced, as required in terms of paragraph (c), is not admissible as evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of section 53 based on the false or misleading nature of the answer.

[S. 48A inserted by s. 16 of Act No. 5 of 2021.]

48B. Warrants.—(1) (a) A judge or magistrate who has jurisdiction may issue a warrant for the purposes of section 48A on application by a person authorised in terms of section 48A(1).

(b) The judge or magistrate may issue a warrant in terms of this section—

- (i) on written application by the person authorised in terms of section 48A (1) setting out under oath or affirmation why it is necessary to enter and investigate the premises; and

(ii) if it appears to the magistrate or judge from the information under oath or affirmation that—

(aa) there are reasonable grounds for suspecting that improper conduct has occurred; and

(bb) entry and search of the premises are likely to yield information pertaining to the improper conduct.

(2) A warrant must be signed by the judge or magistrate issuing it.

(3) The person authorised in terms of section 48A(1) who enters premises under the authority of a warrant must—

(a) if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place on the premises; and

(b) on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant.

(4) The warrant must identify the premises that may be entered and searched and specify the parameters within which the person authorised in terms of section 48A (1) may perform an entry, search or seizure.

(5) A warrant is valid only until—

(a) the warrant is executed;

(b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;

(c) the purpose of issuing it has lapsed; or

(d) the expiry of one month after the date it was issued,

whichever occurs first.

[S. 48B inserted by s. 16 of Act No. 5 of 2021.]

49. Process following investigation.—(1) After the conclusion of the processes contemplated in section 48, the enforcement committee contemplated in section 24B must, if sufficient grounds exist for a charge of improper conduct to be preferred against a registered auditor—

(a) follow an admission of guilt process if the enforcement committee believes that the improper conduct of the registered auditor does not warrant a sanction contemplated in section 51B (3) (a) (iv) or (v); or

(b) refer the matter to the disciplinary committee for a disciplinary hearing.

(2) The enforcement committee must furnish a charge sheet to the registered auditor concerned by electronic means and registered mail.

(3) A charge sheet must inform the registered auditor charged—

(a) of the details and nature of the charge;

(b) that the registered auditor, in writing, admit or deny the charge;

(c) that the registered auditor, together with the admission or denial, submit a written explanation regarding the improper conduct with which charged and, if guilt is admitted, submit factors in mitigation of sentence; and

(d) of the period, which must be reasonable but may not exceed 30 days, within which the plea or the amended plea in terms of paragraph (b) must be submitted to the enforcement committee.

(4) If a registered auditor admits guilt to the charge—

(a) the registered auditor is considered to have been found guilty as charged; and

(b) the enforcement committee must deal with the matter in accordance with section 51.

(5) If a registered auditor denies guilt (or fails to submit a denial or plea or if the enforcement committee made a decision in terms of section 49 (1) (b), the enforcement committee must, on the expiry of the period referred to in subsection (3) (d), refer the charge sheet and any plea received to the disciplinary committee to be dealt with in accordance with section 50.

(6) The acquittal or the conviction of a registered auditor by a court of law on a criminal charge is not a bar to proceedings against the registered auditor under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute—

(a) the offence stated in the criminal charge on which the registered auditor was acquitted or convicted; or

(b) any other offence of which the registered auditor might have been acquitted or convicted,

at the trial on the criminal charge.

50. Disciplinary hearing.—(1) Where a matter has been referred to the disciplinary committee as contemplated in section 49 (1) (b), the enforcement committee must—

- (a) furnish a charge sheet to the registered auditor concerned;
- (b) appoint a person to present the charge to the disciplinary hearing panel.

(2) A person presenting the charge to the disciplinary hearing panel may at any time prior to the conclusion of a disciplinary hearing apply to the panel to amend the charge on the grounds that an error exists in its formulation or that a charge is not properly articulated in the original charge sheet.

(3) A hearing before the disciplinary hearing panel is open to the public except where, in the opinion of the chairperson of the panel, any part of the hearing must be held in camera.

(4) A disciplinary hearing panel may, for the purposes of a disciplinary hearing, subpoena any person with relevant knowledge to appear before the panel at the time and place specified in the subpoena, to be questioned or to produce any object or information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or control which relate to the charge.

(5) A subpoena issued in terms of subsection (4) must—

- (a) be in the prescribed form;
- (b) be signed by an authorised official of the Regulatory Board; and
- (c) be served on the person concerned.

(6) For purposes of this section, service contemplated in subsection (5) (c)—

- (a) at the last known address appearing from the Regulatory Board's records; or
- (b) effected in any manner agreed upon between the Regulatory Board or a disciplinary hearing panel and the person being subpoenaed,

constitutes proper service.

(7) A disciplinary hearing panel may retain any object or information, including but not limited to any working papers, statements, correspondence, books or other documents produced in terms of subsection (4), for the duration of the hearing.

(8) The chairperson of a disciplinary hearing panel must call upon and administer an oath to, or take an affirmation from, any witness at the hearing.

(9) At a disciplinary hearing the registered auditor charged—

- (a) may be assisted or represented by another person in the proceedings;
- (b) has the right to be heard;
- (c) may call witnesses;
- (d) may cross-examine any person called as a witness in support of the charge; and
- (e) may have access to documents produced in evidence.

(10) A registered auditor charged may—

- (a) at any time before the conclusion of the disciplinary hearing, admit that he or she is guilty of the charge, despite the fact that he or she denied the charge or failed to react in terms of section 49 (3) (b); or
- (b) in the case where the registered auditor makes an admission in terms of paragraph (a), be regarded as guilty of improper conduct as charged.

(11) The person referred to in subsection (1) may during a disciplinary hearing—

- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
- (b) question any person who was subpoenaed in terms of subsection (4); and
- (c) call anyone to give evidence or to produce any object or information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which such person suspects or believes to have a bearing on the subject of the disciplinary hearing.

(12) (a) A witness who has been subpoenaed may not—

- (i) without just cause, fail to attend the disciplinary hearing at the time and place specified in the subpoena;
- (ii) refuse to be sworn in or to be affirmed as a witness;

- (iii) without just cause, fail to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her; or
- (iv) fail to produce any object or information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which he or she has been required to produce.

(b) A witness must remain in attendance until excused by the chairperson of the disciplinary hearing panel from further attendance.

(c) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law, with the necessary changes, applies in relation to the examination of any object or information, including but not limited to any working papers, statements, correspondence, books or other documents, or to the production of such information to the disciplinary hearing panel by any person called in terms of this section as a witness.

(d) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.

(e) A person may not prevent another person from complying with a subpoena or from giving evidence or producing any object or information, including but not limited to any working papers, statements, correspondence, books or other documents, which he or she is in terms of this section required to give or produce.

(f) A person subpoenaed in terms of this section must be reimbursed for incidental costs for providing information and attending the disciplinary hearing by the person who requested the subpoena.

(13) If the improper conduct with which the registered auditor is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered auditor as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

(14) If, for any reason, a member of the disciplinary hearing panel is unable to complete proceedings of the disciplinary hearing, the chairperson of the disciplinary committee may—

- (a) direct that the proceedings continue before the remaining disciplinary hearing panel members, two of whom must be members referred to in section 24A (2) (a) and (b); or
- (b) if there are less than two remaining disciplinary hearing panel members, constitute a new panel and direct that the proceedings start anew.

[S. 50 substituted by s. 17 of Act No. 5 of 2021.]

51. Sanctions in admission of guilt process.—(1) If a registered auditor admits guilt as contemplated in section 49 (4) (a), the enforcement committee may—

- (a) caution or reprimand the registered auditor;
- (b) impose a fine on the registered auditor not exceeding the amount determined by the Minister in the *Gazette* in terms of subsection (2); or
- (c) require the registered auditor to attend appropriate training or any other relevant non-monetary sanction or more than one relevant non-monetary sanction.

(2) The Minister must determine the amount referred to in subsection (1) (b)—

- (a) on the recommendation of the Regulatory Board; and
- (b) after publishing in the *Gazette* the proposed amount for comment for at least 30 days.

(3) The enforcement committee may impose more than one of the sanctions referred to in subsection (1).

(4) A sanction imposed in terms of subsection (1) may be suspended for a specific period or until the occurrence of a specific event or made subject to any conditions.

(5) The enforcement committee may order a registered auditor who admitted guilt to the charges to pay such reasonable costs as have been incurred in connection with an investigation or such part thereof as the enforcement committee considers just.

(6) The enforcement committee may, if considered appropriate, request the Regulatory Board to publish in the Board's website the name of the registered auditor who admitted guilt, the charge and the sanction imposed in terms of subsection (1), read with subsection (3), and a cost order in terms of subsection (4).

(7) The Regulatory Board must give effect to the decision of the enforcement committee.

[S. 51 substituted by s. 17 of Act No. 5 of 2021.]

51A. Application of certain provisions to registered candidate auditors.— This Chapter, except section 47, applies to registered candidate auditors with the necessary changes.

[S. 51A inserted by s. 12 of Act No. 2 of 2015 and substituted by s. 18 of Act No. 5 of 2021.]

51B. Sanctions in disciplinary hearing process.—(1) After the conclusion of a disciplinary hearing

contemplated in section 50, the disciplinary hearing panel must—

- (a) within 30 days, decide whether or not the registered auditor is guilty as charged and inform the relevant parties in writing of this decision;
- (b) if the registered auditor is found guilty in terms of subsection (1) (a), within 30 days after the guilty finding, consider mitigating and aggravating factors for the purpose of determining an appropriate sanction; and
- (c) within five days after considering mitigating and aggravating factors, determine the sanction and inform the relevant parties in writing of the final outcome of the disciplinary hearing.

(2) A registered auditor found guilty in terms of subsection (1) (a) may—

- (a) address the disciplinary hearing panel in mitigation of sentence; and
- (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.

(3) (a) If the registered auditor charged is found guilty or if the registered auditor admits to the charges, the disciplinary hearing panel may—

- (i) caution or reprimand the registered auditor;
- (ii) impose a fine not exceeding the amount determined by the Minister in the *Gazette* in terms of paragraph (b);
- (iii) require the registered auditor to attend appropriate training or any other relevant non-monetary sanction or more than one relevant non-monetary sanction;
- (iv) cancel the registration of the registered auditor concerned and remove his or her name from the register referred to in section 6; or
- (v) disqualify the registered auditor from registration as a registered auditor on a temporary or permanent basis.

(b) The Minister must determine the amount referred to in paragraph (a) (ii)—

- (i) on the recommendation of the Regulatory Board; and
- (ii) after publishing in the *Gazette* the proposed amount for comment for at least 30 days.

(c) The disciplinary hearing panel may impose more than one of the sanctions referred to in paragraph (a).

(d) A sanction imposed in terms of paragraph (a) may be suspended for a specific period or until the occurrence of a specific event or made subject to any conditions.

(4) The disciplinary hearing panel may order any registered auditor found guilty or who admitted guilt to pay such reasonable costs as have been incurred in connection with the investigation and the disciplinary hearing or such part thereof as the disciplinary hearing panel considers just.

(5) The Regulatory Board must publish in the Board's website, and if deemed necessary, in any other appropriate medium, the name of the registered auditor found guilty, a summary of the charges, the finding and the sanction imposed in terms of subsection (3) and a cost order in terms of subsection (4).

(6) The Regulatory Board must give effect to the decision of the disciplinary hearing panel.

[S. 51B inserted by s. 19 of Act No. 5 of 2021.]

CHAPTER VI OFFENCES

52. Reportable irregularities and false statements in connection with audits.—(1) A registered auditor who

- (a) fails to report a reportable irregularity in accordance with section 45; or
- (b) for the purposes of, or in connection with, the audit of any financial statement knowingly or recklessly expresses an opinion or makes a report or other statement which is false in a material respect,

shall be guilty of an offence.

(2) Where the registered auditor failing to report a reportable irregularity or conducting the audit is a firm, subsection (1) applies to individual registered auditor referred to in section 44 (1) (a), but nothing in this subsection prevents the taking of disciplinary action under Chapter V in respect of the firm concerned, in addition to or instead of the individual registered auditor referred to in section 44 (1) (a).

(3) A person convicted of an offence in a court of law under this section is liable to a fine or to imprisonment for a term not exceeding 10 years or to both a fine and such imprisonment.

53. Offences relating to investigation and disciplinary process.—(1) A person is guilty of an offence if he or she—

- (a) without sufficient cause, refuses or fails to comply with any reasonable request by an official authorised by the Regulatory Board in connection with the conduct of an investigation;
- (b) interferes with or hinders the conduct of an investigation or a disciplinary process;
- (c) fails, without sufficient cause, to comply with a subpoena in terms of section 48 or 50;
- (d) having been called under section 50, refuses to be sworn in or to be affirmed as a witness or fails without sufficient cause to answer fully and satisfactorily to the best of the person's knowledge and belief all questions lawfully put concerning the subject of the hearing; or
- (e) having been duly sworn in or having made an affirmation under section 50, gives a false answer to any question lawfully put to the witness or makes a false statement on any matter, knowing the answer or statement to be false.

(2) A person convicted of an offence under this section is liable to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

[S. 53 substituted by s. 20 of Act No. 5 of 2021.]

54. Offences relating to public practice.—(1) A person who contravenes sections 41, 43 or 44 is guilty of an offence and is liable to a fine or in default of payment to imprisonment not exceeding five years or to both fine and such imprisonment.

(2) Any person who—

- (a) contravenes any provision of section 47; or
- (b) obstructs or hinders any person in the performance of functions under that section,

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

CHAPTER VII GENERAL MATTERS

55. Powers of Minister.—(1) The Minister may, by notice in the *Gazette*, make regulations regarding—

- (a) any matter relating to the functioning of the Regulatory Board that is necessary to ensure the Regulatory Board's efficiency or to promote good order; and
- (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to make such regulations and the power to appoint the members of the Regulatory Board, to the Director-General or any other official of the National Treasury.

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

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

- (a) publish or otherwise make known the nature and effect thereof in a written, printed or electronic manner to any affected persons and bodies in a manner designed to ensure that they acquire full knowledge thereof; and
- (b) comply with any applicable requirement of just administrative action, including the furnishing of reasons for discretionary decisions imposed by, under or by virtue of any law.

57A. Protection of information.—(1) The Regulatory Board must in respect of personal information in its possession or under its control comply with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

(2) A member of the Regulatory Board, a member of any committee envisaged in this Act, an employee of the Regulatory Board or an authorised person referred to in section 48A(1), may not disclose to any person not in the service of the Regulatory Board any information obtained in the performance of functions under this Act except—

- (a) for the purpose of enforcing compliance with this Act or any decision made in terms of this Act;
- (b) when required to do so by a court;
- (c) 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 process or criminal prosecution;
- (d) at the written request of, and to, any appropriate international regulator of audits and auditors that

requires such information for the purpose of investigation or a disciplinary process; or

(e) for purposes of referring a non-audit matter in terms of section 48 (1A).

[S. 57A inserted by s. 21 of Act No. 5 of 2021.]

58. Repeal and amendment of laws.—(1) Subject to section 60, the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of that Schedule.

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

59. Transitional provisions.—(1) (a) From the date of commencement of this Act, the Regulatory Board must be regarded as the successor to the Public Accountants’ and Auditors’ Board.

(b) In order to give effect to that succession—

- (i) any board members of the Public Accountants’ and Auditors’ Board who immediately prior to the commencement of this Act were members of that Board, must be deemed to have been appointed members of the Regulatory Board for the remainder of the period for which each member was appointed as a board member under the Public Accountants’ and Auditors’ Act, 1991;
- (ii) all property which immediately before the date this Act comes into force was property of the Public Accountants’ and Auditors’ Board shall, by virtue of this Act, without any assignment or other form of transfer or the need for any consent become on that date property of the Regulatory Board;
- (iii) all rights or obligations of the Public Accountants’ and Auditors’ Board, whether contractual or otherwise, which were in existence immediately before the date this Act comes into force and do not fall within subparagraph (ii) shall become, on that date, rights or obligations of the Regulatory Board and, in their application or construction, be treated for all purposes as if the Public Accountants’ and Auditors’ Board and the Regulatory Board were the same person in law;
- (iv) regarding anything done or falling to be done, or any other event occurring, on or after the date this Act comes into force, any reference in an existing document to the Public Accountants’ and Auditors’ Board must be construed as or, as the case may require, as including a reference to the Regulatory Board; and
- (v) for the purposes only of section 197 of the Labour Relations Act, 1995 (Act No. 6 of 1995), the provisions of this subsection must be regarded as the transfer of a business from the Public Accountants’ and Auditors’ Board to the Regulatory Board.

(c) The Registrar of Deeds concerned must, at the request of the Regulatory Board and on submission of the relevant title deeds and other documents, make the necessary entries and endorsements in respect of his or her registers and other documents in order to give effect to a transfer in terms of subsection (1).

(d) No transfer duty, stamp duty or other fees shall be payable in respect of such transfer, entry or endorsement.

(2) Subject to subsection (3), any unfinished business of the Public Accountants’ and Auditors’ Board on the date this Act comes into force, which is dealt with by that Board under a provision of the Public Accountants’ and Auditors’ Act, 1991, and for which no corresponding provision appears in this Act, must be completed by that Board as if this Act had not been passed.

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

(b) In the case of any such proceedings, and in the case of any new applications for registration as an auditor received by the Regulatory Board, the requirements for registration set out in section 15 (2) and (4) of the Public Accountants’ and Auditors’ Act, 1991, must despite the repeal of that Act and any inconsistency with a provision of this Act be deemed to be still applicable until a date determined by the Minister by notice in the *Gazette*.

(4) The Education and Training Committee of the Public Accountants’ and Auditors’ Board, as it existed immediately prior to the commencement date, is deemed to be a committee established by the Regulatory Board under section 20 to determine the requirements for the professional development and achievement of professional competence.

(5) Any committee performing, immediately prior to the commencement date, an investigating or disciplinary function under the Public Accountants’ and Auditors’ Act, 1991, remains validly constituted and must complete its functions after that date as if this Act had not been passed.

(6) Any person who immediately prior to the commencement date was registered as an accountant and auditor under the Public Accountants’ and Auditors’ Act, 1991, is deemed to be registered as an auditor under this Act.

(7) Any training contract registered, any recognition of educational institutions or recognition of training

officers under the Public Accountants' and Auditors' Act, 1991, is deemed to be a registration or recognition under this Act.

(8) (a) The Examination Regulations as contained in the Manual of Information: Guidelines for Registered Accountants and Auditors, issued by the Public Accountants' and Auditors' Board as at the commencement date, must be deemed to have been prescribed by the Regulatory Board in respect of registered auditors.

(b) The Disciplinary Regulations as contained in the said Manual (excluding paragraphs 2.1 to 2.1.21, inclusive, thereof) must be deemed to have been prescribed by the Regulatory Board, to the extent that the Disciplinary Regulations are consistent with this Act.

(c) The Code of Professional Conduct as contained in the said Manual (including paragraphs 1 to 2.1.21, inclusive, of the Disciplinary Regulations) must be deemed to have been prescribed by the Regulatory Board.

(d) The Circulars as contained in the said Manual must be deemed to have been issued by the Regulatory Board.

(e) The Recognition Model as contained in the said Manual must be deemed to have been prescribed by the Regulatory Board.

(f) The auditing pronouncements issued by the Public Accountants' and Auditors' Board are, with effect from the commencement date, deemed to have been issued by the Regulatory Board.

(9) Subject to the provisions of this Act, on and after the commencement date, anything which was done under a provision of a law repealed by section 58 and which could be done under a corresponding provision of this Act is deemed to have been done under that corresponding provision.

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

60. Short title and commencement.—This Act is called the Auditing Profession Act, 2005, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation/Notification No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>
1 April, 2006	The Whole Act	GN316	28698	31 March, 2006

Schedule LAWS REPEALED

<i>No. and year of Act</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 80 of 1991	Public Accountants' and Auditors' Act, 1991	The repeal of the whole.
Act No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	The repeal of section 107.