

## EXPLANATORY BROCHURE

### Lodging a complaint with the IRBA and the Investigation Process that is followed:

#### How to Lodge a Complaint

Any member of the public, an association or an organisation may lodge a complaint against an auditor who is registered with the Independent Regulatory Board for Auditors ("the IRBA) if they feel that the auditor is guilty of improper conduct. At the outset, it is important to understand that the IRBA investigates alleged improper conduct on the part of Registered Auditors and, if necessary, implements disciplinary action against such auditors.

In order for such a complaint to be made, it is important to note the following:

The auditor against whom you wish to lodge a complaint must be registered with the IRBA

In other words any complainant should first establish whether or not the respondent is a Registered Auditor (RA). The designation Chartered Accountant ["CA (SA)"] is conferred by the South African Institute of Chartered Accountants which is a separate entity from the IRBA. If the person concerned is a CA(SA), it does not necessarily follow that he or she is an RA and registered with the IRBA. This might well be the case, but it is imperative that you confirm on the IRBA website, through the link, [www.irba.co.za/find-an-ra](http://www.irba.co.za/find-an-ra), that he or she is an RA.

#### Affidavit

Members of the public who wish to lodge a complaint of improper conduct against an RA shall do so on affidavit. An affidavit is a sworn statement signed in the presence of a Commissioner of Oaths (for example, an attorney, a police officer, postmaster or bank manager). Any of the aforementioned people have the authority to act as Commissioner of Oaths and you may go to any one of them to have your affidavit commissioned. The IRBA frequently receives affidavits which are merely stamped Certified a true copy of the original document, or similar, **which does not fulfil** the requirements of an affidavit.

The affidavit must conclude with a deposition (below) confirming that the contents have been sworn under oath. Thereafter, all the pages including the annexures must be initialled by both the deponent (the person giving the affidavit) and the Commissioner of Oaths.

With regard to the contents of your affidavit, please keep in mind the following points:

- An affidavit is headed as such followed by the full particulars of the person making the deposition as well as the person or entity against whom the complaint is made;
- Please specifically identify in your affidavit exactly what conduct you believe constitutes improper conduct on the part of the RA;
- It is important to set out clearly and concisely the specific acts or failures to act giving rise to the complaint of improper conduct.
- Affidavits which simply state that "the auditor has acted unprofessionally as can be seen from the attached documentation", or similarly phrased affidavits, will be returned for clarification;
- Please attach to your affidavit, copies of relevant documentation which support your complaint, and not the originals of those documents;
- Please do not attach unreferenced documentation to your affidavit;
- Please also ensure that the attachments to your affidavit are numbered, and that your reference to these attachments in your affidavit reflects the page number where the attachment can be found;
- One of the reasons why complaints are required to be in the form of an affidavit is that the IRBA considers complaints against RAs in a very serious light and requires members of the public to do likewise.

#### Defamation

It is important that members of the public understand that derogative offensive statements as well as subjective unsubstantiated allegations can be considered defamatory by the RA against whom such statements are made. To make a defamatory statement simply means to make a statement which is slanderous in nature and can be considered as damaging to a person's reputation and good name.

In order to avoid your affidavit being considered defamatory, you should restrict yourself to the objective facts of the matter and try not to include any emotional unsupported allegations. It is preferable that the facts of the matter be stated simply, truthfully and without unnecessary elaboration and supported only by relevant documentation.

#### Disclosure

On furnishing the IRBA with an affidavit, it is prudent to confirm that you have no objection to your affidavit being forwarded to the respondent RA. Also remember to include all your current contact details (for example, postal address, land line, cell phone and e-mail address).

#### Procedure

The IRBA is empowered under the Auditing Profession Act, Act No 26 of 2005 as amended by Act 2 of 2015 and Act 5 of 2021, ("the Act") to refer any complaint against an

RA to the Investigating Committee appointed under section 20 of the Act if the Board:

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

While every effort is made to obtain a fast turnaround time with complaints, it is important to understand that the process of an investigation is not a rapid one. By its very nature, an investigation must take time if it is to be performed thoroughly and correctly. The Investigating Committee, which initially investigates complaints against auditors once all the relevant documentation and comment has been obtained, meets approximately four times a year and comprises chartered accountants, legal practitioners and members with business qualifications. The Investigating Committee might require further information or further action to be taken by the directorate before it will be prepared to make a recommendation to the Enforcement Committee. The Investigating Committee deals with each matter thoroughly and on its merits and this process cannot be done quickly or hastily.

An important point to remember is that while the Investigating Committee has commenced a process of issuing a bi-annual status email in April and October of each year, to advise parties as to the status of their matter, complainants are requested to accept that apart from this, they will only be notified when there is specific information required from them or to advise them of the outcome of the investigation.

Section 48(7) of the Act states "The investigating committee must, after the conclusion of the investigation, submit a report stating its recommendations to the Enforcement Committee..."

Once the Investigating Committee has finalised its investigation, it submits a recommendation to the Enforcement Committee ("ENCOM"). The ENCOM must, if sufficient grounds exist for a charge of improper conduct to be preferred against a registered auditor:

- follow an admission of guilt process if the ENCOM believes that the improper conduct of the registered auditor does not warrant a sanction contemplated in section 51B(3)(a)(iv) or (v) of the Act; or
- refer the matter to the Disciplinary Committee for a disciplinary hearing.

The ENCOM is a sub-committee of the Board that considers the merits of a matter together with the recommendation of the Investigating Committee.

A complainant is always advised of the outcome of the investigation. In addition, the Director: Investigations quarterly report, published in our newsletter, IRBA News ([www.irba.co.za/library/irba-news](http://www.irba.co.za/library/irba-news)) contains details of the findings of the ENCOM.

### **Jurisdiction**

The Board is empowered by the Act to investigate and if necessary hear any allegations of improper conduct against an RA and, if such RA is found guilty, to impose one of the prescribed punishments.

The punishments include, amongst others, a caution, reprimand, a fine, suspension from practice for a specific period and cancellation of the registration of the practitioner with the Board and removal of the auditor's name from the register of auditors.

As can be seen from the above, the powers of the Board are purely disciplinary in nature. The Board does not act in place of a criminal or civil court and its jurisdiction extends only to the conduct of registered auditors. The attention of complainants is drawn to the fact that the Board does not award compensatory orders in favour of the complainant if the RA is found guilty of improper conduct.

Should you have any further queries regarding the lodging of a complaint against a Registered Auditor, please contact the IRBA on [investigations@irba.co.za](mailto:investigations@irba.co.za)