



irba

INDEPENDENT REGULATORY BOARD FOR AUDITORS

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NEWS



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MESSAGE FROM THE

CEO

In the President's State of the Nation address in February 2012, he reported the steady progress in various areas; however, the challenges of unemployment, poverty and inequality remained, with unemployment still exceeding 20%.

Although consolidated government expenditure is estimated at R1,06 trillion, economic growth is forecast to slow down from 3.1 % in 2011 to 2.7% in 2012, according to Finance Minister Pravin Gordhan in his budget speech on 22 February 2012.

Internationally, uncertainty is increasing as Europe moves into recession and the global economic crisis

strikes even those countries which have demonstrated resilience thus far.

But as we know, with challenges also come opportunities. With the balance of power moving stealthily from the West to countries like India, and Africa representing the second fastest growing economy in the world, we need to identify how these shifts can benefit South Africa. Both the President and Finance Minister emphasise the need for the South African public to join hands and work together to realise the country's vision in the next 20 years. As one of the custodians of the public interest, auditors and the profession necessarily have an important role to play. Given the negative perceptions constantly dogging the profession, an ideal opportunity presents itself to demonstrate how it can discharge its public interest responsibilities and simultaneously support government's vision.

South Africa has been voted into the pole position by the World Economic Forum, for the second consecutive year, for the strength of its auditing

standards. This is no small feat and is a combination of the international community's perception of the strength of regulation and the quality of audits performed in the profession. This kind of confidence must impact on the investment foreign investors are willing to make in South Africa.

Auditors and the profession thus play a crucial role in ensuring that our financial markets remain credible and in creating such confidence. Strong markets are a forerunner to job creation and together we can realise the vision of government to work against unemployment and poverty.

South Africans, and the profession, have weathered many storms before, and by maintaining our current high standards and quality in audits, we can yet again overcome most economic and social challenges through commitment to such standards and quality, and thereby contribute to a sustainable South Africa.

It seems that 2012 promises to be a good year then.

Bernard Peter Agulhas
CEO

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EDUCATION, TRAINING AND PROFESSIONAL DEVELOPMENT

CONTINUING PROFESSIONAL DEVELOPMENT: ETHICS COURSES

The Continuing Professional Development Policy requires RAs to achieve 9 hours of ethics CPD in a 3 year rolling cycle. Many RAs have reported that they have experienced difficulty in finding appropriate ethics CPD opportunities. We have therefore compiled a list of all service providers who offer ethics courses. As you know the IRBA does not endorse courses or accredit providers. The list below is from providers identified at the time of going to print.

CPD Ethics for Auditors and Accountants: service providers
(As available at 26 January 2012, in alphabetical order)

Albert Luthuli Centre for Responsible Leadership
University of Pretoria
Workshops
ben.vandermerwe@up.ac.za
<http://web.up.ac.za/crl>
012 420 4271

AOSIS (African Online Scientific Information Systems)
Online CPD ethics modules.
info@ecpd.co.za
www.ecpd.co.za
086 1000 381 and 021 975 2602

Centre for Applied Ethics, University of Stellenbosch
Workshops
Philosophy Department
University of Stellenbosch
aavn@sun.ac.za
www.sun.ac.za/philosophy/cae
021 808 2418

Ethics Institute of South Africa
Workshops and online CPD ethics modules
info@ethicsa.org
www.ethicsa.org
012 342 2799

Dr Larry Kaufmann
Workshops
larrykaufmann@telkomsa.net
011 782 6588
082 824 7304

Professor Leon van Vuuren, University of Johannesburg
Workshops
lvanvuuren@uj.ac.za
011 559 2073
082 300 8113

Professor Martin Prozesky, Compass Ethics
Workshops and online CPD ethics modules
info@compassethics.co.za
www.compassethics.co.za
083 414 0863

Professor Piet Naude, Nelson Mandela Metropolitan University
Workshops
ethicsw@nmmu.ac.za
041 504 3215
(Denise van der Merwe)

Uli Schackermann, Consultus Professional Services
Workshops
consultus@schackermann.eu
082 554 1243

OFFICIAL STATEMENT ACCOMPANYING THE RELEASE OF THE RESULTS OF THE PUBLIC PRACTICE EXAMINATION 2011, 24 FEBRUARY 2012

OVERALL RESULTS

The Public Practice Examination (PPE) was written on Thursday, 24 November 2011 in 23 local venues and three international venues; Namibia, Swaziland and the United Kingdom. Of the 2054 aspirant accountants and auditors who wrote the PPE in 2011 (1952 in 2010), 1517 (1585 in 2010) passed resulting in a pass rate of 74% (81% in 2010). Of the 1707 candidates who wrote the examination for the first time, 1361 passed; resulting in a first time pass rate of 80%.

The following candidates achieved the top ten places:

- 1 Mr Tim Acker (Honours)
- 2 Ms Byravi Yogeswaran (Honours)
- 3 Ms Tessa Hanan (Honours)
- 4 Mr Tim Escott (Honours)
- 5 Mrs Chantell Haines (Honours)
- 6 Ms Mahdiyyah Moola (Honours)
- 7 Ms Preeti Sukha
- 8 Mr Renier Strydom
- 9 Ms Lori Berelowitz
- 10 Ms Carri Aronson
- 10 Mr Darren Roy

Six candidates achieved honours, which is awarded for a pass mark of 75% or above.

Entry to the PPE is a culmination of a long and rigorous academic, training and assessment process aimed at developing the core and professional competence of prospective auditors.

THE PPE

The objective of the PPE is to assess the professional competence of candidates at entry to the auditing profession. Within the constraints of a written examination, the IRBA has developed the PPE to ensure that it is an appropriate assessment of professional competence and that it reflects the multidisciplinary public practice environment.

The primary objective of the IRBA as established in terms of section 3 of the Auditing Profession Act, 2005 (the Act) is to protect the public through regulation of the auditing profession. In this regard, the IRBA has a duty to ensure that only those who have demonstrated an appropriate degree of professional competence are registered as auditors.

Candidates must demonstrate an ability to

solve multidisciplinary practice problems in an integrated manner and to do so must analyse and interpret information and provide viable solutions to address specific client needs. The ability to demonstrate logical thought and exercise professional judgment is an integral part of the examination.

Admission to the PPE requires completion of recognised academic, education, training and assessment programmes. The qualification period is at least seven years and is similar to that of other highly regarded professions and internationally recognised accounting bodies.

TRANSFORMATION OF THE PROFESSION

Transformation of the profession remains a priority for the IRBA. Of the 912 black candidates who wrote the PPE, 599 passed, representing an overall pass rate of 66%.

The IRBA manages a support programme for Black repeat candidates on an annual basis. In 2011, Fasset (the Seta for finance, accounting, management consulting and other financial services) provided the IRBA with funding to assist in running the support programme. The support programme has, yet again, proven to be successful in 2011. Without exception the candidates who attended the Support Programme achieved better results on each question than repeat candidates who did not attend the support programme. Of the 78 candidates who completed the programme 33 passed, representing a pass rate

of 42%. Of the 203 Black repeat candidates, who did not attend the support programme, 76 passed, representing a pass rate of 33%.

IN CONCLUSION

The IRBA wishes to acknowledge the significant contribution made by the various education institutions, training offices and professional bodies towards the success of the 2011 PPE candidates.

The IRBA's examination continues to be afforded both local and international recognition and we wish to congratulate our successful candidates on their outstanding achievement.

See enclosed supplement for a list of all the successful candidates.

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STANDARDS

GOING CONCERN AND THE AUDITOR'S REPORT

An auditor's report on financial statements prepared on the basis that the going concern assumption is appropriate but a material uncertainty exists is often inappropriate. A number of auditors have been the recipients of a charge of improper conduct for an inappropriate auditor's report on financial statements in such circumstances.

The applicable International Standard on Auditing (ISA 570, *Going Concern*, paragraphs 18 to 20 and A20 to A24) requires the auditor to determine whether the financial statements adequately describe the principal events or conditions that may cast significant doubt on the entity's ability to

continue as a going concern and management's plans to deal with these events or conditions. The Standard also requires the auditor to determine whether the financial statements disclose clearly that there is a material uncertainty related to events and conditions that may cast significant doubt on the entity's ability to continue as a going concern and, therefore, that it may be unable to realise its assets and settle its liabilities in the normal course of business. The auditor is expected to be able to obtain sufficient appropriate audit evidence to evaluate whether the assessment of the directors is based on reasonable and supportable assumptions.

If there is adequate description and clear disclosure of the material uncertainty, the financial statements 'present fairly' in accordance with the applicable financial reporting framework and the auditor's report contains an unmodified opinion on the financial statements and a paragraph, after the opinion paragraph, emphasising the material uncertainty. If there is inadequate description and no clear disclosure of the material uncertainty, the financial statements do not 'present fairly' and the auditor's opinion is modified.

An "Emphasis of Matter" paragraph may not emphasise a material uncertainty that is not disclosed in the financial statements and, in such

circumstances, the auditor's opinion should be modified. An auditor's report is inappropriate when there is inadequate description and there is no clear disclosure of the material uncertainty and the report contains an unmodified opinion and a paragraph which emphasises the material uncertainty.

There seems to be a view by directors, and often by lawyers who advise directors, that when there may be a significant uncertainty about a company continuing in business for the foreseeable future, the less disclosure in financial statements the better and there is certainly no clear disclosure of

a material uncertainty. This view appears as a result of a perception that an admission of a material uncertainty becomes a 'self-fulfilling prophecy' and will be seen as such by the intended users of the financial statements to the detriment of the company's share price or ability to raise funds.

'Auditor Reporting' has a bearing in such circumstances as there is more guidance in the applicable auditing standard (on financial statement disclosure relative to when the going concern assumption is appropriate but a material uncertainty exists) than in the applicable financial reporting standard. Accordingly,

the auditor may have to advise the directors on the required disclosures in the financial statements and the layout and wording of the auditor's report in response to both adequate and inadequate disclosures. A material uncertainty is to be clearly disclosed in the financial statements if the auditor's report is to contain an emphasis of matter rather than a modified opinion.

Derek Spavins*

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** Derek is a retired Director from KPMG, has been a member of CFAS for the past 5 years and Chairman of the Reports Standing Committee handling development of SAAPS 2 and SAAPS 3 and advising on regulatory reporting matters. He also serves on many other CFAS Task Groups. He has served on the KPMG Global ISA Panel and has extensive experience in auditing and assurance standard setting and auditor's reporting solutions.*

BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE)

THE BILL

The Broad-Based Black Economic Empowerment Amendment Bill 2011 issued by the DTI closed for comment on 9 February 2012. The IRBA has commented on this Bill. The B-BBEE Codes of Good Practice are currently being revised by the DTI and are due to be exposed for public comment shortly.

THE SASAE

The CFAS B-BBEE Advisory Committee, in consultation with the DTI, released on exposure a South African Standard on Assurance Engagements (SASAE) 3502 *Assurance Engagements on B-BBEE Verification Certificates* which contains the requirements and guidance for B-BBEE Approved Registered Auditors providing such

services. The exposure period closed on 24 February 2012.

The following significant issues were identified from the comments:

- **Limited vs. reasonable levels of assurance:** Comments received did not support having two options with different levels of assurance expressed. There were concerns whether the market would understand the difference and hence the acceptability and the reliability of the B-BBEE Approved Registered Auditors' certificates.
- Request for more guidance to be included on "sampling" and "materiality" in the context of individual scorecard elements and the underlying information.

- Concerns expressed regarding consistent application of the standard when applied to B-BBEE assurance engagements by a B-BBEE Approved Registered Auditor, when compared with the methodology applied by a SANAS Accredited Verification Agency in accordance with the DTI Verification Manual.

It appeared that these concerns related primarily to:

- o interpretations of the Codes of Good Practice or Sector Codes in determining the score awarded for individual scorecard elements;
 - o the application of international assurance engagement standards, in determining the nature and extent of work performed and engagement documentation to support the B-BBEE Verification Certificate issued; and
 - o the implications for existing SANAS accredited verification agencies and transitional arrangements.
- Comments on operational matters relating to processes to be established by the IRBA, for example when dealing with complaints, referral fees and second opinions. These comments will be considered by the CFAE for possible amendments to the *Code of Professional Conduct for Registered Auditors*.

All comments were considered by the B-BBEE Advisory Committee in finalising the SASAE 3502. It is expected that the final SASAE 3502 will be presented to CFAS at its June 2012 meeting for approval to recommend to the Board to issue. B-BBEE Approved Registered Auditors are advised to consider the guidance contained in the proposed SASAE 3502 and the relevant

Appendices in the DTI's Verification Manual, until such time as the final SASAE 3502 is issued.

APPROVED REGISTERED AUDITORS

Auditors planning to extend their assurance services to provide B-BBEE Verification Certificates to their audit and non-audit clients are advised to ensure their engagement teams are adequately trained and competent to provide such services. It is also important to recognise the reliance placed on these certificates to support the B-BBEE status of potential suppliers in the award of tenders. Please note that the DTI's Statement 005 provides that **only B-BBEE Approved Registered Auditors, and SANAS accredited Verification Agencies, are permitted to issue valid B-BBEE Verification Certificates.**

Attention should be paid to the format of the certificate as well as the unique identification number that should be allocated to each certificate. The DTI requires all B-BBEE Verification Certificates to be uploaded timeously to the DTI portal.

Where the B-BBEE Approved Registered Auditor becomes aware that an incorrect certificate has been issued, steps must be taken to withdraw the certificate immediately, correct it and re-issue to the client. The auditor must advise the client to distribute the corrected certificate to all users. Incorrect certificates may arise from the application of the incorrect Code

or Sector Code to the measured entity, or an incorrect calculation of the score for individual scorecard elements. The amended certificates will need to be uploaded on the DTI portal and the original certificate issued withdrawn.

Exempt Micro Enterprises (EME) Certificates at a Level 3 or Level 4 Contributor Status, may be issued by any registered auditor and any professional accountant who is a member of one of the eight professional institutes approved in terms of the Close Corporation Act who may be appointed as an accounting officer. The definition of "Accounting Officer" can be found in the Close Corporation Act 1984 section 60(1), (2) and (4). A registered auditor should follow the guidance in the proposed SASAE 3502 when providing EME Certificates.

A list of the B-BBEE Approved Registered Auditors can be found on the IRBA website at: www.irba.co.za/index.php/b-bbee-verification-assurance. At present, more than 40 auditors have completed the prescribed B-BBEE MDP programme and have been registered as B-BBEE Approved Registered Auditors to provide B-BBEE Verification Certificates from the date of their registration.

If you have any further questions please contact the Director: Standards at 087 940 8871 or the Professional Managers in the Standards Department.

COMMITTEE FOR AUDITING STANDARDS (CFAS)

CURRENT PROJECTS

Proposed Revised Preface

- In December 2011, the IAASB issued its *Amended Preface*

to the *International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements*. The Preface is issued to establish the status and authority of the

pronouncements issued by the IAASB. The former International Auditing Practice Statements (IAPs) are now referred to as International Auditing Practice Notes (IAPNs), and are issued

as “non-authoritative” guidance to provide practical assistance to auditors. IAPNs do not impose additional requirements on auditors beyond those included in the ISAs, nor do they change the auditor’s responsibility to comply with all ISAs relevant to the audit. The amendments seek to establish a clear distinction between the authoritative engagement standards of the IAASB and non-authoritative material issued by the IAASB to assist practitioners. The existing IAPs have been withdrawn and have not been re-issued.

- The implications of the IAASB change for the status and authority of the existing South African Auditing Practice Statements (SAAPS) and Guides, issued as implementation guidance for auditors in applying the International Standards on Auditing (ISAs) is being considered by the CFAS. A proposed South African Preface and Due Process is being developed for issue on exposure later this year, to address the status and authority of the South African quality control, auditing, review, other assurance, and related services pronouncements and industry guides.
- The existing IRBA SAAPS and Guides will be reviewed in the course of 2012 to assess whether these will be reissued as South African Auditing Practice Notes (SAAPNs) or some other form of pronouncement. Those SAAPS and Guides that relate to legislative requirements to meet the needs of various regulators in South Africa may be issued as authoritative guidance.

OTHER PROJECTS

- The IAASB issued a *Feedback Statement on the Evolving Nature of Financial Reporting: Disclosure and its Audit Implications* in January 2012. The CFAS will be considering the implications

for guidance currently being developed.

- The IAASB issued International Standard on Assurance Engagements (ISAE) 3420 *Assurance Engagements to Report on the Compilation of Pro Forma Financial Information Included in a Prospectus* in December 2011, effective for assurance reports dated on or after 31 March 2013, with earlier adoption permissible. ISAE 3420 deals with reasonable assurance engagements undertaken by a professional accountant to report on the responsible party’s compilation of pro forma financial information included in a prospectus. This will require changes to be made to the current JSE Limited Listing Requirements which currently requires limited assurance to be expressed. The CFAS approved ISAE 3420 at its March 2012 meeting and recommended it to the Board for issue for use by registered auditors providing reporting accountants’ reports on pro forma information in prospectuses issued by companies listed on the JSE Securities Exchange.
- The IAASB also issued International Auditing Practice Note (IAPN) 1000 *Special Considerations in Auditing Financial Instruments* in December 2011. The IAPN is available for use immediately. The IAPN includes background information about financial instruments and addresses audit considerations relating to financial instruments. Non-authoritative guidance is provided on how risks of material misstatement pertaining to the valuation of financial instruments may arise, how an entity may value its financial instruments, and the role of outside parties, including both experts and third-party pricing sources. The CFAS approved

IAPN 1000 at its March 2012 meeting and recommended it to the Board for issue as non-authoritative guidance for use by registered auditors in South Africa.

CFAS PUBLIC SECTOR STANDING COMMITTEE (PSSC)

The PSSC has played an important role in facilitating the development of useful guidance for registered auditors engaged in public sector audits.

The Board approved the following Guides for joint publication with the AGSA at its meeting on 26 January 2012:

- *Guide for Registered Auditors: Auditing in the Public Sector* and
- *Guide for Registered Auditors: Audit of Pre-determined Objectives*

The Guides provide useful insights to the additional requirements and expectations when auditing in the public sector and the various governmental structures, financial reporting and auditing requirements that registered auditors may not always be aware of. The Guides will be published in a useful booklet format and issued at a joint function hosted by the AGSA and IRBA in April 2012 to which public sector audit partners will be invited.

The AGSA's Audit Research and Development (ARD) staff also participates in the Reports Standing Committee (RSC) contributing to the development of SAAPS 2 *Financial Reporting Frameworks and the Auditor's Report* to provide insights to the public sector considerations when determining what constitutes acceptable financial reporting frameworks in South Africa. They have also participated in the preparation of SAAPS 3 *Illustrative Reports* to incorporate aspects affecting reporting implications of AGSA reports on government financial statements.

CFAS REPORTS STANDING COMMITTEE (RSC)

The proposed SAAPS 3 (Revised), *Illustrative Reports* was issued for comment on 22 December 2011 with comments due and received by 24 February 2012.

SAAPS 3 has been revised to take account of the following changes:

- Amendments arising from the clarity project of the International Audit and Assurance Standards Board (IAASB);
- Subsequent revisions of the International Standards on Auditing (ISAs) and International Standards on Review Engagements (ISREs), and
- The requirements of the Companies Act, 2008 (as amended) (Companies Act), and the Companies Act Regulations, 2011, pursuant thereto.

SAAPS 3 also incorporates for the first time the reporting requirements of the Public Audit Act (PAA) and the applicable requirements of the Auditor General - South Africa (AGSA). The comments received on SAAPS 3, were considered by the RSC and changes arising from comments received were presented to CFAS in March 2012.

The wording of the auditor's report relating to "other information" included in the audited annual financial statements as required by the Companies Act, such as the director's report (section 30(3)(b)), the audit committee's report (section 94(7)(f)) and the company secretary's certificate (section 88(2)(e)) needs further consideration and has been referred back to the RSC for further deliberation before SAAPS 3 is issued.

The proposed South African Standard on Assurance Engagement, (SASAE) 3501 *Assurance Engagements on eXtensible Business Reporting Language (XBRL)* was approved for exposure by CFAS at its November 2011 meeting. SASAE 3501 will be issued on exposure for a period of 60 days for public comment in March 2012.

A CFAS JSE Task Group has been formed and is in the process of developing an updated *Guide for Registered Auditors: Reporting on Financial Information contained in Interim, Preliminary, Provisional and Abridged Reports*. It is expected that the updated guide will be issued during the second quarter of 2012. The JSE Task Group will also deal with the updating of the auditing aspects in the other JSE Guides for reporting on profit forecasts and prospectuses, presently contained in the existing SAICA Guides.

RSC REGULATORY REPORTS

Financial Services Board (FSB)

- **Long Term and Short Term Insurance – SAM Project:** The IRBA continues to participate in this project and is appointed to the Steering Committee and the Pillar II and Pillar III working groups of the FSB - Solvency Assessment and Management (SAM) Project. Good progress is being made with this project which is expected to extend over the next three years. The IRBA has

submitted comments on various discussion papers at a high-level impacting on future regulatory returns and audit and reporting requirements.

- **Retirement Funds:** Proposed changes to the auditor's reports in the annual return are being considered. Changes have been made to the annual return that affect the auditor's reports:
 - Schedule B – statement of responsibility by the board of trustees – an "instances of non-compliance" note has been added.
 - Schedule D – report of the independent auditors.
 - Schedule E – report of the board of trustees.
 - Schedule HA – notes to the financial statements (basis of preparation).
 - Schedule IB – assets held in compliance with Regulation 28 – assurance report. The FSB issued the new Regulation 28 report in December 2011.

These amended reports will be included in the annual return circulated by the FSB.

Discussions continue with the FSB Pension Funds and FAIS Departments, the RSC's Retirement Funds Task Group in order to reach consensus regarding reporting requirements for auditors in respect of investment administrators, benefit administrators, nominee holding companies and nominee companies. It has been agreed that the reports will be separate ISAE 3000 reports, comprising one each for:

- Benefit administrators;
- Investment administrators; and
- Nominee holding companies and nominee companies.

STANDARDS

CONTINUED

- A Task Group is working with the **DTI: Films and Television Production Incentive Scheme and Business Process Services Incentive Departments**, relevant industry representatives, and auditors of grant applications to revise the auditor's report required to support grant claims submitted. Assistance is also

being given to revise relevant grant guidelines in respect of the requirements for assurance from auditors.

CFAS SUSTAINABILITY STANDING COMMITTEE (SSC)

- The SSC met on 9 February 2012. Research is to be undertaken in

2012 in respect of sustainability assurance reports issued, in order to develop illustrative sustainability assurance reports as well as an illustrative engagement letter.

ACTIVITIES OF THE INTERNATIONAL AUDIT AND ASSURANCE STANDARDS BOARD (IAASB)

The IRBA, assisted by the various CFAS task groups have, or will submit comments on the following discussion papers and exposure drafts.

Project	Status
Plan for a Post-Implementation Review of the Clarified International Standards on Auditing	<ul style="list-style-type: none"> • The plan was issued in October 2011. The IAASB has approached the IRBA for responses to the review. Comments are due by October 2012. • The IAASB has also asked the IRBA to participate in a survey of audit committees, due by June 2012. • Additionally, the IRBA has been asked to provide further information about the main differences (if any) between the clarified ISAs and the national auditing standards. • A survey of small and medium practices (SMP survey) has already been initiated. The IRBA provided initial responses in October 2011 and will submit final responses by October 2012.

Other current projects of the IAASB

Details of progress on these projects, including comments received can be found at www.ifac.org/IAASB/Projects.php

- Revision of:
 - ISRE 2400 *Engagements to Review Financial Statements*.
 - ISRS 4410 *Engagements to Compile Financial Statements*.
 - ISAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.
 - ISA 720 *The Auditor's Responsibilities Relating to Other Information in Documents Containing Audited Financial Statements*.
 - ISA 610 *Using the Work of Internal Auditors*.
- Proposed ISAE 3410 *Assurance on a Greenhouse Gas Statement*.
- Audit Quality.
- Auditor Reporting.
- Disclosures.
- ISA Implementation Monitoring.
- XBRL.

ETHICS

REVISED CODE AND RULES

The IRBA Rules Regarding Improper Conduct (the "Rules") and Code of Professional Conduct for Registered Auditors (the "Code") have been in effect from 1 January 2011. It is expected that Registered Auditors have updated their firm's quality control requirements and audit methodologies to align with the Code and have provided training to all audit trainees and audit professionals employed within the audit firm regarding these updates. We encourage auditors to carefully consider the implications of the code on their firms and not just implement a tick box approach.

A communiqué was released on 5 December 2011, clarifying any confusion on the rotation of key audit partner as well as transition periods that are set out in the Code. It can be downloaded from the IRBA website: www.irba.co.za/index.php/audit-news-news-42/596-05-december-2011.

IESBA EXPOSURE DRAFTS

The IESBA recently released two exposure drafts for comment:

- *Proposed Changes to the IESBA Code of Ethics for Professional Accountants Related to Provisions*

Addressing a Breach of a Requirement of the Code. The IRBA submitted comments on this exposure draft. The second exposure draft:

- *Proposed Changes to the Code of Ethics for Professional Accountants Addressing Conflicts of Interest.* Comments are being prepared and will be submitted on this exposure draft as well. Copies of the exposure drafts and links to the IESBA website are included on the IRBA Ethics web page.

ETHICS WORKSHOPS

The IRBA presented ethics workshops around the country presented by Uli Schäckermann (CA(SA) and RA) and Professor Martin Prozesky (Ethicist) comprising 18 sessions of 4 hours each. Seats were limited to the first 50 attendees per session allowing for a highly interactive session. The need for such workshops is evidenced by available seats being filled within a few weeks of the booking process.

The workshops focused on the Code and the Rules affecting auditors in their daily practice. The implications of the independence requirements are illustrated by way of case studies in the South African multicultural

environment encountered by auditors daily.

Feedback from attendees has been positive. Practitioners appreciated the workshop format in the update and a review of the changes in the new Code. It became evident that there is considerable confusion over the independence requirements in the Companies Act and those in the Code and understanding by auditors as to which apply when. The CFAE will explore ways of providing guidance to clarify the confusion.

The multicultural environment was a refreshing addition to the session. It allowed Registered Auditors to consciously consider the environment that we operate in that might have received the attention it required previously.

The success of this training session has resulted in numerous requests for additional sessions to be held later in the year. The IRBA anticipates offering further workshops later this year.

For further information on professional ethical issues you may contact the IRBA by email to standards@irba.co.za or by telephone on 087 940 8800.

REPORTABLE IRREGULARITIES

The table below presents the statistics on Reportable Irregularities (RIs) received from April to December 2011, with comparatives. The number of continuing RIs is increasing.

Statistics

	April 2010 to March 2011		April 2011 to December 2011	
	Total	No. of Private Companies	Total	No. of Private Companies
Total number of RIs reported	806 (100%)	629 (78%)	723 (100%)	574 (80%)
Continuing RIs	468 (58%)	385 (82%)	423 (58%)	374 (88%)

Please note the following:

- Email reports to ristandards@irba.co.za.
- RAs must conclude whether the RI is continuing or not continuing and must please state this in their second reports. **It is not acceptable to state that the RA is "not able to conclude"**.
- Extensions will only be granted in *extreme* circumstances.
- Please refer to the IRBA *Reportable Irregularities Guide* before contacting the IRBA with queries.

- A CFAS Task Group has been established to update the current IRBA Guide on Reportable Irregularities issued 30 June 2006 to provide current practical examples of reportable irregularities, and changes arising from the Companies Act, 2008 and Regulations, 2011, including guidance for independent reviewers when reporting irregularities to CIPC.

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LEGAL

QUARTERLY REPORT FROM THE DIRECTOR: LEGAL FOR THE PERIOD 1 OCTOBER 2011 TO 31 DECEMBER 2011

INVESTIGATING COMMITTEE

The Investigating Committee met twice during this period and referred 15 matters to the Disciplinary Advisory Committee with recommendations. One matter was withdrawn at this committee stage.

In addition six matters were not referred to the Committee as they were mediated by the Directorate, or were withdrawn.

DISCIPLINARY ADVISORY COMMITTEE

The Disciplinary Advisory Committee met twice during this period and disposed of 19 matters, as follows.

Decisions not to charge

- three matters in terms of Disciplinary Rule 3.5.1.1 (the

respondent is not guilty of unprofessional conduct; this includes the situation where the conduct in question might be proved but even if proved does not constitute unprofessional conduct)

- six matters in terms of Disciplinary Rule 3.5.1.2 (the respondent having given a reasonable explanation for the conduct)
- three matters in terms of Disciplinary Rule 3.5.1.5 (that in all the circumstances it is not appropriate to charge the respondent).

Decision to charge and matter finalised by consent

Three practitioners were fined.

- one matter was a JSE referral relating to incorrect goodwill impairment in reviewed provisional results (R50 000)
- one matter related to negligence when performing an audit (R40 000 of which R20 000 was suspended on conditions)
- one matter related to negligence relating to the tax affairs of a client and failure to hand over documentation (R20 000 of which R10 000 was suspended on conditions)

Three matters were referred for hearing by the Disciplinary Committee

One matter was withdrawn consequent upon a criminal conviction of the respondent, with imprisonment, which rendered the further disciplinary prosecution of the matter unnecessary.

DISCIPLINARY COMMITTEE

The Disciplinary Committee met three times during this period.

FIRST MATTER: 3 OCTOBER 2011

This matter had commenced on 17 May 2011 and was remanded until 3 October 2011.

Before the reconvened hearing, the pro forma complainant and the respondent entered into a Plea and Sentence Agreement which was presented to the Disciplinary Committee at the reconvention. The facts of the case appear from the ruling, which is reproduced below. This dealt also with the concept and implications of a Plea and Sentence Agreement, in general. The ruling was given by the chairman of the committee Adv A Dodson SC

RULING

"This is a reconvened hearing of the Disciplinary Committee of the Independent Regulatory Board for Auditors, in the matter of the board and Mr [Respondent's name omitted]. The committee previously met on the 17th May this year, and at that point dealt with a point *in limine* regarding the admissibility of the transcript of evidence in an enquiry in terms of Section 415 of the Companies Act. By agreement that was dealt with

before there had been any plea, evidence and argument was heard in respect of that issue on the 17th May, and the disciplinary committee then handed down its ruling on the 8th June to the effect that that evidence was admissible.

It was always understood that there would then subsequently be a reconvening of the committee to continue to deal with the matter and that is the purpose of today's proceedings.

Since the 8th June we have been furnished with a Plea and Sentence Agreement which has been entered into between the parties and it is that agreement which will form the focus of our discussions in today's proceedings.

Insofar as the Plea and Sentence Agreement is concerned, I have had a brief discussion with my fellow members of the committee and we considered that the appropriate way of dealing with the matter would be to give each of you, Mr Smit (the pro forma complainant) and Mr Roux (counsel for the respondent) an opportunity to motivate to the committee why we should proceed in the manner which is envisaged in the Plea and Sentence Agreement."

[At this point the pro forma complainant and counsel for the respondent motivated and contextualised the Plea and Sentence Agreement, after which the proceedings were adjourned for the committee to consider its decision. The chairman then proceeded as follows.]

"Paragraph 7.1 of the Plea and Sentence Agreement essentially requires the committee to indicate at the outset what their attitude is in regard to the proposed sanction which has been agreed at least between the parties in order to determine what should then take place. And so let me indicate briefly at the outset that the committee accepts the sanctions which have been recommended by the parties. The reasons for our doing so will be addressed later in what I have to say, but what that means is that there is certainly no need to adjourn the proceedings and we can then deal with the findings that we make on the basis of the agreement that has been entered into.

I would therefore like to move to deal with the findings in relation to the merits. In doing so I am not going to read the full content of the agreement. It is essentially part of

the record in the proceedings. The committee will however note certain of the most material admissions that are made in respect of each of the charges.

So in dealing with **the first charge** the committee notes the admissions contained in paragraph 4.3:

- The predecessor of the board issued a circular dated 23 April 1997 under reference L1/1/42 to practitioners, which is referred to as the trust account circular.
- In the trust account circular the predecessor of the board requested practitioners, including the respondent, to desist from operating any bank accounts designated as trust accounts, or referring to any of their bank accounts as trust accounts.
- During or about 1997, Messrs [A] and [D] both then directors of [S] requested the respondent's firm, represented by the respondent, to open a bank account in the name of the "[respondent's firm] trust account".
- During or about May 1997 the respondent opened a bank account with Trust Bank, Voortrekker Street, Vereeniging, styled as a "trust account" [with account number] and in the name of [the respondent's firm].
- The respondent was a co-signatory with Mr [A] on this "trust account".
- The "trust account" was opened for the purpose of receiving the proceeds of the payment of the purchase price for the shares and / or assets of [S] from an external investor to the then shareholders of [S].
- It was the professional responsibility of the respondent, even if the trust account circular was not issued, not to have styled the bank account as a "trust account" because such nomenclature was incorrect and misleading for the reasons set out in the trust account circular. It was also his professional responsibility

to have become aware of the issuance of the trust account circular as soon as reasonably possible, and in any event before or shortly after he opened the "trust account", and it was also his professional responsibility in accordance with the trust account circular, and upon becoming aware of it, not to have styled the account as a "trust account" or to have closed the account.

- He nevertheless styled the account as a "trust account" and failed to close the account after he became aware of, or should reasonably have become aware of, the trust account circular.

On that basis the committee finds the respondent guilty of improper conduct within the meaning of Rule 2.1.21 of the Disciplinary Rules in that, in the respects set out in paragraphs 4.3 of the Plea and Sentence Agreement, read with paragraph 3 of the charge sheet he conducted himself in a manner which was improper or discreditable, or unprofessional, or dishonourable, or unworthy on his part, or which brought the profession of accounting into disrepute.

We then deal with the **second charge**. The committee notes in relation to the second charge the particular admissions made. In addition to those which I have already ready out from paragraph 4.3 the following admissions are made:

- That he was responsible for and controlled the "trust account".
- He represented to various banks and shareholders that funds would become available to them and would be paid from the "trust account", which banks and shareholders relied upon such representations, in some instances to their detriment.
- He relied on information provided by Mr [A] and others regarding receipt of the purchase price to the "trust account" and he did not

independently verify the truth of the statements made to him, as would be expected of an auditor of his years of experience, before relaying the information to third parties.

- When he made the representations referred to he knew or ought to have known that the persons to whom he made the representations would rely upon them. He ought to have known that there was no certainty that the funds would be received into the "trust account", and he was negligent in making such representations without an appropriate qualification that receipt of the money was not guaranteed.

On the basis of these admissions the committee finds the respondent guilty of improper conduct within the meaning of Rule 2.1.21 of the Disciplinary Rules in that, in the respects set out in paragraph 4.5 of the Plea and Sentence Agreement, read with paragraph 5 of the charge sheet, he conducted himself in a manner which was improper or discreditable, or unprofessional, or dishonourable, or unworthy on his part, or which brought the profession of accounting into disrepute.

In relation to the **third charge** the committee notes the following admissions:

- The [C] Trust was set up on 1 March 1984 by [name omitted], father of the respondent.
- The respondent and his wife were income beneficiaries of the [C] Trust.

- The respondent's two children were capital beneficiaries of the [C] Trust.
- The respondent was a trustee of the [C] Trust from 1 March 1984 and at all times material to these charges.
- The [C] Trust held shares in [S].
- The [C] Trust held such shares in [S] during a period of time when the respondent was the auditor of [S], namely November 1994 to November 1995.
- At all times relevant the respondent knew or ought to have known that it constituted improper conduct for him to be the auditor of [S] in circumstances where he was a trustee and a beneficiary of the [C] Trust, which in turn held shares in [S], because it compromised his professional independence and gave rise to a conflict of interest between his professional duties and his financial interests.

On the basis of those admissions the committee finds the respondent guilty of improper conduct within the meaning of Rule 2.1.20 of the Disciplinary Rules read with paragraphs 4.1, 5.1, 5.2 and 5.4 of the old code of conduct in that, without reasonable cause or excuse and in respects set out in paragraph 4.7 of the Plea and Sentence Agreement, read with paragraph 7 of the charge sheet, he failed to comply with the provisions in paragraphs 4.1, 5.1, 5.2 and 5.4 of the old code of conduct with which it was his duty to comply.

In relation to the **fourth charge**, the committee notes the following admissions:

- The respondent on behalf of [his firm], signed a document styled "Report of the Accounting Officer, 30 April 1996" at Vereeniging on 14 June 1996.
- To this report was attached a set of draft financial statements for [S] as at 30 April 1996.
- He prepared and signed the draft financial statements in his

capacity as the "accounting officer" of [S]. Whilst so acting in the capacity as "accounting officer" he knew that there was no statutory or other legal provision for a public company such as [S] was at the time, to have an accounting officer.

- He also knew that the directors of [S], and specifically Mr [A], would provide the said draft financial statements to current shareholders and / or prospective investors in order to solicit further investments in [S].
- In the draft financial statements, he reflected the value of the fixed assets of [S] as R8 380 000, recording that the plant and machinery had been re-valued during the year. This was an increase in value from the previous year of R6 555 825.
- He reflected the nett asset value of [S] as R8 510 754, which was an increase in value from the previous year of R6 774 078.
- At the time of compiling the financial statements, he negligently failed to satisfy himself of the true value of the plant and machinery and that there was a reasonable basis upon which to reflect a higher value for the plant and machinery.
- As a consequence of his negligence the nett asset value of [S] as recorded in the draft financial statements was not a true reflection of the nett asset value of the company and if presented to potential investors, was misleading.

On the basis of those admissions the committee finds the respondent guilty of improper conduct within the meaning of Rule 2.1.21 of the Disciplinary Rules in that, in the respects set out in paragraph 4.9 of the Plea and Sentence Agreement, read with paragraph 9 of the charge sheet, he conducted himself in a manner which was improper or discreditable, or unprofessional, or dishonourable, or unworthy on his part, or which brought the profession of accounting into disrepute."

SANCTION

"That then represents the committee's finding on the merits of the matter, on the basis of the agreement reached and it is therefore necessary to then consider the position in relation to **sanction or sentence**.

In coming to the conclusion, which I have already indicated we have come to, which is to support the sanctions recommended by the parties in the Plea and Sentence Agreement, we have taken into account all of the aggravating and mitigating circumstances which have been set out at some length in the Plea and Sentence Agreement. And once again, the committee does not consider it necessary to read out or to work through all of those. The document is on record in the proceedings and reference can be made to all of those factors.

We do, however, wish to give overall comments in relation to the matter. In broad terms the committee is of the view that the sentences which have been recommended in respect of the charges represent a just and equitable outcome to the proceedings, which is most certainly in the interests of justice, and also represents an outcome which takes into account the competing interests that are at stake in proceedings of this nature.

From the perspective of the board and the auditing profession, their interests are accommodated in that the sentences are fairly severe and they will certainly give the correct message out to the professional auditing community as regards the standard of conduct that is expected of that profession in going about the work which it does.

The board's interests are also accommodated by the proceedings being brought to an expeditious and relatively efficient close. It is so that substantial costs have already been incurred in the conduct of the matter, but it will have the consequence that potentially significant future costs will

be curbed and prevented. There is also provision in the sentence for publication and the form of publication will convey the necessary message, without giving the firm's particulars, as to what the standard is that is required of the profession.

Similarly from the perspective of society at large, the community that is dependent on the services which are provided by the auditing profession, their interests again are accommodated by this fairly severe sanction which is contemplated by the Plea and Sentence Agreement. In particular the way that the sentence has been crafted will ensure that in relation to professional services generally rendered by the auditing community, they will take into account what has taken place today. But also in relation to the services which are delivered by the respondent, his future conduct of the profession of auditing will no doubt be influenced by the somewhat bitter lessons that have been learnt by him through this experience, and in particular through the form of sentence which has been agreed upon.

Then finally, considering the matter from the perspective of the respondent, the agreed sentence allows him to bring what has obviously been a difficult chapter in his life to a close. It allows him to continue in his practice, albeit subject to a suspension, and upon resumption of his practice to deliver a service to the community according to standards which in respect of all of his other work outside of this matter appear to have been perfectly acceptable, bearing in mind that he has no record of any other convictions for any form of misconduct before the board.

It is so that the sanction is fairly severe, but it also has the consequence that it is contained by this agreement and it represents a precise punishment which he can work towards paying off and then getting on with his life, and in a manner which allows him to put this all behind him.

Those then represent the broad perspective of the committee as to why it has accepted the recommended sanctions.

The committee would, however, also wish to compliment the parties on the Plea and Sentence Agreement. First of all, in terms of the content of the agreement; it set out the relevant factors in relation to the matter of the appropriate sentence both rationally and elegantly and in a manner which was extremely helpful for the committee in coming to its decision. We also compliment the parties for the overall solution which it encapsulates and which as we have indicated we believe represents a just outcome. And lastly we would wish to compliment the parties in respect of the agreement on the spirit of co-operation which obviously underlies the agreement which has been reached, and we commend the parties for that co-operative process which allowed this matter ultimately to be dealt with in the way that it has.

The committee accordingly imposes the following **sanctions**.

- With respect to charge 1, a fine of R10 000.
- With respect to charge 2, a fine of R100 000 and the respondent's right to practice as an auditor is suspended for a period of 6 months from 3 October 2011, that is today's date.
- With respect to charge 3, a fine of R50 000.
- With respect to charge 4, a fine of R100 000 of which 50% is suspended for a period of 5 years on condition that the respondent is not found guilty of improper conduct relating to conduct or work carried out during the period of suspension.
- The respondent is ordered to make a contribution to the board's costs in an amount of R150 000.
- The board must publish in IRBA News the facts of the matter,

the charges, the guilty plea and the sentence imposed, including the fact of this agreement having been reached. However, there will be no reference to the name of the respondent or that of his firm."

SECOND MATTER

On **3 October 2011** the committee heard the case against Mr Ockert Vermeulen. He was neither present nor represented. The charges and finding appear from the following Reasons for Finding, as delivered by the chairman of the committee, Adv Alan Dodson SC.

INTRODUCTION

"The respondent was accountant and auditor to Tidewave Trade and Invest 4 (Pty) Limited ("the company") during the period January to September 2010. He was during that time registered as an auditor with the Independent Regulatory Board for Auditors ("the Board").

The complaint against him was that he had in his capacity as accountant and auditor misappropriated funds from the company through *inter alia* acts of fraud and theft.

He faced five separate charges of improper conduct, in each instance allegedly amounting to a violation of rules 2.1.3, 2.1.4, 2.1.20 and 2.1.21 of the old disciplinary rules, which remain in force by reason of section 59(8)(c) of the Auditing Profession Act No. 26 of 2005.

Despite due notification of the hearing, as contemplated in rule 6.3.1, the respondent elected not to attend the hearing, claiming that he did not have funds to afford legal representation and did not wish to defend himself. After waiting for the requisite 30 minute period, the proceedings then continued in his absence, as permitted by rule 6.3.1.

The pro forma complainant led the evidence of two witnesses. The first was Mr Ferreira, a forensic auditor who investigated the respondent's conduct. The second was Mr Barnes, the director of the company.

After hearing the evidence and the submissions of the pro forma complainant, the disciplinary committee found the respondent guilty on all five charges. The Committee indicated that it would give its reasons for the finding of guilt later, along with its decision on, and reasons for, the appropriate sanction. These now follow.

THE CHARGES

The essence of **the first charge** is that the respondent prepared eight successive PAYE returns¹ and presented these to Mr Barnes as representing amounts of PAYE due by the company to SARS. It is alleged that the amounts were then paid over by the company to the respondent who represented to Mr Barnes that he would submit the returns and pay the funds to SARS. The respondent then failed to pay any of the amounts to SARS and misappropriated them for himself.

The essence of **the second charge** is that the respondent prepared eleven PAYE returns and four VAT returns² representing that certain amounts were due by the company to SARS by way of PAYE and VAT. It is alleged that the amounts in the returns were then paid by the company to the respondent on

¹ The relevant form is "EMP 201".

² The VAT returns are completed on the form "VAT 201".

the basis of his representation that the funds would be paid over to SARS along with submission of the returns. The respondent then paid over to SARS amounts which were less than the amounts represented to Mr Barnes as being due by the company, retained the balance of each amount and appropriated it for himself.

The essence of **the third charge** is that the respondent presented to Mr Barnes for payment two PAYE returns and one VAT return, representing that these amounts were due to SARS, whereas the returns pertained to amounts which had already previously been paid by the company on the basis of returns submitted by the respondent earlier. It is alleged that the payments were therefore double payments. These double payments were then retained and misappropriated by the respondent for himself.

The essence of **the fourth charge** is that the respondent stole a blank cheque from the company's cheque book, made out a cheque to himself in the amount of R75 000 and then cashed it and misappropriated the funds.

The essence of **the fifth charge** is that the respondent presented to Mr Barnes on behalf of the company a provisional tax return reflecting an amount of R13 950 00 as being due by the company to SARS.³ It is alleged that this amount was paid to the respondent but never paid over by him to SARS and was instead misappropriated for himself.

In respect of each of the charges, it is alleged that :

"The Practitioner is guilty of improper conduct within the meaning of Rule 2.1.3 of the old Disciplinary Rules in that the Practitioner committed any offence involving dishonesty, and in particular (but without prejudice to the generality of the

³ The provisional tax form is an "IRP 6 form".

foregoing) theft, fraud, forgery, uttering a forged document, perjury, bribery or corruption; and/or

is guilty of improper conduct within the meaning of Rule 2.1.4 of the old Disciplinary Rules in that he was dishonest in the performance of any work or duties devolving upon him in relation to any work of a type commonly performed by a practitioner or an office of trust which he has undertaken or accepted; and/or

is guilty of improper conduct within the meaning of Rule 2.1.20 of the old Disciplinary Rules in that he without reasonable cause or excuse, contravened or failed to observe any of the provisions of the Code by failing to act in a manner consistent with the good reputation of the profession and to refrain from any conduct which might bring discredit to the profession (4.6 of the Code); and/or

is guilty of improper conduct within the meaning of Rule 2.1.21 of the old Disciplinary Rules in that he conducted himself in a manner which is improper or discreditable or unprofessional or dishonourable or unworthy on the part of a Practitioner or which tends to bring the profession of accounting into disrepute." "

[At this point the chairman analysed the evidence of the witnesses]

FINDINGS ON THE EVIDENCE

"Based on the evidence which was led, the Committee was satisfied that the pro forma complainant had proved the Board's case against the respondent in respect of all five charges. "

"For these reasons, the Committee found him guilty on all five charges. In respect of each charge, his actions amounted to improper conduct under

each of the disciplinary rules referred to namely disciplinary rules 2.1.3, 2.1.4, 2.1.20 and 2.1.21. In respect of the infringements of disciplinary rule 2.1.3, the Committee was satisfied that the respondent was guilty of at least the crimes of theft and fraud."

SANCTION

"On 20 July 2011, subsequent to the events which gave rise to the charges, the respondent caused his name to be removed from the register of auditors. In this regard section 39 of the Auditing Profession Act provides, in relevant part, as follows:

- "(6) At the written request of a registered auditor, the Regulatory Board must remove the registered auditor's name from the Register, but the removal does not affect any liability incurred by the registered auditor prior to the date of the removal.*
- (7) The fact that a registered auditor's registration has been cancelled or removed does not prevent the Regulatory Board from instituting disciplinary proceedings for conduct committed prior to the cancellation or removal."*

Accordingly, the Board was entitled to continue with the disciplinary proceedings notwithstanding the removal of his name from the Register.

The respondent has also been sequestered subsequent to the events for which he was charged.

Neither of these circumstances can be considered mitigating factors in the circumstances of this matter, but they do nonetheless impact from a practical point of view on what the appropriate sanction will be.

The criminal conduct in which the respondent engaged was of the worst possible kind that an auditor might involve himself in. He used

his position of trust as auditor and accountant to provide the opportunity for engaging in the criminal conduct complained of. His actions were manifestly carefully planned and deliberate. Moreover the conduct was repeated seemingly on almost every occasion that he was required to provide on-going auditing and accounting services to his client. His actions resulted in significant financial loss. His fraudulent activities were directed not only at his client, but also at the South African Revenue Service.

When offences involve dishonesty, the disciplinary committee and the Board view such matters as being of the utmost seriousness; all the more so where the dishonesty goes to the heart of the auditor's function.

As was submitted by the pro forma complainant -

"He has brought the profession into disrepute, compromised public perception and faith in the profession and abused the profession to unjustly enrich himself."

Such conduct cannot be tolerated by the profession. It deserves the harshest possible sanction. The respondent has chosen not to attend the hearing or to place before the Committee any factors which might mitigate against the imposition of the harshest possible sanction.

Accordingly, had the respondent not already resigned as an auditor, the Committee would have had no hesitation in cancelling his registration and removing his name from the Register in accordance with section 50(3)(a)(iv) of the Auditing Profession Act. That avenue no longer being available to it, it is appropriate that the respondent be sentenced to the maximum fine which may be imposed in terms of section 51(3)(a)(ii) in respect of each of the charges. The maximum fine in respect of a single charge is -

"[an] amount calculated

according to the ratio for five years imprisonment prescribed in terms of the Adjustment of Fines Act, 1991."

This is in effect an amount of R100 000.

Solely because the respondent has been sequestered and the Board is likely to suffer considerable administrative inconvenience if it engages in futile attempts to recover the fines, the Committee intends to suspend the fines on condition that they become payable should the respondent at any stage in the future again seek to be registered as an auditor in terms of the Auditing Profession Act. This condition should not in any way be read as generating a legitimate expectation of re-registration. On the contrary, the condition seeks to operate as a disincentive for the respondent to seek re-registration.

The Committee accordingly issues the following finding under rule 7.6, read with section 51(3), (4) and (5) of the Auditing Profession Act:

- Had the respondent still been registered as an auditor, the Committee would have cancelled his registration and removed his name from the register referred to in section 6 of the Auditing Profession Act. The finding must be taken into account by the Board in considering whether the respondent is a fit and proper person if ever he seeks in future to be re-registered as an auditor.

- The respondent is fined R100 000 in respect of each of charges 1, 2, 3, 4 and 5, ie in the total amount of R500 000.
- The fines in the previous subparagraph are suspended in terms of rule 8.2 on condition that should the respondent at some future date apply to be registered as an auditor under the Auditing Profession Act, or any relevant subsequent amending or repealing legislation, the respondent's prior payment of the fines is a condition of his registration as such.
- The respondent's name, the charges against him and the finding in respect of the charges as well as the finding in respect of the sentence imposed upon him, are to be published in the IRBA News.
- The respondent is ordered to pay the costs of the proceedings in an amount of R300 000.
- The costs order is suspended on condition that should the respondent at some future date apply to be registered as an auditor under the Auditing Profession Act, or any relevant subsequent amending or repealing legislation, the respondent's prior payment of the costs is a condition of his registration as such.
- The Board is requested to notify the South African Institute of Chartered Accountants and any other relevant accounting institution with whom the respondent might be registered or seek to become registered of the information referred to in subparagraph 41.4 above.

THIRD MATTER

On 25 October 2011 the committee met to consider the case against Mr [name omitted]. The matter had been postponed from a previous date as the respondent had not arrived for the hearing due to ill health. The respondent was still not present, and was unrepresented. The facts appear from the finding of the chairman of the committee, Adv Alan Dodson."

SUMMARY

"As will be clear from the record, the respondent did not attend the proceedings and for the reasons already given the hearing continued in his absence. He faced three charges. Two charges pertained to his having given unqualified trust account reports for the law firm LEGODI & MOFOKOANE in the first charge for the 2008 and in the second charge the 2009 financial years. The charge is effectively that the conduct of the attorneys warranted a qualified report in respect of the 2008 and 2009 reports.

The board led the evidence of four witnesses. **[At this point the chairman analysed the evidence of the witnesses]**

"A plea or document at least purporting to set out the defences which the respondent intended raising was sent to the board dated 29th August 2011, and notwithstanding the failure of the respondent to appear in the proceedings the committee has given careful consideration to that document and it was in its salient respects also put to Mr Faris when he gave evidence. Some of the letter is not easy to understand but it appears that the defences emerging from it are essentially threefold.

The first defence is a suggestion that he did perform his audit on a sample basis and therefore should not be criticised for not having picked up the discrepancies observed by Mr Faris who was, when he prepared his report, doing so on a different basis and for a different purpose. However, Mr Faris testified inter alia that given the relatively limited amount of documentation which would have to have been gone through, the requirement of sampling in the first instance was reduced because of the low volume of documentation that would have to be audited, and in the second instance he pointed out that if one was to select a sample the appropriate place to start, apart from generally

being the Trust bank statements, would be in those portions of the bank statements where significantly large transactions were recorded as distinct from the general trend in those accounts of relatively small amounts. It would appear from the copies of the statements which were made available to us that the particular one which I have already referred to i.e. that reflecting the deposit from the Road Accident Fund in the amount of R99,213, ought to have attracted the attention of the auditor if he was selecting a sample.

It also appears from the analysis of those statements that that is the largest transaction reflected in the statements. There is only one other transaction, it would appear, that was anything close to being in that region, and those should have formed the basis of his sampling and those would have revealed the concerns which ought to have led to a qualified audit report.

The second defence which appears to emerge from the second page of the letter setting out the plea is what legally might be described as a *de minimis* defence where he suggests that the matters referred to are so trivial that the board ought not to be taking up its time dealing with such matters.

The committee has considered that defence but does not consider it to be a compelling one. Evidence was given by Mr Faris as to the function and particularly important function which is performed by auditors when they perform audits of this nature. The function of the auditor is to protect both trust creditors, the clients of the attorneys, as well as the Fidelity Fund. The Fidelity Fund in the current economic climate has come under considerable pressure as a result of both the decline in the interest income and the increase in the claims on the fund. So the *de minimis* defence is not accepted.

The third defence is a suggestion that the respondent's laptop crashed in early 2009 and that the data on his laptop was lost. However, the

committee is satisfied that this does not constitute a defence because if there had been accounting records then these would have been made available to him in hard copy and in any event if regard is had to the evidence of Mr Legodi, one has it, as it were, from the horse's mouth, that in fact proper accounting records were not kept.

Having regard to the reasoning to which I have already referred it is perhaps appropriate before referring to the conclusion that we have come to, just to have regard to the wording of the particular rules that are relevant to, firstly what an attorney is to do and, secondly, what an auditor is to do. Section 78.1 of the Attorneys Act provides that:

"Any practising practitioner shall open and keep a separate trust banking account at a banking institution in the Republic and shall deposit therein the money held or received by him on account of any person."

Section 78.4:

"Any practising practitioner shall keep proper accounting records containing particulars and information of any money received, held or paid by him for or on account of any person of any money invested by him in a trust/savings or other interest bearing account referred to in sub-section 2 or 2(a) and of any interest on monies so invested which is paid over or credited to him."

In passing I will point out that one is dealing in this matter only with trust funds as contemplated in Section 78.1 of the Attorneys Act. The reference in Section 78.4 to accounting records is defined or supported by a definition in Section 78.6 which provides a definition of accounting records as being:

"For the purposes of sub-sections (4) and (5) any record or document kept by or in the custody or under the control of any practitioner which relates to -

- (a) money invested in a trust savings or other interest bearing account referred to in sub-section (2) or (2A).
- (b) interest on money so invested;
- (c) [is not relevant here], and
- (d) his practice."

And then there are the relevant rules of the Law Society of the Northern Provinces. Rule 68.1 deals with the various accounting records that are required to be kept, and I should emphasise that those would include both trust and business accounting records, and include in rule 68.1.2:

"Records containing entries from day to day, of all monies received and paid by it on its own account."

And then Rule 68.5 refers to the requirement of updating accounting records and reads:

"Shall regularly and properly update its accounting records and shall be deemed not to have complied with this rule inter alia if its accounting records have not been written up for more than one month and have not been balanced within two months after the date on which the trust creditors lists referred to in Rule 69.7 are to be extracted."

Then Rule 69.3 is important for present purposes. The heading to Rule 69.3 is as follows:

"Trust balances not to exceed trust monies, and trust accounts not to be in debit"

The rule requires practitioners to ensure that the total amount of money in its trust banking account, trust investment account, trust cash at any date shall not be less than the total amount of the credit balances of its trust creditors; to ensure that no account of any trust creditor is in debit, and to employ and maintain a system to ensure that the requirements of sub-rule 69.3.1 and 69.3.2 are not infringed when amounts are transferred from its

trust banking account to its business banking account."

Then Rule 69.6.1 provides that:

"any cheque drawn on a firm's trust banking account shall be made payable to, or to the order of a payee specifically designated."

And then finally Rule 70.4 sets out the duties of an accountant and says that:

"Every accountant who has accepted an appointment in terms of Rule 70.1 shall:

70.4.1 within 6 months of the annual closing of the accounting records of the firm concerned, or at such other times that the council may require, furnish the council with a report which shall be in the form of the third schedule to these rules;

70.4.2 without delay report in writing directly to the council if at any time during the discharge of his/her function and duties under this rule;

70.4.2.1 it comes to his/her notice that at any date the total of the balances shown on the trust accounts in the accounting records of the firm exceeded the total amount of the funds in the trust banking account, the trust investment account and its trust cash;

70.4.2.3 any material queries regarding its accounting records which he/she has raised with the firm have not been dealt with to his/her satisfaction;

70.4.2.3 any reasonable request made by him or her for access to its accounting records and supporting documents or for any authority referred to in Rule 70.2 has not been met to his/her satisfaction."

Taking into account both the evidence which has been led as well as the content of the rules and provisions of the Act to which I have referred it is clear that there were indeed infringements by the attorneys of the firm concerned of those rules and that those infringements ought reasonably to have been detected by the respondent in the course of his audit and they ought to have been dealt with by him when preparing the reports in the financials year for 2008 and 2009. The committee is satisfied that those reports ought to have been qualified in relation to the attorney's non-compliance.

In those circumstances the committee finds the respondent guilty of an infringement of in respect of **the first charge**:

"That he failed to perform any work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the board may be reasonably be expected."

Further the committee finds the respondent guilty in respect of **the second charge** in that he:

"Without reasonable cause of excuse failed to perform any work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the board may reasonably be expected."

Finally the disciplinary committee finds the respondent guilty in respect of **the third charge** of failing to reply to correspondence.

That then represents the findings of the committee."

SANCTION

"The committee has had the opportunity to consider the matter of an appropriate sanction. As has previously been explained, in deciding on an appropriate sanction for the respondent the committee considers the matter from the perspective of the particular offence that has been committed, from the perspective of the community, and from the perspective of the respondent.

In relation to the offence with which we are concerned I have to some extent already dealt with the evidence that was given by Mr Faris about the function which is performed by auditors in terms of Rule 70 of the Law Society's rules and the importance of that particular function. He referred to the difficulties faced by the Fidelity Fund and it must be remembered that that is a fund which is put in place in order to protect the members of the public. It must also be borne in mind that from the direct perspective of the clients of the particular firm, an immediate protection for them is to be derived from the scrutiny which ought to be applied by the auditor in auditing the trust accounts in accordance with the rules.

The committee accordingly cannot approach the matter other than on the basis that it is indeed a serious offence. On the other hand it is so that the amounts which were involved in this particular instance were small and there was no evidence of any particular instance of damage having flown from the inappropriate conduct on the part of the respondent in this case.

From the perspective of the community there are in this instance three elements of the community which must be considered, that is the broader public, the attorneys' profession and the auditors' profession.

I have already indicated what the concerns of the broader public are

which are protected by the function which is performed by the auditor in terms of Rule 70.

From the perspective of the attorneys' profession it is obviously of particular importance that auditors do this job properly if the reputation of that profession is to be protected. I will come back later to how the profession in this particular instance dealt with its own practitioners, but in my view that consideration must come second as it were before the consideration of the importance of protecting the integrity of the attorneys' profession through the proper performance of this function.

And then the final component of the community is the auditing profession, and obviously it is important to bear in mind that this particular function has been entrusted to the auditing profession by the attorneys' profession and it is a responsibility which they ought to perform with diligence and integrity.

Thirdly, we consider the matter from the perspective of the respondent. The committee is placed in the unfortunate position where the respondent has not treated the committee with the respect to which it is entitled and he has not treated the board's disciplinary process with the respect to which it is entitled, and that is a matter of significant concern on the part of the committee. He, as I have already indicated, did not arrive for the previous hearing. He indicated that he would provide a doctor's note to confirm that he was seen at a doctor's surgery but he has never come up with any doctor's note. I have already dealt with the manner in which today's proceedings and his non-attendance were dealt with by the respondent, and once again his conduct in this regard has been entirely unsatisfactory.

The committee has however taken note of the outcome of the disciplinary proceedings in relation to the attorneys who were the original cause of the problem. They received, if my recollection is correct,

an entirely suspended sentence ultimately and a low fine, I think in the region of R10 000 each in respect of the offence. There is obviously a temptation to tend to equate the treatment of the two branches of the profession for purposes of a problem which originated on the part of the attorneys. However, at the same time it must be borne in mind that the two professions are distinct professions.

The two professions have their own respective statutes, their own respective rules and their own respective practice and traditions insofar as the matter of appropriate sanctions is concerned, and they also have their own expectations as far as levels of conduct on the part of practitioners are concerned. And the auditing profession also has to bear in mind that when sanctions are imposed they send out certain signals to the broader auditing profession as to how certain forms of misconduct are or are not viewed. It has also been taken into account by the committee that the auditor in the situation of auditing trust accounts is in a sense the last line of defence. People are looking to the profession to find out where there has been negligence and worse on the part of attorneys, and if they are not there to provide that last line of defence there is the potential for all sorts of abuse and decline in standards.

Having said all of that the committee finds that it must to a degree nonetheless take into account the light sanction that was imposed on the attorneys concerned. The impression which is also gained by the committee is that one is dealing with a small auditing firm that will not necessarily have a significant capacity to pay a fine and that has been carefully taken into account along with all the relevant considerations in arriving at an appropriate sanction.

The committee accordingly imposes the following sanction on the respondent.

- A fine of R50 000. Of the R50 000, R30 000 is suspended for five years on condition that:
 - He is not found guilty of improper conduct within the meaning of Rules 2.1.5 and 2.1.21 of the old disciplinary rules or any successor provision, and
 - He does not perform the work referred to in Rule 70 of the Law Society rules without attending a course approved by the board, on the auditing of attorney's trust accounts, and
 - He attends a course referred to in 2.2 on the auditing of attorneys trust accounts

and provides the board with written proof of such attendance.

The R20 000 payable portion of the fine is to be paid within 12 months.

- The respondent is ordered to pay a total contribution of R60 000 towards the wasted costs of the proceedings on 21 September 2011 and today's proceedings.
- Publication of the charge, the findings, the sanction and the reasons for the sanction is ordered in the IRBA NEWS, but not the name of the respondent or the name of his firm."

Queries: **Jane O'Connor**
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 Telephone: **087 940 8804**
 Facsimile: **087 940 8873**
 E-mail: **legal@irba.co.za**



REGISTRY

IMPORTANT INFORMATION ABOUT THE 2012 INDIVIDUAL ANNUAL FEES AND ANNUAL RETURN

The 2012 invoices for annual fees as well as the 2012 Annual Returns will be posted and e-mailed to all RAs in April 2012. Please note that this year the invoices and Annual Returns will be sent separately. The invoice will be sent to the individual RA, but the statements will be sent to the accounts person of the firm, where relevant.

During the last two weeks before due date, we receive thousands of e-mails from RAs submitting their proof of payments and Annual Returns.

When you receive your invoice, please do not wait until you submit your Annual Return to send us your proof of payment. We would like to make sure we can timeously allocate your payment to you.

Your 2012 Annual Return document will comprise the following:

- an explanatory letter; and
- an Annual Return document to be returned covering the following:
 - o a page confirming that all information submitted is true and correct;
 - o a print out of your personal information from our database for you to correct;
 - o a Public Practice information questionnaire;
 - o a pro-forma CPD Declaration; and
 - o a pro-forma FICA questionnaire.

Please note that the **ENTIRE** Annual Return must be submitted to the IRBA.

The due date for fees and documentation is **31 MAY 2012**.

Payment, as well as the required completed documentation, must be **received** by the Board by the due date.

We would accordingly respectfully remind our RAs to pay their fees and submit their documentation timeously to avoid their registration being terminated.

Your invoice will contain details on how and where to send us your proof of payment, and the Annual Return will contain details on how and where to submit your documents.

If you have any queries, please contact the Manager: Registrations, Caroline Garbutt, on 087 940 8800 or e-mail cgarbutt@irba.co.za.

Please note that if you do not pay your annual fees by the due date, your registration will lapse.

If you only pay your annual fees, but do not return your full completed Annual Return by the due date, your registration will be cancelled for failure to submit documentation.

INDIVIDUALS ADMITTED TO THE REGISTER OF THE BOARD From 1 OCTOBER TO 31 DECEMBER 2011

Bari Mario Renato
Barnard Jacqueline Melissa
Batt Andries Kinder
Botha Christina Maria
Bothma Gideon Jakobus
Chubb Genevieve Faye
Combrink Leon Allan
Duminy Lindsay
Essa Luqmaan
Gambu Sizakele Bridget
Govender Vanesan
Govind Nisha
Hickman Deborah Lillian
Knott David
Mahdi Sadia
Makena Katlego
Marais Daniel
Masango Sakhile Abraham
Mhlanga Lynase
Molete Mojalefa Seponkane Abram
Mukova Kudakwashe Kennedy
Narismulu Prakash Krishna
Nel Werner
Nyalambisa Yongama
Nyamaka Otilia Tsitsi
Phora Daniel
Pienaar Joanett
Pretorius Werner Henning
Salejee Junaid Ebrahim
Shumba Ulde
Starkey Richard Bradley Tom

Steenkamp Daniel
Taylor Tina La Cour
Van Zyl Petrus Benjamin

INDIVIDUALS RE-ADMITTED TO THE REGISTER OF THE BOARD From 1 OCTOBER TO 31 DECEMBER 2011

Bush Christopher
Coetzee Marnus Nico
Gcabashe Tsediso Zwelethu
Herbst Petrus Hendrik
Jordaan Gert Johannes Daniel
Leader Roy Graham
Macdonald Michelle Jean
Mudau Mulato Martin
Mzimela Cleopas Zenzele
Nemato Kholeka Ethel
Neveling Jaco
Baker Nizaam Reshed
Sithebe Sifiso
Stenekamp Moegamat Igshaan
Swana Lubabalo Onke Wela
Van Dyk Nicolaas
Van Staaden Burton Harlen

INDIVIDUALS REMOVED FROM THE REGISTER OF THE BOARD From 1 OCTOBER TO 31 DECEMBER 2011

Baltsoucos Dimitri (Resigned)
Boshoff Christa Johanna (Resigned)
Buchanan Innes Donald Munro (Resigned)

Clayton Clive Edward (Resigned)
Cohen David (Resigned)
Coombe Deborah Anne (Resigned)
Feinstein Simon Wolfe (Deceased)
Forson Richard (Resigned)
Geldart David Albert (Resigned)
Geldenhuis Francois (Resigned)
Gildenhuis Seymour Reginald (Resigned)
Glaser Elias Harry (Resigned)
Glaum Trevor Philip (Resigned)
Goldberg Max Peter (Emigrated)
Hourquebie Philip Alan (Resigned)
Hudson Ian Mac Donald (Deceased)
Kahan Charles Evered (Resigned)
Klompas Ephraim Errol (Resigned)
Kriel Anton (Resigned)
Lawrence Athlone Thomas (Resigned)
Lebos Joseph Andrew (Resigned)
Leonard Helena (Resigned)
Livni Lola Reva (Resigned)
Louw Jacobus Gideon (Resigned)
Martinis Epaminondas (Deceased)
Pohle Walter Friedrich (Resigned)
Reeves David Frederick (Resigned)
Robertson Alan James (Resigned)
Sacks Michael Ivan (Resigned)
Schmidt Paul Edgar (Resigned)
Sherwood Walter Rex (Resigned)
Stern Ian Henry (Resigned)
Suliman Bibi Khatija (Resigned)
Wapnick Alec (Resigned)
Weber Stephan Johannes (Resigned)
Wener David Mervyn (Resigned)

REGISTRY

CONTINUED

Whitecross Helenor Elizabeth
Millicent (*Resigned*)
Willis Albert John Henry (*Resigned*)
Woolley Deryck Ernest (*Resigned*)

INDIVIDUALS REMOVED FROM THE REGISTER OF THE BOARD DUE TO NON-SUBMISSION OF DOCUMENTATION

Baltsoucos Nicolaos
Barnard Jacobus Christiaan
Bester Celeste
Botha Jackie
Buchner Susanna-Marie
Burnett Eric Stephen
Butkow Julius
Buurman Evert
Cassim Mohamed Fazil Ebrahim
Chilliba Stoffel Delekile
Clow Oliver Edward
Dada Mava
De Jager Sarel Jacobus
De Kock Daniel Josias
De Wee Conrad Randall
Dippenaar Casper
Du Preez Pieter Johannes
Fischer Andrew
Gani Sabeha
Golubchik Mendel
Groenewald Andre
Grove Henri Jean
Hall Geoffrey Robert
Harris Carl Andrew
Hermanus Thabiso Mpilo Denzil
Horner Neil Alan
Hugo Gert

Hyman Brenderly
Jaffer Ahmed Hassan
Jansen Wayne Errol
Jita Malungelo Cornelius
Jonker Andries Jaco Jooste
Kara Imtiaz Ahmed Ismail
Khula Thlogi Daniel
Koyana Sindisiwe Ntombenhle
Le Grange Pierre
Leolo Malose Edmund Ntlotlwane
Lombard Allan
Lombard Natasja
Loots Jaco
Mabokela Lucky Lesiba
Mabusela Mmakhumo Rebone
Makibile Nokunene
Makwetu Thembekile Kimi
Malaba Nhlanhla Kelvin Siphon
Marais Henrie
Marsden Michael
Maseng Modise Ishmael
Mkhwanazi Sifiso John
Moepi Tieho Lawrence
Mohamed Abdul-Kader
Mokoena Tladi Jacob
Moodley Vengdajalam
Mpungose Hopewell Gladstone
Sifiso
Muller Abrahm Orffer
Mxunyelwa Samkelo Sinawo
Naidoo Neil
Omar Carrim Yacoob
Oosthuizen Willem Albertus
Pangwa Velile
Pather Kauslin
Phehlukwayo Cyprian Mondli
Prins Johannes Jurie

Rautenbach Theodorus Johannes
Rheeder Christian Georg
Rudman Antoinette
Schoombie Derrick Andre
Schoombie Sonja
Serfontein Jan Lodewyk
Sikuza Monwabisi Mandisi
Smith Ian Frederick
Snyman Carl Raennier
Strauss Willem Petrus
Swana Nkululeko
Taylor Thomas Parsley
Tobias Charles
Tong Jaucoline Dorinda
Truter Michael Cyril Truter
Uys Petrus Johannes
Vakis Glaukos Christov
Van Zyl Jacobus Frederick
Venter Hendrik Louis
Venter Stefanus Strydom
Viljoen Hendrik Christoff
Vorster Johannes Christoffel
Hendrick
Vosloo Elsa
Walker Alan David Henry
Welsh Colin Alexander
Wentzel Jacobus Johannes
Wolberg Robert Leonard

Caroline Garbutt
Manager: Registrations
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E-mail: registry@irba.co.za

COMMUNICATIONS

In the interests of improved communication with registered auditors and other stakeholders, a list of communiqués sent by bulk e-mail during the period October to December 2011 is set out below. These communiqués may be downloaded from the IRBA website, under the various “News” tabs.

05 October	A Proposed Guide for Registered Auditors: Audit of Predetermined Objectives
11 October	Application of Section 90(2) of the Companies Act
13 October	Approval for Registered Auditors to provide B-BBEE Verification Assurance Services
14 November	Change in the method of recovery of cost for inspections performed by the IRBA
16 November	South Africa ranked first again out of 139 countries for its strength of auditing and reporting standards
23 November	IESBA issues Proposed Changes to the Code of Ethics for Professional Accountants Related to Provisions Addressing a Breach of a Requirement of the Code
2 December	The Controlling Body of Strate Issues 06P/2011
5 December	Key audit partners and transitional provisions
15 December	IRBA Manual of Information and Handboek vir Inligting 2012
21 December	B-BBEE Amendment Bill issued for public comment
21 December	Ethics workshops for Registered Auditors
22 December	Proposed South African Auditing Practice Statement (SAAPS) 3 (Revised) Illustrative reports
22 December	Change in the Method of Recovery of Cost for Inspections Performed by the IRBA

GENERAL NEWS

IRBA BOARD MEMBER APPOINTED TO HIGH COURT BENCH

For once, the IRBA is proud to announce a resignation from its board – that of Lepono Lekale. The reason for the resignation is Judge Lekale's appointment to the High Court bench. It is the first time in the history of the IRBA - and its predecessor the PAAB – that one of our Board members has been elevated to the Bench. We are honoured to have been associated with Judge Lekale and are confident that he will contribute to the body of South African jurisprudence.



THE MERGER OF TWO PREEMINENT BLACK AUDIT AND ACCOUNTING FIRMS



Sizwe Ntsaluba and Gobodo joined in 2011. Bernard Agulhas attended the function to celebrate the merger of the two firms. He is pictured here together with (L-R) Terrence Nombembe: Auditor-General; Nonkululeko Gobodo: Executive Chairman; Pravin Gordhan: Minister of Finance; Victor Sekese: Chief Executive

CONTACT INFORMATION

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