



irba

INDEPENDENT REGULATORY BOARD FOR AUDITORS

ISSUE

4

November 2007

news



IN THIS ISSUE

• Audit Technical	3
• SMEs	5
• Public Sector	6
• Regulated Industries	7
• Ethics	10
• Practice Review	12
• Legal	13
• Registry	25
• IRBA Information Sessions	29
• Ethic SA	31
• Obituary: DM Atherstone	31

MESSAGE FROM THE CEO

First Board meeting held

On Thursday 17 May 2007 Dines Gihwala was duly elected as Chairman of the Independent Regulatory Board for Auditors (IRBA) as constituted under the provisions of the Auditing Profession Act (APA), Act No. 26 of 2005.

Dines is the Chairman and Senior Partner of Hofmeyr, Herbststein & Gihwala Inc, one of South Africa's largest legal firms, and we are very pleased to have him serve as the new Chairman of the Board.

MESSAGE FROM THE CEO

CONTINUED

The APA stipulates that the Board's membership should include individuals who are not members of the auditing profession. The APA requires that a maximum of four positions are to be held by Registered Auditors (RAs), while the other six positions must be held by non-RAs.

It is vital that the IRBA is, and is seen to be, independent of the profession. The inclusion of non-RA members on the Board will go a long way to achieving this. All the members of the new Board have been appointed on the premise that they are competent individuals with the relevant knowledge, experience and ability to contribute to setting the strategic direction for the IRBA.

The focus areas that the chairman has identified for his term of office, in no specific order of priority, are:-

1. Transformation of the profession with special emphasis to retain newly qualified RAs from historically disadvantaged communities in the profession;
2. Restoring the reputation and credibility of the profession as a whole which was unfairly tainted as a result of the various business and audit failures internationally and locally;
3. Promoting the interests of the profession in the context of the corporate law reform programme; and

4. Ensuring that the APA is implemented and honoured in spirit and in law.

The APA sets out the IRBA's role as follows:

"To promote the integrity of the auditing profession including investigating alleged improper conduct, conducting disciplinary hearings, and imposing sanctions, conducting practice reviews or inspections; to take steps to protect the public in their dealings with RAs; to prescribe the standards for professional competence, ethics and conduct of RAs; to encourage education in connection with the auditing profession; and to prescribe auditing standards."

We are confident that the new Board will fulfil its role with the required dedication and commitment.

Other members of the new Board appointed by the Minister of Finance are:

Ms Linda De Vries (Deputy Chairman);
Ms Gill Marcus
Mr Jacob Modise
Mr Themba Zakuza
Ms Grathel Motau
Mr Siphiso Sono
Mr Wynand du Plessis
Mr Deepak Nagar
Ms Cathryn Emslie

The Accountant General, Mr. Freeman Nomvalo, is the Minister's representative on the IRBA.

While we are very proud and excited to begin a new era with the new Board, we must once again thank the previous chairman, Deepak Nagar, and his Board, for their wisdom and guidance during the transition period from the PAAB to IRBA.

Further detail on the transition and the implementation of the APA can be found in the first IRBA Annual Report, which is now available.

Kariem Hoosain
CEO

Telephone: (011) 622-8533

Facsimile: (011) 622-4029

E-mail: khoosain@irba.co.za



AUDIT TECHNICAL

IAASB MAKES FURTHER PROGRESS ON CLARIFICATION OF ITS AUDITING STANDARDS

To enhance the quality and consistency of audits, the International Auditing and Assurance Standards Board (IAASB), an independent standard-setting board under the auspices of the International Federation of Accountants (IFAC), is continuing to advance its project to clarify its auditing standards. The standards below have been redrafted in accordance with the IAASB's new drafting conventions designed to enhance the clarity of its pronouncements. At its meetings in July and October 2007, the IAASB approved for public comment the following exposure drafts of proposed International Standards on Auditing (ISA):

ISA 705 - Modifications to the Opinion in the Independent Auditor's Report

ISA 705 has been revised and redrafted from the exposure draft ISA 705 issued in March 2005 and was exposed for comment in accordance with the IAASB's new drafting conventions designed to enhance the clarity of its pronouncements.

ISA 706 - Emphasis of Matter Paragraphs and Other Matter(s) Paragraphs in the Independent Auditor's Report

ISA 706 has been revised and redrafted from the exposure draft ISA 706 issued in March 2005 and was exposed for comment in accordance with the IAASB's new drafting conventions designed to enhance the clarity of its pronouncements.

ISA 800 - Special Considerations - Audits of Special Purpose Financial Statements and Specific Elements, Accounts or Items of a Financial Statement

ISA 800 has been revised and redrafted from the exposure draft ISA 701 issued in June 2005 and was exposed for comment in accordance with the IAASB's new drafting conventions designed to enhance the clarity of its pronouncements.

ISA 805 - Engagements to Report on Summary Financial Statements

ISA 805 has been revised and redrafted from the exposure draft ISA 800 issued in June 2005 and was exposed for comment in accordance with the IAASB's new drafting conventions designed to enhance the clarity of its pronouncements.

ISA 505 - External Confirmations

ISA 505 has been revised and redrafted in accordance with the IAASB's new drafting conventions designed to enhance the clarity of its pronouncements.

ISA 620 - Using the Work of an Auditor's Expert

ISA 620 has been revised and redrafted in accordance with the IAASB's new

drafting conventions designed to enhance the clarity of its pronouncements.

The following standards have not been revised, but are only exposed for comment in accordance with the IAASB's clarity drafting conventions:

ISA 220 - Quality Control for Audits of Historical Financial Information,

ISA 510 - Initial Audit Engagements - Opening Balances,

ISA 530 - Audit Sampling and Other Means of Testing,

ISA 700 - The Independent Auditor's Report on General Purpose Financial Statements and

ISQC 1 - Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements

How to comment:

The Committee for Auditing Standards (CFAS) of the Independent Regulatory Board for Auditors (IRBA) invites comments on the proposed ISAs. The deadlines for comments to the CFAS on the proposed new ISAs were as follows

Exposure Draft of proposed ISA	Comment Due Date
ISA 510 (Redrafted), Initial Audit Engagements - Opening Balances	15 October 2007
ISA 530 (Redrafted), Audit Sampling and Other Means of Testing	15 October 2007
ISA 700 (Redrafted), The Independent Auditor's Report on General Purpose Financial Statements	15 November 2007
ISA 705 (Revised and Redrafted), Modifications to the Opinion in the Independent Auditor's Report	15 November 2007
ISA 706 (Revised and Redrafted), Emphasis of Matter Paragraphs and Other Matter(s) Paragraphs in the Independent Auditor's Report	15 November 2007
ISA 800 (Revised and Redrafted), Special Considerations - Audits of Special Purpose Financial Statements and Specific Elements, Accounts or Items of a Financial Statement	15 November 2007
ISA 805 (Revised and Redrafted), Engagements to Report on Summary Financial Statements	15 November 2007
ISA 220 (Redrafted), Quality Control for Audits of Historical Financial Information	15 December 2007
ISQC 1 (Redrafted), Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements	15 December 2007
ISA 505 (Revised and Redrafted), External Confirmations	4 February 2008
ISA 620 (Revised and Redrafted), Using the Work of an Auditor's Expert	4 February 2008

IAASB ISSUES INTERNATIONAL STANDARDS ON AUDITING IN TERMS OF THE CLARITY DRAFTING CONVENTIONS

The IAASB released **ISA 600 (Revised and Redrafted), Special Considerations - The Audit of Group Financial Statements (Including the Work of**

Component Auditors) in October 2007, to assist the group engagement partner in taking responsibility for the direction, supervision and performance of the

group audit and the issue of an auditor's report that is appropriate in the circumstances.

COMPANIES BILL – REVISED TIMEFRAMES

The Department of Trade and Industry has announced revised timeframes for the Corporate Law Reform process:

- Finalisation of the updated Companies Bill, 2007, following public comments: August 31, 2007;
- Submission of the Bill to the State Law Advisors for certification: September 10, 2007;
- Submission of the Companies Bill to Cabinet for approval to introduce the Bill into Parliament: October 31, 2007;
- Introduction of the Bill in Parliament: February, 2008;
- Enactment of the Bill: July, 2008;
- Promulgation of the Bill: November/December 2008;
- Implementation of the New Companies Act: January 1, 2010.

COMMENT LETTERS SUBMITTED TO IFAC

From June to September 2007, the CFAS submitted comment letters to the IAASB in relation to the following proposed International Standards on Auditing (ISA):

- ISA 200, Overall Objective of the Auditor, and the Conduct of an Audit in Accordance with International Standards on Auditing;
- ISA 250, Laws and Regulations;
- ISA 260, Communication of Audit Matters with those Charged with Governance;
- ISA 500, Considering the Relevance and Reliability of Audit Evidence;
- ISA 550, Related Parties;
- ISA 510, Opening Balances, and
- ISA 530, Audit Sampling and Other Means of Testing.

The comment letters are available on the IRBA website at www.irba.co.za

CFAS EXPOSURE DRAFTS RELEASED FOR COMMENT

● The CFAS released an exposure draft of a proposed guide, Auditor Attending the Annual General Meeting, for comment. The closing date for comments is **15 February 2008**.

The invitation to comment and Exposure Draft are available on the IRBA website at www.irba.co.za

SMEs

ISSUE OF SA GAAP FOR SMES

The South African Statement of Generally Accepted Accounting Practice (GAAP) for Small and Medium-sized Entities (SMEs) (the Statement), was issued on 4 October 2007.

The Accounting Practices Board (APB) approved the issue of the Statement in response to market needs and differential reporting allowed by the Corporate Laws Amendment Act, 2006 (CLAA).

The Statement may be used by companies defined as 'limited interest' in the CLAA and other entities with no public accountability. These companies and entities will now have a choice of reporting in terms of the Statement of GAAP for SMEs or in terms of IFRS.

A company that will qualify as a 'limited interest company' in terms of the CLAA may apply the Statement even though the CLAA has not been given an effective date, (assuming the scope requirements in Section 1 of the Statement are met) and still be in compliance with the Companies Act

No. 61 of 1973. The reason being that the Statement forms part of 'Statements of GAAP as approved by the APB', as referred to in paragraph 5 of Schedule 4 of the Companies Act.

The Statement is effective and can be used immediately.

Circular 9/2007 - Statement of GAAP for SMEs, was also issued to provide more detail in terms of the application of the Statement. The circular addresses the following areas:

- Current and future classifications of companies in the context of the corporate law reform process;
- The scope and effective date of the Statement;
- Financial reporting frameworks for 'limited interest companies';
- Development of the Statement;
- Some areas to be aware of in applying the Statement; and
- Audit reporting considerations.

A document outlining frequently asked questions (FAQs) has been prepared to provide answers to questions that are

expected to arise with the application of the Statement. The list of questions was compiled from the comments received at 10 discussion forums held around the country.

To view a complete section outlining all the available information on the Statement of GAAP for SMEs, please visit the SAICA website at www.saica.co.za

PUBLIC SECTOR

THE AUDITOR GENERAL ISSUES DIRECTIVE

The Auditor-General (AG) has issued the following general notices relating to the Public Audit Act, 2004 (PAA) through the Government Gazette No. 29919, dated 25 May 2007:

General directive (notice number 645)

The directive confirms that the AG has opted not to perform any audits of institutions referred to in section 4(3) of the PAA for the 2007-8 financial year (mainly any public entities listed in the Public Finance Management Act where the AG is not already performing these audits). Auditees have been requested to appoint their own auditors in line with the prescribed consultation process with the AG.

The directive has also laid out the PAA requirements that registered firms of auditors should comply with in respect of the audits that the AG opted not to perform at this time.

Auditing of performance information (notice number 646)

The directive spells out the phasing-in approach that will be followed to comply with the requirements of section 20(2) (c) and section 28(1) (c) of the PAA. These sections relate to auditing of performance information. The approach should be followed in audits of all entities in the 3 spheres of government.

Reporting and auditing frameworks - Public Finance Management Act (no. 647)

International Standards of Auditing shall be applied for all regularity audits conducted by the AG until further notice to the contrary.

The directive sets out the bases of accounting which he has recognised as prescribed by the National Treasury. The bases are set out at the end of this section.

The specimen financial statements and guide for the preparation of the annual report are available on the Office of the Accountant-General website (www.treasury.gov.za)

Unlisted entities reporting frameworks (notice number 648)

The notice provides accounting and audit report guidelines for public entities not listed in terms of PFMA. Attached to the notice are two circulars, Audit Circular 1 of 2005 and 1 of 2007, issued by the AG.

Government sphere	Financial year end	Basis of preparation	Prescribed by
National & Provincial departments	31 March	Modified cash basis	National Treasury Specimen Fin Statement
Parliament and provincial legislatures	31 March	Modified cash basis	National Treasury Specimen Fin Statement
Public entities – national and provincial (3 A and 3C) and constitutional Institutions	31 March	SA Statement of GAAP with GRAP Standards 1, 2, 3 replacing the equivalent GAAP	National Treasury
Public entities (schedule 2, 3B and 3 D) and trading entities	31 March	SA GAAP	National Treasury

AUDITOR GENERAL FEES AND PAYMENT TO REGISTERED FIRMS

AG audit fee payment policy

The attention of registered firms contracted to perform audit engagements on behalf of the Auditor-General (AG) is drawn to the Auditor General audit fee payment policy regarding audit fees payments from the AG:

The AG payment policy is on average 45 days from the date of statement. In

order to pay registered firms within 45 days terms the following should take place.

1. Registered firms should forward to audit Business Units (BU) correct invoices before the last day of the month. The invoices should be captured by the audit BU before the end of the month. Such invoices would become due for payment at the end of the following month.

Invoices that are incorrect will delay capturing. For example if an invoice for March has queries and the queries are not resolved before the end of March this invoice will not be captured in March. The invoice will only be paid at the end of May if it was captured in April. This increases the average payment period from 45 to 60 days.

REGULATED INDUSTRIES

CONTINUED

2. At the end of the month, registered firms should also submit statements to the Finance department at the Head office. The statement sent should contain invoice numbers and amount that correspond with invoice

submitted and captured by the audit BU (as per 1 above). When the invoices correspond the account will be paid in the month that invoices are due. Should there be any discrepancy in the captured

invoices by the BU and the statements, the payment will be delayed and paid in the following month. For further information contact SAICA.

ACCOUNTING STANDARDS BOARD ISSUES ITCs IN TRANSITIONAL PROVISIONS

The Accounting Standards Board (the Board) has issued five Invitations to Comment (ITC) on the directives on transitional provisions for different public sector entities. The ITCs propose that transitional provisions be deleted from the Standards of GRAP – where they are currently included – and instead be issued in directives. Transitional provisions provide guidance to entities on the transition from their current applied basis of accounting to the basis

prescribed by the Standards of GRAP. Comments on the 5 directives, listed below, were requested by 31 October 2007.

- **ED 39** - Deletion of Transitional Provisions from Standards of GRAP
- **ED 40** - Directive on Transitional Provisions for Public Entities
- **ED 41** - Directive on Transitional

Provisions for High Capacity Municipalities

- **ED 42** - Directive on Transitional Provisions for Medium to High Capacity Municipalities
- **ED 43** - Directive on Transitional Provisions for Parliament

The ITCs are available on the Board's website at www.asb.co.za.

REGULATED INDUSTRIES

THE CFAS ISSUES AUDITOR'S REPORT IN TERMS OF THE NATIONAL CREDIT ACT

The CFAS issued the following audit report to the National Credit Regulator (NCR) in terms of Regulation 68 of the Regulations to the National Credit Act, 2006, and prescribed in the NCR Guideline 001/2007: Assurance Engagement - Guide for Credit Providers, issued in September 2007:

- **The Report of the Independent Auditor of Credit Providers to the Board of Directors and the National Credit Regulator in Compliance with Regulation 68 of the Regulations to the National Credit Act, 2006.**

The report is effective for auditors'

reports dated on or after 1 July 2007. The report is available on the IRBA website at: www.irba.co.za.

The NCR Guideline 001/2007 is available on the NCR website at: www.ncr.org.za.

THE CFAS ISSUES AUDITOR'S REPORT ON ATTORNEYS' TRUST ACCOUNT

In terms of the Attorneys' Act, No. 53 of 1979 and the Rules of the Provincial Law Societies, auditors are required to report on their audit of attorneys' trust accounts by 31 August each year.

The IRBA commenced with the process of updating the current guidance contained in the SAICA Guide, Guidance for Auditors: The Audit of Attorneys' Trust Accounts in terms of the Attorneys' Act, No 53 of 1979 and the applicable rules of the Provincial Law Societies, which guidance was applicable to the audits for the year ended 31 August 2008. A consultation process is being followed which involves meeting with representatives of the Law

Society of South Africa (LSSA), the Attorneys' Fidelity Fund and the respective Provincial Law Societies and Registered Auditors in order to identify amendments required to the guidance and the Rules of the Provincial Law Societies.

The need for updating the existing guidance has arisen due to the adoption of the International Standards on Auditing, new legislation affecting auditors and other developments in reporting standards. The current rules of the law societies still refer to South African Auditing Standards, which were withdrawn on adoption of the International Standards on Auditing.

Please note that the changes to the report are an interim measure until such time as the guidance has been updated and do not affect either the nature of the engagement to audit attorneys' trust accounts or the level of assurance expressed in the reports.

The Regulated Industry Standing Committee (RISC), the sub committee of the CFAS responsible for issuing guidance and auditors' reports for regulated industries, will update the guidance and audit report over the following twelve months. The report is available on the IRBA website at www.irba.co.za

THE CFAS ISSUES AUDITOR'S REPORT IN TERMS OF THE FURTHER EDUCATION AND TRAINING COLLEGES ACT

The Committee for Auditing Standards issued two auditor's reports in terms of the Further Education and Training Colleges (FETC) Act, Act No. 16 of 2006.

The auditor's report on the annual financial statements of a PFETC is prepared in accordance with the International Standards on Auditing (ISA) 700, *The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements*. In terms

of Section 28 of the FETC Act, a person providing further education and training other than a public college must be registered in terms of the Companies Act, Act No. 61 of 1973. A private college would prepare the annual financial statements in accordance with the Companies Act and thus the auditor would have to report in terms of ISA 700.

The auditor's assurance report on the projection of the PFETC is prepared in

accordance with the International Standard on Assurance Engagements (ISAE) 3400, *The Examination of Prospective Financial Information*. The FETC Act and regulations require the PFETC in a start-up phase, without a set of financial statements, to submit a projection with its application to register, and thus the auditor would have to examine the projection in terms of ISAE 3400.

REPORT FOR PENSION FUNDS INVESTMENT ADMINISTRATORS

In order for an asset manager to administer the investments of a pension fund, the asset manager has to register as an investment administrator with the Financial Services Board in terms of Section 13B of the Pensions Act, 1956. In terms of Regulation 32(2)(b) the asset

manager is required to provide a report from their auditors in the form of Schedule O.

The report includes some factual information but also requires the auditor to certify the following:

- That the bookkeeping, computer and control systems are adequate for the size and complexity of the business it is conducting/proposes to conduct.

REGULATED INDUSTRIES

CONTINUED

- That adequate measures are in operation to ensure the continued safety of documents of title relating to assets held in safe custody.

Auditors have not been able to issue a report in this format for some time and in particular they cannot certify aspects of internal control. Another difficulty is that in many instances the systems and controls are not yet in place because the

asset manager does not yet have a licence for this business.

Concerns have been raised that where auditors have submitted reports giving some comfort but not in the exact format of Schedule O these reports have been rejected by the Financial Services Board (FSB) with the result that required licences have not been granted.

The FSB has indicated that it is aware of the issue. Until such time as the report has been updated, the FSB will accept a report from the auditors in a format that they can sign off, provided that the administrator attaches a business plan to prove that it is viable. The report is available on the FSB website at www.fsb.co.za

EXCHANGE CONTROL DEPARTMENT OF THE SOUTH AFRICAN RESERVE BANK

The Exchange Control department of the South African Reserve Bank (EXCON) has issued the following Exchange Control Circulars:

- No.12/2007 – Authorised Dealer in Foreign Exchange with limited authority. This circular advises that the name of Nedtravel (Pty) Limited in Section A.2(B) of the Exchange Control Rulings (the Rulings) has been deleted and substituted with Tourvest Financial Services trading as American express Foreign Exchange Services.
- No.13/2007 – Audit requirements for institutional investors. Subsection B.2(B)(iii)f) has been amended. The sample size applicable to the audit reports for institutional investors will only be based on the last quarter.
- No.14/2007 – Securities Control – Authorised Bank. The name “Non-Resident Centre – Johannesburg” has been added to the list of names under the heading of FirstRand Bank Limited in subsection G.(A)(iii)(j) of the Rulings.
- No.15/2007 – Credit and/or Debit Cards. Section B.16(A) relating to credit/and or debit cards authorized for use outside the CMA has been amended.
- No.16/2007 – Amendment to the Exchange Control Rulings. Sections B.2(B)(ii)(a), B.2(B)(ii)(b) and I.1(D) have been amended.
- No.17/2007 – Authorised Dealers in Foreign Exchange with limited authority (“ADLA”). This circular advises that the formal guidelines for regulating the appointment and conduct of ADLAs have been approved by the Minister of Finance. A new Section A.4 has been incorporated into the Exchange Control Rulings (the Rulings) dealing with the submission of applications to conduct the business of an ADLA.
- No.18/2007 – Authorised Dealers in Foreign Exchange. Sasfin Bank Limited was appointed as an ADLA. The Rulings have been updated accordingly.
- No.19/2007 – Amendment to the Exchange Control Rulings. Sections A.3(B) and B.2(A) have been amended.
- No.20/2007 – Inward listings by foreign issuers of debt instruments on the JSE Limited. Authorised Dealers are referred to Section H.(C) of the Rulings. The JSE Limited can now also facilitate the listing of debt instruments by foreign issuers. The Rulings have been amended accordingly.
- No.21/2007 – Securities Control – Authorised Bank. The name Rand Merchant Bank, a division of FirstRand Bank Limited, contained in the list of names under the heading of FirstRand Bank Limited in subsection G.(A)(iii)(j) of the Rulings has been deleted. The Rulings have been updated accordingly.
- No.22/2007 – Authorised Dealers in Foreign Exchange. ADLAs are advised that, as a result of the change of name of RENNIES Bank Limited to Bidvest Bank Limited and pending the formal exchange, ADLAs may, with immediate effect, conduct foreign currency business with Bidvest Bank Limited.
- No.23/2007 – Authorised Dealers in Foreign Exchange. The appointment of HSBC Bank Plc – Johannesburg Branch has been deleted. The Hongkong and Shanghai Banking Corporation Limited – Johannesburg Branch is appointed as an ADLA with immediate effect. The Rulings have been updated accordingly.

The circulars are available on the SARB website at www.reservebank.co.za

ERRATA TO THE GUIDE: TRADING WHILST FACTUALLY INSOLVENT

If you refer to the Guides section of the SAICA Website, specifically the Contents – Volume 4, Trading Whilst Factually Insolvent, is listed as one of the Guides issued in July 1999. We draw your attention to the fact that an errata can be found on the front cover of the Guide stating:

“Since this Guide was issued in July 1999, the Public Accountants’ and Auditors’ Act

has been superseded by the Auditing Profession Act which contains significant changes relating to irregularities and has rendered certain sections of the Guide outdated. Once the Companies Bill, 2007 is finalised, which may also materially affect the issues addressed in this Guide, this Guide will be revised and consequently this version will be superseded. In the meantime, care should be taken in applying the Guide to ensure that there is compliance

with the provisions of the Auditing Profession Act and current auditing standards.

Paragraph .54 of the Guide – A subordination agreement has never had the effect of restoring factual solvency and/or converting debt to equity. The classification as financial liability/equity instrument should be determined by referring to IAS 32(AC 125) - Financial Instruments: Disclosure and Presentation.”

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES

The Financial Advisory and Intermediary Services (FAIS) Supervision department of the Financial Services Board (FSB) has initiated a process of active communication with authorised financial services providers (FSPs) through a regular newsletter. The theme of the latest FAIS newsletter is compliance officers, compliance function, compliance reports and the relationships between compliance officers, FSPs as well as the FSB. Articles are as follows:

- Theme visits—compliance framework in small FSPs

- Changes to the determination of Fit and Proper requirements
- Requirements for appointment of Compliance Officers
- Compliance officer approval process
- Functions of compliance officers
- Procedures for appointing or terminating the services of compliance officers
- Purpose of compliance reports and methods of submission thereof

- Frequently asked questions relating to the compliance report

The FSB welcomes suggestions on the newsletter and for future topics. For suggestions, or to receive the FAIS newsletter, send an e-mail request to faiscomment@fsb.co.za

ETHICS

THE AUDITOR’S RIGHT OF RETENTION (LIEN)

A common query received by both the Independent Regulatory Board for Auditors (IRBA) and the South African Institute of Chartered Accountants (SAICA) is whether or not an auditor has a lien over books and records in his possession if his fees are outstanding. Due to some uncertainty in this area, the IRBA and SAICA obtained a legal opinion in this regard, and the pertinent points are highlighted below for the information of practitioners. Please note that this legal opinion has been summarised to include those points

relevant to an auditor’s right of retention.

Clause 15.26 of the PAAB Code of Professional Conduct states:
“Unless he/she has a lien over any books and papers for the payment of charges outstanding, the existing accountant should, promptly after the change in appointment, transfer all books and papers that are the property of the client and which are in or may come into his/her possession to the client, or with the client’s permission, to the newly appointed accountant.

Whether or not he/she has a lien is a question of law and of fact, and practitioners should bear in mind that a refusal to hand over books and papers over which they do not have a valid lien could render them liable for any costs by the client as a consequence of that refusal.

There is little doubt that an auditor who is in possession of documents belonging to his client may have a lien over such documents for the payment of fees. There is no case law for the specific

point that an auditor will have a lien over such documents, but other professionals such as lawyers, architects and even bookkeepers have been allowed to rely on a lien.

The Appeal Court in *Brooklyn House Furnishers (Pty) Ltd v Knoetze and Sons* 1970 (3) SA 264 (A) at 270E determined that South African law recognised three types of retention rights:

- “(1) a retention right for the storage or safekeeping of property (“salvage liens”);
- (2) a retention right for improvements (“improvement liens”); and
- (3) a retention right for debts ex contractu (“debtor and creditor liens”).

Accordingly, an auditor’s lien can be described as a “debtor’s and creditor’s lien” to retain papers and documents which he has drawn up or upon which he has done work. The requirements for the operation of the lien are that:

- (a) a contract of work whether expressed or implied must be concluded;
- (b) a term of the contract must be the doing of work on the property of the client for reward;
- (c) the work must be done; and
- (d) the lien holder must possess the property on which the work was performed (see *Botha NO v E M Mchunu & Co* 1992 (4) SA 740 (N)).

An auditor who has been appointed by a company clearly has complied with all these requirements and there is nothing in the Companies Act No. 61 of 1973 (“the Act”) or in legislation regarding auditors which militates against this conclusion. Section 273 of the Act merely determines that the auditor may be remunerated and the basis for remuneration normally would be set out in the engagement letter between the auditor and the company.

A further contention is that an auditor will not have a lien to withhold documents that have to be supplied in terms of statutory duties. However, it is suggested this argument would be wrong. The exact scope of this type of lien is not yet settled in our law (*Goodricke & Son v Auto Protection*

Insurance Co Ltd (in Liquidation) 1968 (1) SA 717 (A)). However, it is quite clear that the lien extends to documents compiled or improved for a client. These documents may be retained until the fee due for such work is paid in full.

Moreover, although it has not yet been settled by the Supreme Court of Appeal, there is also good authority for the view that every document that is used in the process of performing activities for which fees are charged is subject to the lien (*Botha NO v E M Mchunu & Co* 1992 (4) SA 740 (N)). In this case Combrinck J stated:

“The test as I see it should simply be that if the attorney is entitled to charge his client a fee in respect of a document in his possession, then he should be entitled to exercise a lien over it because then it is recognised that he expended work and labour on it.”

This test was also supported in *Free State Agriculture & Eco Tourism Development v Mthembu and Mohamed* 2002 (5) SA 343 (O), which also held that the lien could be exercised only for the payment of fees for work done. The lien does not apply to retainers.

The auditors therefore will have a lien over all documents in their possession on which they perform work for a fee. All documents which they hold in order to prepare the statutory audit such as the books of the company will clearly be included here, but also other documents will be included as long as a fee is charged for performing services with regard to them. Accordingly, statutory documents of a company that are held by the auditors can form the basis of a lien **as long as a fee is charged for keeping and dealing with them.**

The next question is whether company secretarial documents will have to be released. If no fee is charged for the rendering of secretarial services then no lien will be created. If a fee is charged, the answer to the question will depend on whether the fee is divisible. Where the fee charged is indivisible all documents can be retained until the entire fee is paid. There is no need for a relationship of proportionality between the documents and the fee.

The question of what documents can be retained for what fee therefore depends on whether the fee is divisible or not. If the fee is divisible then documents will have to be released once the fee for services rendered on such documents is paid.

Finally, an auditor is obliged to release the documents on payment of his fees. The company is the owner of the documents and is entitled to have them released. Should the auditor not release the documents once the outstanding fee has been paid, a legal action (*rei vindicatio*) can be brought against the auditor. Prior to payment of the outstanding fees, the auditor can refuse to do so as he has a lien over the documents but once fees are paid the lien is lost.

In the final instance, it should be observed that some of the problems with regard to the lien may be side-stepped by requiring the provision of security for the payment of fees from a client.

In conclusion, auditors are advised of the following:

1. Whether a lien exists or not remains a question of law and of fact and will depend on the specific circumstances presented.
2. If an auditor exercises a non-existent lien over his/her client’s documents, they are doing so at their own risk.
3. Unless a registered auditor has a lien over a client’s books and papers, he or she is advised to hand over the client’s books and papers.
4. Auditors may want to consider revising their engagement letters so that there is a specific provision that will deal with the issue of retention of files if fees are not paid.

IESBA EXPOSURE DRAFT RELEASED FOR COMMENT

- The International Ethics Standards Board for Accountants (IESBA), an independent standard-setting board within the International Federation of Accountants (IFAC), has issued an exposure draft proposing to strengthen three components of the independence requirements contained in its Code.
- In December 2006, the IESBA issued an exposure draft proposing revisions to the existing independence requirements contained in the Code. In that exposure draft (which is now called Independence I), the IESBA indicated that there were three areas that the IESBA would revise in a

future exposure draft, namely:

- Provision of internal audit services to an audit client;
- Independence implications related to the relative size of fees received from one assurance client; and
- Contingent fees for services provided to assurance clients.

This exposure draft which is called Proposed Revised Section 290 - of the Code of Ethics for Professional Accountants, Independence - Audit and Review Engagements and Proposed Section 291, Independence - Other Assurance Engagements,

was released in SA in July 2007 with a comment date of 15 October 2007. The CFAE submitted a comment letter to the IESBA, which is available on the IRBA website at www.irba.co.za.

Queries: **Bernard Peter Agulhas**
Director: **Standards**
Telephone: **(011) 622-8533**
Facsimile: **(011) 622-4029**
E-mail: **bagulhas@irba.co.za**



PRACTICE REVIEW

3 HOUR INTERACTIVE DISCUSSION GROUP

Subject Matter

- The practice review process
- Quality control policies and procedures
- Auditing standards requirements

Participants

Minimum of 12 persons.
Individual firms / groups of firms / small practitioner forums.

Target Audience

Partners and audit staff.

Cost

R 460 plus VAT per participant.

Contact

Elaine Beljon

Tel: (011) 622-8533
Fax : (011) 622-7334

QUARTERLY REPORT FROM THE DIRECTOR: LEGAL FOR THE PERIOD 1 JANUARY 2007 TO 31 MARCH 2007

INVESTIGATING COMMITTEE

As mentioned previously, the disciplinary procedures of the Board in terms of the Auditing Profession Act are somewhat different to those under the Public Accountants' and Auditors' Act. However, in terms of the transitional procedures, matters which were already before the Investigation and Disciplinary Committees under the old dispensation continue to be finalised in terms of those processes.

The majority of matters from now on fall to be finalised in terms of the new procedures, and there will thus be less and less reported from this committee, and more from the Disciplinary Advisory Committee.

The Investigating Committee met twice during this period and disposed of 11

cases, in terms of the old dispensation, as follows:

Matters not proceeded with

6 matters were not proceeded with:

- 5 were withdrawn by the complainant;
- 1 was suspended until the outcome of current litigation

Matters discharged

1 case in terms of Disciplinary Rule 3.9.2 (the conduct in question – even if proved – not constituting unprofessional conduct).

Matters with guilty findings

4 practitioners were found guilty and punished, by consent, as follows:

4 practitioners were fined. The matters were as follows:

- 1 related to negligence (audit) (R75,000 of which R37,500 was suspended on conditions)
- 2 related to negligence (tax) (R20,000 of which R10,000 was suspended on conditions; and R5,000, respectively)
- 1 arose out of practice review: 2nd cycle, 2nd review (R20,000 of which R10,000 was suspended on conditions, R300 contribution to wasted costs.)

DISCIPLINARY ADVISORY COMMITTEE

The Disciplinary Advisory Committee met once during this period and disposed of 12 matters as follows. Unless otherwise indicated, the finding reached accorded with that recommended by the Investigating Committee.

Decision not to charge

3 matters not prosecuted in terms of Rule 3.9.3 (there being no reasonable prospect of proving the respondent guilty of the conduct in question):

Decision to charge and matter finalised by consent:

Cautioned

Three practitioners were cautioned. The matters were as follows:

- 1 related to general negligence
- 1 related to overcharging
- 1 arose out of a GMP referral

Fined

Six practitioners were fined. The matters arose out of practice review. All were 2nd cycle reviews.

2nd reviews:

One practitioner was fined R20,000 – R10,000 of which was

suspended on conditions;

Two practitioners were fined R30,000 – R15,000 of which was suspended on conditions; Two practitioners were fined R30,000 – R20,000 of which was suspended on conditions

3rd review:

One practitioner was fined R30,000 of which R15,000 was suspended on conditions, as well as the imposition of a previously suspended fine of R15,000

DISCIPLINARY COMMITTEE

Die nuut gekose Dissiplinêre Komitee het vir die eerste keer op die 22ste Januarie 2007 ontmoet om die saak teen mnr L te verhoor. Hy was skuldig bevind op al drie aanklagte soos aangevoer teen hom. Hy was teenwoordig maar nie verteenwoordig nie.

Die eerste klag

Die Praktisyn was skuldig bevind aan onbehoorlike gedrag soos bedoel in Dissiplinêre Reël 2.1.5 deurdat hy sonder redelike oorsaak of verskoning, en in die vlogende opsigte uiteengesit, versuim het om sy werk of pligte as ouditeur van [AB], wat werk of pligte was wat gewoonlik deur 'n geregistreerde rekenmeester en ouditeur uitgevoer word, met sodanige mate van omsigtigheid en bedrewenheid uit te voer as wat volgens die Raad se oordeel redelijkerwys verwag kan word;

Feite waarop die eerste klag gebaseer word

Die Praktisyn het in die volgende opsigte versuim om auditwerkspapiere of auditbewyse (alternatiewelik voldoende of onvolledige auditwerkspapiere of auditbewyse) op te stel of te bekom of te behou in verband met sy audit van die [AB] finansiële state; hy het derhalwe versuim om te voldoen aan algemeen aanvaarde auditstandaarde, en wel in die volgende opsigte:

Beplanningsaangeleenthede

- o daar was geen of onvoldoende werkspapiere of auditbewyse om aan te dui dat die Praktisyn oorweging gegee het aan die wette en regulasies wat op die besigheid van [AB] van toepassing was. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde auditstandaarde en meer in besonder SAOS 230 en/of SAOS 250;
- o daar was geen of onvoldoende werkspapiere of auditbewyse om aan te dui dat die Praktisyn oorweging gegee het aan die vraag van die risiko van wesenlike wanvoorstellings in die [AB]

finansiële state wat uit bedrog en foute mag ontstaan het. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde auditstandaarde en meer in besonder SAOS 230 en/of SAOS 240;

- o daar was geen of onvoldoende werkspapiere of auditbewyse rakende 'n beoordeling van auditrisiko op die verklaringsvlak. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde auditstandaarde en meer in besonder SAOS 230 en/of SAOS 400;

Verifikasie

Daar was geen of onvoldoende werkspapiere of auditbewyse rakende die volgende:

- o voorraad ter waarde van ongeveer R419 000;
- o debiteure ter waarde van ongeveer R1 051 000;
- o inkomste van ongeveer R5 741 000;
- o koste van verkope van ongeveer R4 700 000;
- o bedryfsuitgawes van ongeveer R639 000;
- o betaalstaat van ongeveer R434 000;
- o langtermyn versekerde lenings van ongeveer R601 000;
- o bankrekening van ongeveer R244 000;
- o aandeelkapitaal van ongeveer R1 000;
- o lenings betaalbaar van ongeveer R297 000;
- o aandeelhouderslening van ongeveer R111 000;
- o debietlenings van ongeveer R97 000 ingesluit by lenings betaalbaar;
- o moontlike voorsiening van uitgestelde belastingbate;
- o volledigheid van krediteure;
- o die verskil tussen ouderdomsanalise en krediteure voorsieningslys van ongeveer R779 000.

Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde auditstandaarde en meer in besonder SAOS 230 en/of SAOS 500;

Afhandelingsaangeleenthede

Daar was geen of onvoldoende werkspapiere of auditbewyse dat die ouditeur procedures uitgevoer het om gebeurte na die balansstaatdatum te identifiseer. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde auditstandaarde en meer in besonder SAOS 230 en/of SAOS 560;

Bestuursverklaring

Die bestuursverklaringsbrief wat deur die Praktisyn bekom is is ongeveer een en 'n half maande voor die auditverslagdatum gedateer. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde auditstandaarde en meer in besonder SAOS 580.

Die tweede klag

Die Praktisyn was skuldig bevind aan onbehoorlike gedrag soos bedoel in Dissiplinêre Reël 2.1.5 deurdat hy, sonder redelike oorsaak of verskoning, en in die volgende opsigte uiteengesit, versuim het om sy werk of pligte as ouditeur van [NS], wat werk of pligte was wat gewoonlik deur 'n geregistreerde rekenmeester en ouditeur uitgevoer word, met sodanige mate van omsigtigheid en bedrewenheid uit te voer as wat volgens die Raad se oordeel redelijkerwys verwag kan word;

Feite waarop die tweede klag gebaseer word

Die Praktisyn het in die volgende opsigte versuim om auditwerkspapiere of auditbewyse (alternatiewelik voldoende of volledige auditwerkspapiere of auditbewyse) op te stel of te bekom of te behou in verband met sy audit van die [NS] finansiële state. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde auditstandaarde en wel in die volgende opsigte:

Beplanningsaangeleenthede

- o daar was geen of onvoldoende werkpapiere of ouditbewyse om aan te dui dat die Praktisyn oorweging gegee het aan die wette en regulasies wat op die besigheid van [NS] van toepassing was. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde ouditstandaarde en meer in besonder SAOS 230 en/of SAOS 250;
- o daar was geen of onvoldoende werkpapiere of ouditbewyse om aan te dui dat die Praktisyn oorweging gegee het aan die vraag van die risiko van wesenlike wanvoorstellings in die [NS] finansiële state wat uit bedrog en foute mag ontstaan het. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde ouditstandaarde en meer in besonder SAOS 230 en/of SAOS 240;
- o daar was geen of onvoldoende werkpapiere of ouditbewyse rakende 'n beoordeling van ouditrisiko op die verklaringsvlak. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde ouditstandaarde en meer in besonder SAOS 230 en/of SAOS 400;

Verifikasie

- Daar was geen of onvoldoende werkpapiere of ouditbewyse rakende die volgende:
- o voorraad ter waarde van ongeveer R351 000;
 - o die verskil tussen werkpapiere van debiteure van ongeveer R96 000;
 - o inkomste van ongeveer R2 703 000;
 - o koste van verkope van ongeveer R2 281 000;
 - o bedryfsuitgawes van ongeveer R213 000;
 - o betaalstaat van ongeveer R325 000;
 - o salarisvoorsienings van ongeveer R104 000;
 - o maandelike voorsiening van uitgestelde belastingbates;
 - o lenings vanaf groepmaatskappye van ongeveer R186 000;

- o debietlening van ongeveer R54 000 ingesluit by debiteure;
- o BTW ontvangbaar van ongeveer R54 000;
- o geldigheid van verskil op BTW rekonsiliasie van ongeveer R124 000;
- o krediteure van ongeveer R1 392 000 en in besonder die volledigheid daarvan.

Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde ouditstandaarde en meer in besonder SAOS 230 en/of SAOS 500;

Afhandelingsaangeleenthede

daar was geen of onvoldoende werkpapiere of ouditbewyse dat die ouditeur procedures uitgevoer het om gebeure na die balansstaatdatum te identifiseer. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde ouditstandaarde en meer in besonder SAOS 230 en/of SAOS 560;

Bestuursverklaring

die bestuursverklaringsbrief wat deur die Praktisyn bekom is is ongeveer een en 'n half maande voor die ouditverslagdatum gedateer. Die Praktisyn het derhalwe versuim om te voldoen aan algemeen aanvaarde ouditstandaarde en meer in besonder SAOS 580.

Die derde klag

Die Praktisyn was skuldig bevind aan onbehoorlike gedrag soos bedoel in Dissiplinêre Reël 2.1.14 deurdat hy, sonder redelike oorsaak of verskoning, en in die volgende opsigte, versuim het om te antwoord of op toepaslike wyse binne 'n redelike tydperk te handel met korrespondensie of ander vorms van Kommunikasie vanaf die Raad wat 'n antwoord benodig het;

Feite waarop die derde klag gebaseer word

Die Praktisyn het versuim om te antwoord of op toepaslike wyse binne 'n redelike tydperk te handel met [verskeie] korrespondensie of ander vorms van Kommunikasie vanaf die

Raad wat 'n antwoord benodig het:

- brief vanaf die Raad gedateer 12 September 2005;
- e-pos vanaf die Raad gedateer 9 November 2005;
- brief vanaf die Raad gedateer 30 November 2005;
- brief vanaf die Raad gedateer 23 Februarie 2006.

Uitspraak en vonnis

Die voorsitter van die komitee, Adv van der Linde het die uitspraak gelewer. Ter wille van goeie order is dit hieronder volledig uiteengesit.

“Die dissiplinêre komitee kom nou by wat gebruiklik die moeilikste deel van sy verrigtinge is, en dit is om 'n gepaste straffoemeting op te lê vir Mnr [L].

Gebruiklik word die belange van die gemeenskap, in hierdie geval die ouditeursberoep en die sake wêreld in ag geneem in die eerste plek. Tweedens, die aard van die misdryf waaraan die Respondent skuldig bevind is, en in die derde plek, die belange van die Respondent self.

Behoorlike straffoemeting behels 'n opweging van daardie drie onderskeie belange, en dan die oplegging van 'n gepaste straf. Primêr egter by strafoplegging is gebruiklik pogings om die oortreder te rehabiliteer, want uiteindelik is dit meer in die gemeenskap se belang dat 'n oortreder gerehabiliteer word as wat dit is om die oortreder uit die gemeenskap uit te verwyder.

Met daardie faktore in ag geneem, het ons die aard van die oortreding as ernstig tipeer, soos die pro forma klaer betoog het. Dit kom vir ons voor dat die oortreding te doen het met twee oudits waarvan daar bitter min getuienis ten opsigte van wesenlike belangrike balansstate en inkomste staat items bestaan. Daar was voor ons nie getuienis oor of die oudits inderdaad uitgevoer is nie, en ek aanvaar dat dit moeilik is om sulke getuienis voor ons te plaas, veral in die afwesigheid van die dokumentêre bewys waarna die klagstaat verwys. Dit is juis omdat dit moeilik is om vas te stel of so 'n oudit behoorlik uitgevoer is dat die vereiste bestaan dat daar dokumentêre bewys moet bestaan van die uitvoer van so 'n oudit. In die normale gang, alles anders gelyksynende, sou die afwesigheid van ouditgetuienis ons waarskynlik genoop het daartoe om die ernstigstegenoop het daartoe om die ernstigste straf waarvoor die Wet voorsiening maak op te lê.

Ingevolge Artikel 51(3)(a)(iv) behels dit die kansellasie van die registrasie van die Respondent. Ons het egter ook die persoonlike omstandighede van Mnr [L] in ag geneem, maar ook dit was nie 'n maklike taak nie. Teen hom, na ons mening, tel die feit dat hy

nie 'n klinkklare plan vir die toekoms het nie, en onseker was toe ons hom gevra het of hy sy toekoms in die ouditeursberoep sien. Daarinteen mag dit wees dat sy onsekerheid daaruit spruit dat hy nie weet wat vandag hier met hom kan gebeur nie, en hy beswaarlik planne kan maak op die basis dat hy in die beroep gaan bly indien wat vandag hier gebeur beteken dat hy nie in die beroep kan by nie. Dit mag ook wees dat die opmerkings van Mnr [S] hom tot pessimisme gestem het. Wat egter ook teen hom tel is die feit dat dit nie die eerste keer is dat hy gemeet word en te lig bevind word ten opsigte van die nakoming van sy praktykstandaarde nie.

Sy vorige veroordeling is in hierdie verband 'n baie belangrike feit wat teen hom tel. Na alles egter het Mnr [L] stappe gedoen wat daarop dui dat hy graag sy praktykstandaard wil verbeter, en ek verwys in hierdie verband na die rekenaarprogram wat hy aangekoop het, ek verwys na die stappe wat hy gedoen het om sy praktykstandaard te verhoog ten einde te voldoen aan praktykvoorsigte, en ek verwys na die vergaderings wat hy bygewoon het by Me [B] se werksinkels.

Dit alles in aggenome is die straf wat ons opleë die volgende.

Eerstens, die Respondent se registrasie word ingevolge Artikel 51(3)(iv) van Wet 26 van 2005 gekanselleer, maar die kansellasie word opgeskort op voorwaarde dat die Respondent beide sy praktykvoorsig van die tweede siklus en sy praktykvoorsig van sy derde siklus wat moet plaasvind binne twee jaar na die aanvang van die derde siklus, moet slaag.

Tweedens, die Respondent word met R25,000.00 beboet.

Derdens, die Respondent word gelas om 'n bydrae tot die koste van hierdie verrigtinge ten bedrae van R25,000.00 te maak.

Vierdens, die Respondent se vorige opgeskorte boete ten bedrae van R15,000.00 word in werking gestel, en

Vyfdens, die feite van hierdie verhoor, met inagneming van die bevinding en van die vonnis, maar met uittaling van die Respondent se naam, moet in IRBA NEWS gepubliseer word; my verwysing na die Respondent se naam, sluit in die verwysing na sy firma se naam."

QUARTERLY REPORT FROM THE DIRECTOR: LEGAL FOR THE PERIOD 1 APRIL 2007 TO 30 JUNE 2007

This quarter has seen many changes in the Legal Department, most particularly the approval of the new Disciplinary Rules on 7 June 2007.

In terms of the transitional provisions of the Act (section 59(8)(b)), the existing Disciplinary Rules continue to have effect under the new dispensation.

The section had an interesting slant: it grouped Disciplinary Rule 2.1 – 2.1.21 (which lists what constitutes improper conduct) in with the Code of

Conduct, and keep the rest of the Rules (which were mostly procedural) separate.

The new rules (which will be referred to simply as the 'Disciplinary Rules') are in effect and govern the manner in which improper conduct is investigated and punished.

Rule 2.1 – 2.1.21 of the previous rules remain in force until a new Code of Conduct is promulgated. In the interim, these sub-rules will be referred to as

the 'Old Disciplinary Rules' as reference is still frequently made to them.

The Disciplinary Rules have been placed on the website, and a bulk mail in this regard was despatched to all RAs on 16 July 2007. The Rules are also to be found in Government Gazette number 30004 of 29 June 2007.

INVESTIGATING COMMITTEE

In terms of the transitional procedures, matters which were already before the Investigation and Disciplinary Committees under the old dispensation, continue to be finalised in terms of those processes. The majority of matters now fall to be finalised in terms of the new procedures, and there will thus be less and less reported from this committee, and more from the Disciplinary Advisory Committee.

The Investigating Committee met twice during this period and disposed of 8 cases, in terms of the old dispensation, as follows:

Matters not proceeded with

- 7 matters were not proceeded with:
- 6 were withdrawn by the complainant;
 - 1 was closed as the respondent has emigrated and the complainant does not communicate with us

Matters discharged

1 case in terms of Disciplinary Rule 3.9.3 (there being no reasonable prospect of proving the respondent guilty of the conduct alleged).

Farewell to Horton Griffiths



LEGAL

CONTINUED

The committee took leave of long-time and dedicated chairman Horton Griffiths at its meeting on 10 May 2007. He now serves on the Disciplinary Committee. Kishore

Kooverjee took over the chairmanship and we wish him well in this position. In addition, Mr Hoosen Wadiwala joined the committee on 10 May 2007, as a member independent of the

profession. He is an attorney practising for his own account, who spent a number of years with Deloitte, so he is perfectly positioned to add value to the committee. We welcome him.



DISCIPLINARY ADVISORY COMMITTEE

This committee comprises three people who are all members of the Board. From 29 May 2007 we are honoured to have the chairman of the Board, Dines Gihwala, as a member of the committee. As a past chairman of the Disciplinary Committee he adds tremendous value to the committee. The other two members are Wynand du Plessis (chairman) and Cathryn Emslie, both RAs.

The Disciplinary Advisory Committee met twice during this period and disposed of 20 matters as follows.

Decision not to charge

4 cases in terms of Disciplinary Rule 3.9.1 (the respondent having given a reasonable explanation for the conduct).

4 cases in terms of Disciplinary Rule 3.9.2 (the conduct in question – even if proved – not constituting unprofessional conduct).

4 cases in terms of Rule 3.9.3 (there being no reasonable prospect of proving the respondent guilty of the conduct in question):

Decision to charge and matter finalised by consent:

Cautioned

One practitioner was cautioned. The matter related to overcharging.

Fined

Seven practitioners were fined. The matters were as follows:

- One related to the appearance of a lack of independence (R10,000)
- Six arose out of practice review.

All were 2nd cycle reviews.

2nd reviews:

Three practitioners were each fined R30,000 of which R15,000 was suspended on conditions;

3rd reviews:

One practitioner was fined R30,000

of which R15,000 was suspended on conditions,

One practitioner was fined R30,000 of which R5,000 was suspended on conditions,

One practitioner was fined R20,000

of which R10,000 was suspended on conditions.

In certain matters the imposition of sentence was postponed indefinitely on condition that the practitioners stopped performing the attest function.

DISCIPLINARY COMMITTEE

With effect from 1 April 2007, the committee is made up as follows:

Chairman:

Adv Willem van der Linde SC

Deputy chairmen:

Adv A Dodson

Adv Tim Bruinders SC

RA members:

Mr Antonie Jagga

Mr Charles Reid

Mr John Rhynes

Mr Horton Griffiths

Mr Danny Naidoo

Non-RA members:

CA (SA): Mr Andre de Wet

Attorneys: Mr Hussan Goga

Mr Lepono Lekale

Usually 6 members (comprising a quorum of the committee) sit to hear a matter.

The newly constituted Disciplinary Committee met twice during this period.

FIRST MATTER

On 2 April 2007 the committee heard the case against Mr P H Ferreira. He did not appear and was no longer on the register at the time of the hearing.

The facts appear from the sentence which was handed down by the chairman of the committee Adv van der Linde SC, as follows:

Finding:

In this matter the respondent, Mr P H Ferreira was charged with four charges.

The charge sheet described the facts that are relied upon to found these four charges and it is not necessary to repeat them. In support of the charges the pro forma complainant, the IRBA, called two witnesses, Mr [C] and Ms [O] respectively.

Ms [O], who testified second, is the director of legal services of the Board and the nature of her evidence was formal. She proved that the respondent was registered on the 1st July 1992 as an auditor and accountant with the then Board until the 1st March 2006 when he wrote a letter of that date, received later during that month by the Board, in which he notified his intention to cancel his registration. He asked that his cancellation of registration be dealt with accordingly and since he did not pay his fees for the year following 31 December 2005 the Board accepted that that conveyed an intention that his registration be cancelled with effect from the 1st January 2006. Ms [O] also proved despatch of the letters dated the 20th October 2005, the 28th November 2005, the 6th February 2006 and the 10th February 2006. No response was received to those letters.

The evidence of Mr [C], which I will summarise in the main, was to the following effect. He said that he had been a construction contractor for some 25 years and had had a professional relationship with a [D] since about 1994. I will refer to [D] and the respondent, [H], respectively by their first names, meaning no disrespect but simply to avoid confusion.

In the beginning of 2002, [D] told him about an investment that was linked to [WPM] staff. How it worked was that a company by the name of ABC Financial Services (Pty) Limited '[ABC]', would lend money to the staff of the

mine and since the management of the mine would deduct the repayments from the wages or salaries of the staff to repay it to ABC the loans to the staff of the mine were secure. Therefore ABC was able to offer to investors a substantial return on their outlay, particularly an interest of 6% per month and this attracted Mr [C]. Initially he was not interested but some 6 months later [D] persuaded him to invest the money. [D] also told him that [H] was the auditor of that company. There was no prospectus and everything was verbal. [D] explained to him that the money was to be transferred to [H]'s trust account, which Mr [C] then arranged to be done. He also signed a written loan agreement, which [D] produced pre-signed by [H] and he, Mr [C], signed it on the 15th January 2002. In terms of that agreement he would advance R200,000.00. This would carry interest at 6% per month and the loan would be for not less than 12 months.

He did not for a fact know that the other signature was that of [H], but assumed that it was, on the basis of what [D] had said to him. He proved [H]'s signature by reference to the affidavit which [H] made on the 28th October 2004.

Mr [C] said that it was his accountant that drew the cheque and [D] arranged for a messenger to collect the money and to pay the money to what Mr [C] described as [H]'s 'trust account'. The amount that he paid was R283,020.00 and not only R200,000.00. The reason for this was that Mr [C] had had more monies available to his credit with his accountants and he wanted to clear that account, intending later to give [D] further instructions as to what to do with the R83,020.00.

Later on Mr [C] established that in fact ABC did not exist. This was when he had phoned [D] to enquire about a second investment that he, Mr [C], had made with [D] to the tune of about R1 million that had also gone sour. He enquired then about the investment with ABC and was told by [D] that ABC had been liquidated but that he, Mr [C], did not have to worry since he would recover his money from the liquidators.

Mr [C] tried to claim back the money but was from time to time led up the garden path by [D] who eventually gave him the wrong liquidator's address. Through his attorneys he established that [VT] were the liquidators but they conveyed that ABC never existed. In fact the pro forma complainant proved by handing in a certificate stamped by the Registrar of Companies on the 12th March 2007, which says that:

"According to our computer records no company by the name of ABC or ABC Financial Services was registered as at 15 January 2002."

Mr [C] said that his attorney established through the attorney of [H], a Mr [M], that the investment was not with ABC but with a private individual by the name of Ms [MA]. Mr [C] said that he was not a client of [H], and after he had heard from [D] that ABC had been liquidated and after he had found out on the 3rd March 2003 that the other investment with [D] had also gone sour he handed over both matters to his attorney.

He says in 2004 he went past [H]'s office and it was then only that he had met [H]. He said he asked [H] for proof that [H] actually transferred the monies paid over to [H] away from [H] and into an investment recipient. [H] did not give him an answer and instead referred him to his, that is [H]'s attorney.

He, Mr [C] persevered trying to receive an accounting, but this was never provided.

He said that he accepts that the R283,020.00 was in fact paid by [D] to [H], but he disputed that an amount of R83,020.00 was repaid by [H] to him on the 29th January 2002. He said with reference to extracts from a bank account appearing as the bank account of Mr Henk Ferreira, that the R83,020.00 referred to there as a debit against that account on the 29th January 2002 was probably the amount that he had invested. However, the account number to which that amount was transferred was not one that he was familiar with, although later on in questioning by the tribunal he said that that could have been the account of [D].

He was asked whether [H] was correct when he said that at no stage did Mr [C] invest money with him, that that was indeed correct, that he was investing with a scheme and that he was told that [H] was indeed the auditor of the scheme. He regarded the investment with ABC though [H]. The fact that [H] signed the agreement on behalf of ABC led him to be assured that [H] was indeed the auditor of the scheme as [D] had told him. The statement which is an attachment to affidavit by [H] confirming what had happened to the monies which [H] had paid over to Ms [M] was unfamiliar to Mr [C] and he could not assist in explaining its composition.

He said, did Mr [C], that he would never have invested money with a private person and that he thought throughout that he was dealing with a company, and the reason why this was important to him was that he thought that there would be regulation applicable to companies, by means of accounts and statements and auditors which did not apply to individuals. He said that he did not remember receiving the R20,000.00 to which [H]'s attorney referred, but did say that his own bank account reflected R20,000.00 coming in, then again going out, but then later in questioning from the tribunal said that it then came in again, so that ultimately he was credited with the net amount of R20,000.00. As regards the R99,020.00, which Mr [M]'s letter says was paid to Mr [C] on the 25th July 2002, Mr [C] conceded that he did receive this. The

circumstances under which he received it were that he had phoned [D] saying that he needed the balance of his funds of about R83,000.00 and the next day or shortly thereafter he received payment of R99,020.00 but with no detail as to how this amount was made up. In questioning from the tribunal he did concede however that at least included within that amount had to be the R83,020.00 which he had paid over through his accountants to Mr [H].

In his evidence in chief however he said that he never received repayment of the R83,020.00. In questioning from members of the tribunal he said that he did not think that the investment was illegal and in fact thought it was legal, although he took no legal advice and has no legal background. He corrected the date which appears in his affidavit at page 35, paragraph 8.2 as July 2003 to July 2002, which correction would bring his evidence in the affidavit in line with his evidence before this tribunal. In response to a question he said that he did not question the composition of the R99,020.00 that was paid to him. In response to other questions he said that he was told that he would get interest at 6% per month and that this would be paid after 12 months. He understood, he said, that [H] was acting as an auditor of the ABC.

In response to further questions he said that he was not told that there was any risk in the investment and that, strange as it may seem at face value, [D] convinced him that the risk was minimal.

That being the evidence for the complainant, he argued for the following findings of guilty....

As regards the first charge ..., he fairly conceded that such evidence as there was, which was of course made more difficult by the fact that Mr Ferreira was not here to testify, did not prove dishonesty. He did however submit that the respondent was guilty of the second alternative of the first charge, ... in that he acted by failing to account to Mr [C] in a manner which is improper or discreditable or unprofessional or dishonourable or unworthy on the part of a practitioner, or in a manner which tends to bring the profession of accounting into disrepute, or as envisaged in disciplinary rule 2.1.21.

He submitted that although he could not argue that the receipt by Mr Ferreira of the investment was not by Mr Ferreira in his capacity as either an auditor or accountant, and I may add a submission with which this tribunal respectfully agrees, nonetheless the very fact that as a professional person Mr Ferreira received this investment behaved him to account about that investment to the person who paid over the money to him. With that submission we agree, although it is true that Mr Henk Ferreira probably did not receive the money as an auditor or accountant, the high professional standards of the profession expects of Mr Ferreira in the circumstances to account to Mr [C] about what had happened to that money.

In our view his failure to do so makes him guilty of improper conduct in terms of Rule 2.1.21, which I have referred to above, and he is so found guilty.

As regards the second charge, the pro forma complainant argued that Mr Ferreira had a duty to ensure that ABC in fact was registered. He said that that duty existed as a matter of law and that Mr Ferreira must have realised that Mr [C] would rely on Mr Ferreira's integrity as a professional person to ensure the registration of that company. Again we agree, after all what Mr Ferreira did was to send into the world a document which purported to be a loan agreement between a prospective investor of a substantial amount, being R200,000.00, signed by Mr Ferreira on behalf of the company. Indeed it is telling that the *domicilium citandi et executandi* of the borrower is given as ..., the address of Mr Ferreira. It is true that the representations surrounding the signature by Mr [C] of that loan agreement to the effect that Mr Ferreira was an auditor was not made by Mr Ferreira in terms of the agreement itself but by Mr [D], but nonetheless that representation was not false and was indeed true. It follows that when Mr [C] received this document he knew, because this was the truth, that the person who signed on behalf of ABC was an auditor registered with the Board and the reliance to which Mr [C] testified flowing from that fact was

accordingly justified.

We therefore find that in this regard too Mr Henk Ferreira was guilty of improper conduct as envisaged in Rule 2.1.21.

[The chairman discussed the arguments presented and then continued]

The fourth charge and third one preferred, is that relating to the failure to answer or to deal appropriately within a reasonable time with correspondence emanating from the Board. This failure is in itself regarded as improper conduct in terms of Rule 2.1.14. ... The despatch of the letters concerned and the failure to respond to them and it follows that the four letters listed in support of the 4th charge have been duly proved and the charge duly proved.

We accordingly find Mr Ferreira guilty of that charge as well.

In summary, Mr Ferreira is found guilty of two charges of improper conduct, both under Rule 2.1.21 as well as a third charge of improper conduct under Rule 2.1.14

Sanction

In this matter the question of sentencing now arises. Traditionally in imposing a sentence one takes into account the offence, the individual and the interests of society.

As regards the offence the three charges of which we have found Mr Ferreira to have been guilty, although all of them fitting into charges of improper conduct, are charges which he could have avoided by simple cheap and easy conduct. It would have been very easy for Mr Ferreira to account to Mr [C]. It would have been very easy for Mr Ferreira to establish whether ABC has not been registered or has been registered and it would have been very easy for him to have responded to the mail from the Board. That fact counts against Mr Ferreira in weighing an appropriate sentence.

What also counts against Mr Ferreira on this score in weighing an appropriate sentence, is that his failure in at least the first two instances, but particularly the second instance, that is the failure to establish whether ABC was registered

or not, could have, and in this case might very well have had, heavy financial consequences for members of the public at large.

The third factor which we take into account weighs in favour of Mr Ferreira and that is that we have not found any dishonesty on his part.

As regards the individual we assume that he is a first offender and that counts in his favour.

What counts against him is that he did not appear here today to assist us in coming to a just conclusion. That counts in our view quite heavily against him. As regards the interests of society we regard the crime as a serious one. By putting his signature on a document purporting to represent a non-existing company and sending it into the world at large is in our view serious since it is so easy for members of the public, as happened here, to take strength from the fact that the person representing the investment recipient was indeed a registered auditor. In fact we regard the matter as so serious that we would have considered acting in terms of Section 51(3)(a)(iii) and (iv) of the Act, which refer to the suspension of the right to practice or the cancellation of the registration of Mr Ferreira.

In this case his own cancellation of registration has disabled us from considering those sections. We considered suspending a fine as we were urged to do, but we do not believe, despite the administrative difficulties otherwise, that it would be appropriate to send out a message that

because of those administrative difficulties the registered auditor who is found guilty of improper conduct has a financial advantage, and we believe that the administrative difficulties would have to be resolved at a different level.

The sentence that we impose is a fine of R100,000.00 and publication of the respondent's name as well as the name of his firm, plus an appropriate summary of this judgment in IRBA News.

SECOND MATTER

On 7 May 2007 the committee heard the case against Mr [S].

The facts appear from the sentence which was handed down by the chairman of the committee Adv van der Linde SC, as follows:

Finding:

In this matter Mr [S] was found guilty this morning on his own plea on 5 charges. The charges are of improper conduct but in three manifestations.

The first is in that Mr [S] contravened or failed to comply with any provision of the Act with which it is his duty to comply.

The second is that he contravened or failed to comply with any provision of any other Act, with which it is his duty to comply in his capacity as accountant and auditor to an undertaking, or in doing work of a type commonly performed by a registered accountant and auditor.

And the third is that he, without reasonable cause or 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, or failed to perform the work or duties at all.

A charge which relied on rule 2.1.4, was not persisted in. ...

Mr [S] testified in mitigation. He said in summary that when he was contacted about the investigation on the 20th July 2005 he co-operated immediately and in particular gave to [the Board's investigator] when called

for them, his working papers.

In relation to charge 1, concerning the [XYZ] audit, he said that Mr [A] is an attorney at [B] and that he had been doing his trust audit since about 1999.

His records were impeccable and he had a freelance bookkeeper who used the WINLAW accounting system. In 2004 the bookkeeper stopped working for Mr [A] and Mr [A] was not able immediately to find a replacement. In the result, the audit of the trust account was long overdue. This had to be done by

31 August 2004 in respect of the year end here concerned, being 29 February 2004. He said that he established that the WINLAW system in the case of Mr [A] was also kept on a spare computer where there was a full backup and therefore that full backup afforded access to the trust accounts kept in the books of Mr [A].

He instructed his clerk, Mr [M] to interrogate each of those accounts as reflected in that computer database and he, Mr [M], recorded them all on Excel and therefore this enabled Mr [M] to audit the trust balances. Mr [M] reported after his work to Mr [S] to the effect that a qualification ought to be appended in respect of the period ended 29 February 2004. That report of Mr [M] as well as another report of Mr [M] also to the effect that the audit ought to have been qualified appears in EXHIBIT C.

Mr [S] considered these recommendations of Mr [M] but decided not to qualify the certificate on the basis that there was no trust shortage.

Regarding the second charge, Mr [S] admitted that there were shortcomings in the audit, particularly in regard to the retaining of documentary evidence of the audit work carried out, but he says that he has since appreciated the errors of his ways in that regard, and in fact in three attorneys' audits since has qualified his opinion.

The third charge related to the audit of attorney, Ms [B]. He said he had known her for some four years and before he audited her trust account he audited that of her father. He said that her trust account always balanced every month, every year and in fact

also for the year ended February 2005. However, in the case of Ms [B] he established a trust shortage in the year February 2005. His clerk picked it up. It turned out that a Mr [V] had stolen some R102,000 from her and she made this good with a deposit of her own monies, and this led to establishing the trust shortage.

Further, through his clerk Mr [S] established that Ms [B] was charging through her trust account expenses which were being used by her live - in partner in his business. He said that as an articulated clerk he got the impression that it appeared to be normal practice in the case of many attorneys that they receive all monies in their trust account and from there clear appropriate transfers to business account. He said he established that Ms [B] issued cash cheques which were used by her partner to settle certain accounts on her behalf, these cash cheques being drawn against the trust account.

However, the shortage was mainly attributable, he said, to the funds stolen by Mr [V]. He, despite knowledge of these facts, decided that he would not qualify that certificate because in his view the Fidelity Fund was not at risk because the shortage had been made good.

As regards the 4th charge he conceded, as he had in relation to the audit of [XYZ], that there was inadequate audit evidence of the audit carried out. He said that with a one man practice often audits are not as studiously performed in the sense of retaining audit evidence as they are in larger audits. He said that he will make sure that in the future, were he permitted to continue practising as an auditor, that there would be proper audit evidence of the audit carried out.

In summary in relation to charges 1 to 4, he said that he understood that they all concerned the attorneys Fidelity Fund and that the rules are designed to enable an auditor to report on breaches of the rules, not only breaches that are still evident as at the two selected dates but also in the interim.

Regarding the 5th charge, that relating to [EFG] Pty Ltd '[EFG]', he explained that he had met a Mr [G] in 1984

when Mr [G] was an auditor for a company for which he was working. Mr [S] himself registered in 1987 and in 1992 acquired his own practice and slowly built it up. Mr [G] went into liquidation and asked him to perform the attest function of his clients. Initially he would go to Mr [G]'s offices and there perform the attest function after presentation of the files.

In 1994, this activity moved to his own office and the review files would be brought to him there. Now this involved about two to three of Mr [G]'s clients per month and EFG was one such client.

The audit work would be performed by Mr [G]'s staff, and in the case of EFG the person who did it was a Mr [SI]. In the case of this particular audit, Mr [W] and Mr [G] came to see him after he had called them to come and explain certain features of the audit. There were certain explanations given by Mr [W] relating to the entry recorded in the working papers, concerning accounts receivable and an amount of some R1.5 million entered next to the name of [BANK], and he accepted that explanation. However, the truth of the matter is set out in a report by a Mr [RA] of [Firm]. At that page in paragraph 1, he writes:

"Furthermore, there is some concern by us with regard to the amount of R1.5 million reflected in the debtors. This amount to the best of our knowledge represents a withdrawal from the company's call account by the directors or shareholders in proportion to their shareholding of an amount of R2.5 million. The R2.5 million is then adjusted by journal 22, whereby the sundry debtors account is then reduced by 1 million to reflect 1.5 million and the creditors are equally reduced to 1 million. It appears that the creditors account is a 'dumping ground' for some strange transactions, hence the reluctance of Mr [G] to supply us with the breakdown of trade creditors reflected in the balance sheet."

Mr [S] testified that had he not accepted Mr [W]'s explanation and had he enquired further he would have come to the same conclusion that Mr [RA] came to here, and his fault lies

therein that he accepted the explanation when he should not have accepted the explanation. He did not say, Mr [S], what he would have done had he come to the conclusion as did Mr [RA], that the creditors account is a 'dumping ground' for some 'strange transactions'.

He said with reference to certain journal entries, that he could not explain the assertions. It is asserted is that there were no explanations for certain unusual journal entries, the journal entry narrations merely being 'prov [G]' and '[G]' respectively. One journal entry debits expenses and credits current liabilities by R2.33 million and the other journal entry debits current liabilities and credits current assets by R1 million. He said he did not look at these. He said that he sat with the financials and the lead schedules and worked through those.

His evidence in this regard, that is to say that he did not look at these journal entries, were not taken further with him in cross-examination. He concedes that he ought to have looked at those entries and that he should have gone to the next journal, but at the time the explanation given to him seemed plausible.

With reference to directors emoluments, he said that it was explained to him that EFG was paying rental of some R42 000,00 per month to Mr [J], who was also a director but not VAT registered. This amount was accordingly reflected as part of the directors' emoluments or salary and it was then taxed in the hands of the director receiving those emoluments. The difference between the directors' emoluments figure of R630,000.00 appearing in the lead schedule and the similar figure appearing in the financials is explained in that regard.

As regards the difference between the signed and unsigned financial statements, he says that it was an error on his part and that he should have ensured that the signed financial statements were placed in the working papers.

He testified to his own previous convictions, saying that he failed a second cycle peer review in May 2004. He was convicted by the

Investigating Committee of this board in May 2004 concerning a matter in which Mr [G] did not want to resign as an auditor. The client wanted to terminate Mr [S]'s services. This person was previously a client of Mr [G]. This was investigated by the committee and he was fined, he said he thought somewhere between R5,000 and R10,000.

[The chairman discussed the arguments presented and then continued]

Mr [G] is in the background both of the [XYZ] audit and the [EFG] audit.

Regarding the [XYZ] audit he said that he first audited their accounts in the year ended 2001. He knows that the certificate of the kind issued to the Law Society in terms of rule 70 of the rules of the Law Society of the Northern Provinces, is required to ensure that attorneys keep proper accounts, that they keep proper book of trust account receipts, proper books of trust bank accounts and that they do not abuse trust funds. He knows and appreciates that the Law Society relies heavily on the reports given by independent auditors.

In the case of Mr [A]'s trust account he decided that he would not qualify it despite Mr [M]'s recommendation because he thought that there would be no prejudice to the Fidelity Fund and the Law Society. Looking back he agrees now that it is a very serious contravention not to have qualified that certificate. He says that although he thought about it he concedes that he did not adequately apply his mind to Mr [M]'s recommendations.

He was cross-examined as to his statement that in fact there was no trust shortage in the [XYZ] account, and there were certain entries he did not nor could explain. He said that he tried to help Mr [A] by giving this unqualified certificate and appreciates now that he should not have done so. He should not have placed his own reputation at stake.

Regarding Ms [B]'s audit, he said that his first audit in respect of her accounts was in the year ended 2003. It was put to him that in the case of Ms [B] there was a fairly gross dereliction of duties and he did not dispute that. It was put to him that in her case trust monies were being used for personal expenses and that this was very serious, but his response to that was that he had seen that some attorneys receive all their monies into their trust account and use that account to clear out expenses to business and other accounts.

He is appreciative of the fact that there is a rule that they ought to be kept separate and he was referred to a judgment in the matter of Law Society v Meyer in this respect. He says now looking back he appreciates the severity. He says that however, any shortages that there were in Ms [B]'s trust account had been made good by the dates in respect of which the certificates had to be issued and to his mind the risk by then had gone. He appreciates that there was a trust shortfall, and appreciates that in effect the trust account had lost its separate identity as a trust account. He understood that the Law Society relied on him but said that in small practices there is inevitably, certainly on his part, a lack of appropriate discipline in the auditing of their books. He knew that he should comply with the prescribed auditing standards, however also when it comes to small firms.

Clearly there was no compliance with the audit evidence requirements and he conceded this. As regards [EFG], he explained that he has acted as an auditor for a large number of for clients of Mr [G]. He says that at that time when he was acting for Mr [G] in these instances the standard of the audits carried out in those instances was the same as the standard here. By that he could only have meant that it was equally poor.

He said that he did not share offices or staff with Mr [G], but Mr [SI] was articulated to him for about four years until 2006 and then went to work for Mr [G]. Mr [SI] operated from Mr [G]'s office but was articulated to him, but although he knew he needed board approval he did not have that. He mentioned also that there was another person, but that line of evidence was not taken further. He said he met with Mr [SI] on a monthly basis and that Mr [SI] is now in industry. He said that the registration fees payable in respect of Mr [SI] were paid by him, but Mr [G] repaid him.

This evidence led to it being put to him that he was 'fronting' for Mr [G], to which his response was that he guessed that that was so having regard to the evidence. He knows that that is wrong but said that he did not know then that it was wrong. He said that Mr [G] was driving these audits. He said that if he were allowed to continue practising that relationship would be terminated immediately.

In response to questions from the panel, it appeared that some 40% of his annual fees are derived from the attest function, that in effect he was not au fait with the working papers and the impression certainly was that he left it up to Mr [M], referring to the [EFG] audit.

[The chairman discussed the arguments presented and then continued]

Sentence

In considering an appropriate punishment we took into account, as I have said, on the one extreme the absence of proven dishonesty. That would militate against an unqualified cancellation of the registration of Mr [S] under Section 51(3)(a)(iv). However, if we were simply to overcome that difficulty by, as it were, by cancelling his registration and suspending the cancellation it would mean that Mr [S] would be able to proceed with audits, and it is our conclusion having regard to the severity of the offences that the public ought not to be open to an audit which is carried out in so bad a fashion. Therefore in order to protect the public, and by public I mean the Law Society, the Fidelity Fund and other interested parties, the effect of the punishment

that we impose has to be in our view to remove Mr [S] effectively for a period from his right to practice as a registered auditor.

In coming to that conclusion we had regard to two judgments in the Supreme Court of Appeal concerning attorneys. I read merely from the case summary. The one in the matter of KJR Summerly v The Law Society of the Northern Provinces, where the case summary reads:

"Attorneys struck from the roll by the court a quo misconduct not involving dishonesty", decided that he should rather be suspended from practice with further restrictions imposed after expiry of suspension."

In the matter of the Law Society of the Cape of Good Hope v Henrietta Peter, the summary reads:

"Attorney misappropriation of trust monies. Whether a court a quo should have struck the name of the attorney concerned from the roll rather than suspending her for a period and subjecting her to certain restrictions for a further period."

In this case the appeal by the Law Society in the case of an attorney who had a shortfall in the trust account and whom the High Court had suspended from practice for a year, not removed her name from the roll and had imposed restrictions on her practice after that period of a year was dismissed by the Supreme Court of Appeal.

In other words, the effect of the judgment of the Supreme Court of Appeal was not to strike the attorney from the roll, despite a shortfall in the trust account because there was no dishonesty but effectively suspending the attorney from practising for a period of two years.

In our view the appropriate punishment is therefore the following:

- In terms of Section 51(3)(a)(iii), Mr [S]'s right to practice as a registered auditor is suspended for a period of two years.
- Secondly, publication of the facts and conclusion of this matter is to take place in 'IRBA News' but Mr [S]'s name is not to be disclosed in terms of Section 51(5) of the Act.

LEGAL

CONTINUED

- Thirdly, Mr [S] is directed to make a contribution to the costs of this enquiry in an amount of R45,000 in terms of Section 51(4).

To clarify therefore, there is no imposition of a fine. Secondly, there is an order in terms of Section

51(3)(a)(iii) to suspend his right to practice as a registered auditor for a period of 2 years, and for purposes of clarity we direct that that suspension will take effect on the 1st July 2007.

Queries: **Jane O'Connor**
Director: **Legal**
Telephone: **(011) 622-8533**
Facsimile: **(011) 622-4029**
E-mail: **joc Connor@irba.co.za**



REGISTRY

CPD POLICY

An article on page 12 of the Nov/Dec 2006 issue of the IRBA News, and other queries we received on the release of the IRBA's CPD policy, has resulted in questions from Registered Auditors on the application of the policy. This communication seeks to provide answers to some of these questions.

The article addressed the procedure which would be followed when a person wished to register with the IRBA more than three years after

- (a) they were last registered with the IRBA;
- (b) they passed the PPE; or
- (c) they completed their training contract,

whichever is the later.

Where an applicant is in this situation, an assessment would be conducted which evaluates the individual's basis for registration. This would include a consideration of compliance with the IRBA's CPD policy during the period prior to the registration application.

In instances where the applicant's CPD is fully compliant, an interview would normally suffice to support the application for registration.

Where the CPD is not fully compliant, or not compliant at all, a more extensive proficiency assessment would normally be conducted.

The nature and depth of the proficiency assessment could take a number of forms, including the applicant performing a review of an example working paper file, or re-writing the PPE. The level of the proficiency assessment would depend on the extent and degree of non-compliance with the CPD policy, and could take into account the reasons and duration of the period of non-registration.

We appreciate that there are numerous circumstances which could give rise to this situation, and these circumstances will be taken into account in evaluating such applications.

For further information on CPD and proficiency assessments, please contact Uganda Naidoo, Director: Education, Training and Professional Development.

For further information on registration, please contact Caroline Garbutt.

Queries: **Caroline Garbutt**
Registrar
Telephone: **(011) 622-8533**
Facsimile: **(011) 622-4029**
E-mail: **cgarbutt@irba.co.za**



REGISTRY

CONTINUED

INDIVIDUALS ADMITTED TO THE
REGISTER OF THE BOARD
From 01 FEBRUARY 2007 to 31 JULY
2007

Acker Madelein
Alt Andrew Ivan George
Amod Ebrahim Yusuf
Antiglevich Simon
Arendse Natalie Roseline
Aucamp Mandie
Bailie Daniel Hermanus
Ball Mark Robert
Bhagwan Dharmesh Natvarlal
Bhamjee Mohammed
Bhana Pramesh
Bhikha Yatesh
Boshoff Ralie Johanna
Bosman Berton John
Botha Carnel
Botha Chris
Botha Pieter
Bruwer Tertius Scholtz
Burger Conrad
Burger Jonette
Chauke Vonani Justice
Chigumba Ian Anesu
Chitima Nelson
Cinnamond Gareth William
Claasen Barend Jacobus
Cloete Ferdinand
Coetzee Aletta Magdalena
Coetzer Nico
De Beer Lynette Cornelia
De Beer Matthys Christoffel Johannes
De Bruin Carin
De Jongh Anine
De Villiers Pieter Ignatius Du Plessis
Dell Lorna
Dickason Cecil Rian Wessels
Dikana Kali Joseph
Donaggi Lambert Colyn

Dreyer Edward Frederick Greenalf
Duarte Natalia Lima
Durand Anna Catharina Gysbertha
Eastman Michiel Adriaan
Ebrahim Shenaaz
Els Cornelius Alwyn
Fakir Tasnim
February Claudette
Felstead Eugene
Fourie Johannes Jacobus
Gaffar Mansoor
Galen Nomfuyo
Geel Suzanne
Gordon Bryan
Goussard Heleen
Gouvias Vivienne Rose
Greeff Marlene Etresia
Groenewald Andre
Groenewald Jan Marthinus
Hamman Marthinus Christof
Hechter Lynette
Heggie Lisa Joy
Hillier Lara
Hlongwa Musawenkosi Sibusiso
Hugo Jean Anton
Hurter Pieter Maree
Jacobs Richard James
Jones Judi
Jonker Andries Jaco Jooste
Jordan Thwalazidanga Mgcinisihlalo
Joubert Christiaan Friedrich
Kalan Anant Bhana
Kgoedi Yvonne
Khan Amanullah
Khula Tlhogi Daniel
Knoesen Darryl Ian
Kotze Suné'83
Kroh Jens
Kruger Dorathea Johanna
Labuschagne Jan Frederik Daniel
Laing Riaan
Lange Martin
Lemmer Johann Casper

Levisohn Robin
Lindeque Barend
Lockhat Suleman Yusuf
Lombard Gregory Stephen
Louw Henz
Louw Marelize
Malaba Nhlanhla Kelvin Sipho
Mapaure Cynthia Nomsa
Marti Tania Cheryl
Martin Kim Taryn
Mauer Jacqueline Mary
Mazarura Bothwell Anesu
Mcnaair Clinton Grant
Mhlwana Ziphiwo Madododwa
Mollagee Osman
Morgan Gareth James
Moroole Bogabale Berlinah
Mustard Clinton
Nadrowski Tamzin Anne
Nagy Imre
Naidoo Jonathan Joel
Naran Joshila Ashokkumar
Nejthardt Malgorzata
Nel Carla
Ngoasheng Isaac Lesetja
Ninan Modayil Varghese
Nosworthy Bronwyn
Olls Ian
Oosthuizen Daniel Johannes
Pardoe Emma Susan
Peer Irshaad
Pope Peta-lynn
Prins Alberto
Ramnarian Keeran
Ranchod Nita
Reintjes Ciara Craul
Robertson Denis Alexander
Roesch Hendrik Petrus
Rossouw Andries Jacobus
Sahd Alec
Satheke Samuel Mathaba
Savage David Wayne
Schaafsma Tjaard August

REGISTRY

CONTINUED

Schoeman Louis Johannes
Schoeman Lucinda
Schonegevel Sidney Cecil
Schutte Josef Christiaan
Seedat Imraan Gulam Mohamed
Semenya Derrick Phuti
Sexton Garreth John
Sinclair Greig
Sithole Samuel
Slabber Ilze
Smit John Morgan O'Kennedy
Snyman Salomien Judith
Stalley Elton Clifford
Stander Lindie
Stevens John Edward
Stuckie Melissa Anne
Sukati Mmathabo Abigail
Swenson Bjorn
Taljard Timneen Jo-anne
Tayob Taznin Abdul Sattar
Teixeira Karen Elizabeth
Terblanche Werner
Theron Inge
Timpany Dene
Trolese Nino
Van Der Schyff Willem Nicolaas
Van Niekerk Johannes
Van Tonder Johannes Theodorus
Van Wyk Tanya
Van Wyk Yolandie
Van Zyl Pierre
Verburg Johannes Gerhardus
Viljoen Herman Steele
Vivier Vivan
Wentzel Penelope-pearl
Wilkins Wilco
Wilson Paul
Windell Wayne Kurt
Wright Glenn David
Xaba Rosetta Ntambose

INDIVIDUALS RE-ADMITTED TO THE REGISTER OF THE BOARD From 01 FEBRUARY 2007 to 31 JULY 2007

Abakah-gyenin Meshach Mighty
Abrams Clifford Lawrence
Boshoff Riaan Roelof
Bosman Armand
Cairncross John Michael
Cajee Zeinoul Abedien
Chikweshe Oliver
Cox Willem
De Swardt Louis Stephanus
Dixon Dorothy Rose
Ebrahim Fatima Abdul Samid
Els Frans Sarel Jacobus
Fenn Douglas Rodney
Fialkov Kevin
Gcabashe Tsediso Zwelethu
Goosen Daniel Johannes Andrias
Griesel Ryno
Horn Anthony Richard
Kaidos Martins Helena Sevasti
Korsten Jan Hendrik Mahoney
Kwinana Ntombiyakhe
Labuschagne Christo Pieter
Le Roux Danielle
Liebenberg Schalk Willem
Lubisi Mashangu Ronny
Lucouw Pierre
Lungoomiah Raj
Modipane Tebogo Collen
Muller Beyers
Ngwenya Zanele Ziphelele
Odendaal Samuel Daniel Hermanus
Omar Carrim Yacoob
Palmieri Roberto
Plenderleith David Peter Wynn
Pretorius Willem Jan Hendrik
Raubenheimer Margaret Eunice

Rossen Nicholas Barn
Rossouw Wynand Hendrik
Sayers John Meyrick William
Singh Premnath Inder
Sithole Stefaan
Van Der Laan Jacob Geert
Van Der Merwe Marius
Van Der Walt Izak Hamilton Du Plessis
Van Dyk Adriaan Sarel
Van Dyk Theodorus Bernardus
Van Zyl Francois Andre
Van Zyl Jacobus Frederick
Wallis Mavourneen
Wellen Sean Walter
Zulu Maqhinga Johannes
Zulu Thabani Francis

INDIVIDUALS REMOVED FROM THE REGISTER OF THE BOARD From 01 FEBRUARY 2007 to 31 JULY 2007

Aitken Douglas Henry (Resigned)
Alt Stephan Howard (Resigned)
Asmal Mahomed Azam Ebrahim
(Resigned)
Bals Glen (Resigned)
Barnfather Samantha Anne (Resigned)
Barracough Ashley Craig (Resigned)
Barrett Basil Henry (Resigned)
Bayant Aysha (Resigned)
Berry Brian Herbert (Resigned)
Bester Joachim Paulus (Resigned)
Beukman Gawie Frederik (Resigned)
Bezuidenhout Cornelis Jansen (Resigned)
Black Julius (Resigned)

REGISTRY

CONTINUED

Boner Frank (Resigned)
 Boshoff Willem Hendrik (Resigned)
 Bosman Melanie (Resigned)
 Botes Johannes Jurgens (Resigned)
 Bovens Robyn Gail (Resigned)
 Boyle Robert Sydney (Deceased)
 Brown Graham Keith (Resigned)
 Bucke William Neville (Resigned)
 Budlender Stephanie Glenn Alison (Resigned)
 Cambanis Gregory Basil (Resigned)
 Cane Joel Mark (Resigned)
 Carreira Richard George (Resigned)
 Castleden Michael John Royal (Resigned)
 Cerva Renato Vincent (Resigned)
 Claassen Jacob Willem Stephanus (Resigned)
 Clark Shaun (Resigned)
 Coetzee Jacobus Stephanus (Resigned)
 Cornelissen Hendrik Albertus Rudolf (Resigned)
 Cowie Ian Reginald (Resigned)
 Cronje Willem Bartholomeus (Resigned)
 Crous Daniel Jacobus Johannes (Deceased)
 David Israel Oscar (Resigned)
 Davis David Harris (Resigned)
 De Jongh Tessa Val (Resigned)
 De Klerk Johan Nico (Resigned)
 De Man Anko (Resigned)
 De Wet Hendrik Christoffel (Resigned)
 Dey Christopher Ian (Resigned)
 Dixon Lewis Alan (Resigned)
 Drew Llewellyn (Resigned)
 Dreyer Hugh Ross (Resigned)
 Du Plessis Johannes Christoffel (Resigned)
 Du Toit Tobias Petrus (Resigned)
 Du Toit Willem Joubert (Resigned)
 Fakie Shauket Allie (Resigned)
 Fanarof Basil (Resigned)
 Flaum John Mitchell (Resigned)
 Fourie Johannes (Resigned)
 Furman Leonard Charles (Resigned)
 Geel Suzanne (Resigned)
 Gelbart Meyer (Resigned)

Gemmel Keith Melville (Resigned)
 Gronsbell-Huntz Seth Wilfred (Resigned)
 Hampton Trevor John (Deceased)
 Harmsworth Colette Sue (Resigned)
 Hastie Trevor Alexander (Resigned)
 Haumann Paul Roux (Resigned)
 Haupt Phillip Karl (Resigned)
 Healy Graeme Frederick (Resigned)
 Henning Kathryn Edith (Resigned)
 Henwood Douglas William (Resigned)
 Hislop Raymond Scott (Resigned)
 Hoek Albert Christiaan Johan (Resigned)
 Hoole Adrian Hawksworth (Resigned)
 Howell Ulrich Michael Martin (Deceased)
 Jackson Alan John (Resigned)
 Jayes Stuart Samuel (Resigned)
 Johnson William Eric (Resigned)
 Joubert Andreaa (Resigned)
 Joubert Marthinus Andries (Resigned)
 Kaidos George Panagiotis (Resigned)
 Kalvari Aubrey Isaac (Resigned)
 Kamstra Peter Richard (Resigned)
 Katz William (Resigned)
 Kohler Richard Alan (Resigned)
 Kotze Hendrik Nicolaas (Resigned)
 Lack Woolf (Resigned)
 Lategan Marthinus Theunis (Resigned)
 Lemmer Johannes Jacobus Francois (Resigned)
 Levitt Stanley (Resigned)
 Ligthelm Anina (Resigned)
 Lorgat Haroon (Resigned)
 Lotter Berendina (Resigned)
 Lowe Barry Arthur (Resigned)
 Macdonald Graham Alastair (Resigned)
 Maddock Graham Allen (Resigned)
 Maher Kevin Charles Patrick (Resigned)
 Marsh Martin Graham (Resigned)
 Matthee Werner Johann (Resigned)
 Mattheus Stefanus Gerhardus (Resigned)
 Mayer Paul Clifford Percy (Resigned)
 Mazwane Mnikelo Moses (Resigned)
 Mc Creesh Cormac Garrett (Resigned)
 Mcelligott Matthew Richard Aherne

(Resigned)
 MCGough Ian Crawford (Resigned)
 MCGurk Patrick Neil (Resigned)
 McLaren Susanna Elizabeth Jacoba (Resigned)
 Meintjes Quentin (Resigned)
 Miller Reuben (Resigned)
 Naidu Krishni (Resigned)
 Nam Delphine Leong (Emigrated)
 Nel Isak Abraham (Resigned)
 Noorgat Mohamed (Resigned)
 Nyman Peter (Resigned)
 Oosthuizen Leon Albertus (Resigned)
 Parker William Devenish (Resigned)
 Perkel Jonah (Resigned)
 Perling Stephen Ian (Deceased)
 Petersen Barend (Resigned)
 Phelps Leonard Stephen (Resigned)
 Philip John Melvin (Resigned)
 Pieterse Izak Jacobus Du Plessis (Deceased)
 Pieterse Magdalena Johanna (Resigned)
 Pollard Daniel Brachya (Resigned)
 Potgieter Christoff Werner (Resigned)
 Potgieter Leon (Resigned)
 Pretorius Rehan (Resigned)
 Pretorius Stuart Michael (Resigned)
 Prior Colin Robert (Resigned)
 Pugh Donald Stanley (Resigned)
 Randall Alan (Resigned)
 Rice John Cromwell (Resigned)
 Rom Kim (Resigned)
 Rouessart Reginald Philip Roy (Resigned)
 Rubin Vivian Dudley (Resigned)
 Rubinstein Boris David (Resigned)
 Salomon Frank Selwyn (Resigned)
 Sandler Denis (Resigned)
 Schmarr-meisel Melita (Resigned)
 Scholtz Russel (Resigned)
 Sitabule Victor (Resigned)
 Sloane Michael Raymond (Resigned)
 Smit Raymond Anthony (Resigned)
 Smith Alwyn Voyle (Resigned)
 Smith Donald William (Resigned)

REGISTRY

CONTINUED

Stanford David Michael Hartley
(Resigned)

Stein Steven Ivan (Resigned)

Steyn Barend Lukas (Resigned)

Strachan Trevor John (Resigned)

Strydom Frederick Johannes (Resigned)

Strydom Marlize (Resigned)

Strydom Shaun (Resigned)

Surmany Albert Ivan (Resigned)

Swartz Nicholas Dirk (Resigned)

Thompson Jack Hatton (Resigned)

Timpany Dene (Resigned)

Tolson Michael Gow (Resigned)

Trollope John Henry (Resigned)

Van Buuren Barend Johannes (Resigned)

Van Collier Johannes Christoffel
(Resigned)

Van Der Merwe Jaco (Resigned)

Van Der Merwe Juan Gerard (Resigned)

Van Dyk Saartjie Amalia (Resigned)

Van Niekerk Denys Laubmeyer

(Resigned)

Van Niekerk Jacobus Johannes

(Resigned)

Van Schoor Lucinda (Resigned)

Venter Carlie (Resigned)

Volschenk Kobus (Resigned)

Wade Kenwyn Budd (Resigned)

Ward Peter Kenneth (Resigned)

Wartson Shaun Aubrey (Resigned)

Watson Larry Cecil (Resigned)

Weiner Izak (Deceased)

Wessels Gary Anthony (Resigned)

West Gordon George (Resigned)

Williams George (Resigned)

Wilson Elizabeth (Resigned)

Withers David Anthony Vaux (Resigned)

Wolpert Leonard Lazar (Resigned)

Zakuza Temba Stanley (Resigned)

IRBA INFORMATION SESSIONS

NATIONAL ROAD SHOW

Following on from the success of the first road show in May/June 2006, the CEO and the IRBA directors embarked on a second national road show from late July to mid-September 2007. A total of 17 venues around the country were visited over the 7 week period, and the sessions were attended by a total of 830 registered auditors, trainee accountants and representatives from the offices of the Auditor-General.

There was no charge for the sessions, which included handouts, breakfast or lunch and other refreshments. Attendees at the 3½ hour sessions were awarded CPD certificates for their attendance.

It was heartening to see the passion and commitment of RAs all over the country, some of whom drove long distances to get to the smaller venues and all of whom are united in their commitment and concern for the profession.

The feedback that RAs gave on their evaluation forms has given IRBA valuable insights into the issues that

need to be addressed, and will assist IRBA to make future presentations even better. The four main topics that RAs consider most important are:

- Reportable irregularities
- Practice review
- The sustainability of the profession
- The impact of the proposed corporate law reforms on the profession

If, for any reason, you were unable to attend one of the information sessions, you are welcome to request a copy of the handout material from IRBA's Communications Department:

Thabisile: tnzuke@irba.co.za
or Joanne: jjohnston@irba.co.za

Queries: **Joanne Johnston**

Manager: **Communications
and Publications**

Telephone: **(011) 622-8533**

Facsimile: **(086) 524-6131**

E-mail: **jjohnston@irba.co.za**



IRBA INFORMATION SESSIONS

CONTINUED



ETHICSA MEMBERSHIP

IRBA is proud to announce that it is now an organisational member of the Ethics Institute of South Africa (EthicsSA), with effect from August 2007. EthicsSA is an independent non-profit organisation whose mission it is to promote and advance ethical practices in South Africa – in the public and private sectors and in the professions. For more information on the organisation visit www.ethicsa.com



MEMBER OF THE
*Ethics Institute
of South Africa*

OBITUARY

MISS DOROTHY MAY ATHERSTONE, JUNE 2007

We were saddened to hear of the death of Miss Dorothy Atherstone who, at the time of her death, was the oldest female member of the South African accounting profession.

Miss Atherstone was born on 3 May 1914 and was registered with the Public

Accountants' and Auditors' Board in 1957. She retired from public practice in May 1979, having reached the age of 65. Miss Atherstone was granted Associate Life Membership of SAICA with effect from January 1980, as she had been a member for 25 consecutive years.

Our sincere condolences go to her family, friends and colleagues.

CONTACT INFORMATION

All correspondence to be addressed to:

The Editor
P O Box 751595, Garden View, 2047, Johannesburg

Docex 158, Johannesburg

E-mails to be addressed to: Bernard Peter Agulhas at bagulhas@irba.co.za
or Joanne Johnston at jjohnston@irba.co.za

Website: <http://www.irba.co.za>