irba news
INDEPENDENT REGULATORY BOARD FOR AUDITORS

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IN THIS ISSUE

MESSAGE FROM THE CEO

2010 is upon us. To be in line with everyone else, it was convenient to say that any project would be postponed to, or deadlines met by, 2010.

For the auditing profession, this is easier said than done. Unfortunately (or fortunately), our projects do not revolve around 2010. The last year has introduced standards and legislation that are, to some extent, hardly dependent on the sports events which will see the world focus all attention on South Africa.

Certainly the Companies Act 2008, and the Regulations issued pursuant thereto, will not only impact the auditing profession, but the country as a whole. Recognising the implications of the legislation, we have engaged with the Department of Trade and Industry (dti) since we realised the potential consequences of the corporate legislation. The IRBA submitted comment letters on the draft legislation and had several meetings with the drafters of the regulations to explain our concerns and provide possible solutions.

Neither the content nor implementation date of the Companies Act and draft Regulations pursuant thereto are final. We will continue to defend the IRBA's mandate to protect the public interest, and retain our international status as a world class regulator and standard setter. We are confident that our continuous engagement with the relevant structures will ensure a regulatory framework that is consistent, coherent and aligned.

Until such time as the Companies Act and Draft Regulations are promulgated and become effective, Registered Auditors must comply, inter alia, with the current Companies Act, 1973 (Act No. 61 of 1973) and the Auditing Profession Act, 2005 (Act No. 26 of 2005).

We have planned to finalise two major projects during the first half of 2010: The amendments to the Auditing Profession Act and the research on capping of auditor liability. We are very aware of the nexus between the corporate legislation and these projects, and will consider the interrelationships between the projects. Also aligned to these projects is the IRBA's commitment to attracting professionals and transformation of the profession. We embarked on several initiatives that will support delivering on our commitment and I will report on progress and further details in future issues of IRBA News.

On the international front, we will be participating in meetings and conferences which deal with issues around new auditing standards, and specifically the implementation of the Clarity Standards, challenges faced by regulators, and sharing ideas on inspections processes. We continue to engage with the Public Company Accounting Oversight Board (PCAOB) and European Commission (EC) to seek recognition of our inspections processes as sufficiently robust to rely on. This will hopefully alleviate the need for those regulators to perform additional reviews on auditors of companies listed on their securities exchanges. A substantial part of such reliance will depend on their perception of the independence of the IRBA from the auditing profession, and in this regard we have scheduled several meetings with the National Treasury to continue to discuss our funding model. Although we are cogniscent of the financial constraints on most bodies, we are equally aware of the importance of reliance and cooperation between international audit regulators.

The IRBA Code of Professional Conduct and Rules Regarding Improper Conduct were issued on exposure for public comment in November 2009 with a 3 month comment period. The Code is substantially in line with the IFAC Code of Professional Ethics, while accommodating circumstances peculiar to the South African environment. Multidisciplinary practices have been the subject of a lot of discussion and internationally, the International Organisation of Security Commissions (IOSCO) issued a consultation paper on non – professional ownership structures, which considers how such structures could alleviate the concerns around market concentration while recognising the risks around the loss of competence, independence and audit quality should the current restrictions on ownership structures be removed. Other interesting developments from regulators' perspectives include audit firms reporting in their financial statements on audit quality, transparency of firms auditing public interest entities and improved auditor communications in the auditor's report. We will monitor further developments in this regard.

South Africa presently chairs the International Forum of Independant Audit Regulators (IFIAR) Standards Coordinating Working Group, which considers projects such as the implementation of the Clarity Standards and the effectiveness of the IFAC Reforms. This provides an opportunity to monitor the effectiveness of the auditing standards as well as to comment on IFAC reforms which may impact the South African auditing profession.

SAICA has revised its training model and will be offering more than just the audit route to qualify as a Chartered Accountant. The IRBA needs to be responsive to changes in its environment and, accordingly, also needs to consider our own training model. A task force has been established to make recommendations to the Board regarding different training models for qualifying auditors.

The past year has seen some benefits from the good stakeholder relations with important role players such as the JSE Ltd, the BEE Unit at the dti and the banking fraternity. Several projects were successfully completed through continuous dialogue and constructive discussion between the various parties, which demonstrated that positive outcomes can be achieved when everyone works towards the same goals in the interest of the general public. We also welcome the provisions of the King III Report on Corporate Governance, and believe that the principles articulated therein will further encourage best practice in business.

Recognising that it is important not only to participate in, and drive the various projects, we

have put together a strategy to improve our communications with Registered Auditors and the public so that they can remain informed of progress on these projects. We are confident that by keeping the relevant parties apprised of the more important developments, we will have demonstrated our support of transparent regulation.

So 2010 is upon us. But that is merely a number. We will deal with this year as if it was any other year, and continue to do what is best for the public while supporting Registered Auditors who serve the public without fear or favour. Maybe it is necessary to recognise that the international sporting events will bring some challenges and risks of which regulators and auditors alike should be aware. But there will be little difference in the manner in which we respond to those challenges because we are tirelessly committed to the Profession.

Bernard Peter Agulhas
CEO
Telephone: *087 940 8797*
Facsimile: *087 940 8878*
E-mail: *executive@irba.co.za*

DEPARTMENTAL SECTIONS THAT FOLLOW COVER THE PERIOD JULY - DECEMBER 2009

EDUCATION, TRAINING AND PROFESSIONAL DEVELOPMENT

PUBLIC PRACTICE EXAMINATION 2009

RESULTS

The results for the 2009 Public Practice Examination will be released on Friday 26 February 2010. A more detailed report and results supplement will appear in the next issue of IRBA News.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

The reputation, relevance and value of the auditing profession depends on the ability of its registered auditors to continually meet the expectations of stakeholders and provide a service appropriate to the needs of the South African economy within the global context. The primary responsibility of the IRBA is to protect the public through regulation of the auditing profession. To this end, the IRBA must ensure that every Registered Auditor (RA) has the necessary professional competence at the point of registration to serve the public interest and the needs of the economy. Following from this obligation, the IRBA has a duty to ensure that all RAs engage in appropriate programmes of Continuing Professional Development (CPD) designed to maintain and develop the competence demonstrated at entry point to the profession.

The objectives of the CPD programme are to enable members of the profession to:

- Maintain and further develop professional competence so as to meet the ever increasing and new knowledge, skill and value demands of the profession as a response to knowledge expansion, technological advancement and the requirements of specialist areas.
- Meet stakeholder expectations by ensuring that they maintain and further develop the professional competence required to perform any particular engagement which is undertaken in order that clients may receive the advantage of competent professional service, based upon up-to-date developments in practice, legislation and techniques and other requirements of the profession.
- Meet their ethical obligations to maintain and further develop their professional competence at the level appropriate to the types of engagements and levels of responsibility which they undertake.

CONTINUED

Maintaining and developing professional competence requires an ability to continuously learn and adapt to change. Having demonstrated an appropriate degree of professional competence, RAs may be considered capable of self-directed learning as opposed to prescribed or legislated learning. Individuals take responsibility for satisfying their own learning needs to improve performance, to develop career aspirations or to enhance their current expertise within and beyond their present employ. Lifelong learning therefore assumes processes that enable individuals to identify their own learning requirements through reflection on personal experience and the analysis of initiatives undertaken to perform better and progress further in their careers.

The process of lifelong learning commences early, continuing with the education, training and assessment programmes that prepare an individual to enter the profession and continues on throughout an individual's career.

CPD is an extension of the learning processes that led to registration as an RA. The professional knowledge, skills and values gained and demonstrated at the point of registration continue to develop and are refined appropriately for the specific professional activities and responsibilities of the individual. For this reason, CPD programmes should afford RAs the necessary flexibility to choose from the vast array of possibilities; those relevant learning interventions most appropriate for their particular learning needs within a specific role, responsibility and context.

In order to provide the public with some assurance as to the nature and extent of CPD activities which RAs undertake, it is necessary that the IRBA prescribe minimum CPD requirements. Although the IRBA appreciates the self-directed nature of lifelong learning, acting in the public interest demands the prescription of the minimum nature and extent of CPD appropriate to the statutory auditor.

It should be emphasised that CPD does not provide any assurance that all RAs will deliver higher quality services at all times, nor does participation in or attendance at CPD programmes necessarily ensure that professional competence is maintained or further developed. However, despite these limitations, as the regulator charged with acting in the public interest, the IRBA must take appropriate measures to provide assurance to the public that all those engaged in public practice undertake appropriate CPD designed to maintain and develop professional competence.

(Please see the IRBA's CPD policy at www.irba.co.za)

Laine Katzin
Director: Education, Training & Professional Development
Telephone: 087 940 8791
Facsimile: 087 940 8875
E-mail: edutrain@irba.co.za

PLEASE NOTE THAT THE FIRST THREE YEAR REPORTING CYCLE ENDS ON 31 MARCH 2010. PLEASE ENSURE THAT YOUR CPD RECORDS ARE SUBMITTED TO THE IRBA BY 1 APRIL 2010.

The Education, Training and Professional Development Committee (EDCOM) of the IRBA is seeking nominations for individuals to serve on the EDCOM for a term of three years. If you are interested in or have experience in education, training or professional development of auditors and you would like to serve on the Committee please visit www.irba.co.za for a nomination form and more details.

STANDARDS

IRBA PROJECTS

JSE LISTING REQUIREMENTS

The revised JSE Limited Listing Requirements (LR) were published on 17 February 2010. Changes to sections relating to registered auditors accredited by the JSE have been incorporated in the Listing Requirements, following discussions between the IRBA and the JSE.

AUDITOR LIABILITY PROJECT

This project will continue during 2010 to support recommendations with regard to capping of auditor liability which will be made to the Board later in the year.

AMENDMENTS TO THE AUDITING PROFESSION ACT

The proposed amendments to the Auditing Profession Act are being finalised by legal advisors at present. These comprise primarily "housekeeping" amendments to facilitate the implementation of administrative requirements more effectively and efficiently.

ACCREDITATION OF AUDITORS TO PROVIDE B-BBEE RATING CERTIFICATES

A proposal for accreditation of registered auditors to provide the B-BBEE ratings certificates to their audit and other clients was submitted to the Department of Trade and Industry (the dti) in December 2009. The dti incorporated the proposal in its submission to the Chief Director and Deputy Director General (DDG) who support the proposal. We understand that the dti await Ministerial approval, expected during 2010, which will be communicated by the dti as soon as it is received. Consequently, Government Notice 810 relating to the validity of Rating Certificates published after 31 January 2010 by persons not yet accredited by SANAS has not been extended.

COMMITTEE FOR AUDITING STANDARDS (CFAS)

GLOBAL COMPETITIVENESS REPORT 2009 – 2010

The Global Competitiveness Report 2009 – 2010, produced by the World Economic Forum, was released in September 2009. South Africa is ranked no. 2 out of 133 countries for its "Strength of Auditing and Reporting Standards". This ranking assesses the strength of financial auditing and reporting standards regarding company financial performance. The full report is available at: www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm

ADOPTION, ISSUE AND PRESCRIBING OF INTERNATIONAL AUDITING PRONOUNCEMENTS

Board Notice 128 of 2009 was published in terms of the Auditing Profession Act No. 26 of 2005 ("the Act") in the Government Gazette No. 32615 on 9 October 2009, to formally adopt, issue and prescribe the International Engagement Standards issued by the International Auditing and Assurance Board (IAASB) of the International Federation of Accountants (IFAC) to be applied by registered auditors in South Africa. Board Notice 128 of 2009 and the *2008 and 2009 IAASB Handbooks* are available for download in .pdf format from the IRBA's website- www.irba.co.za at no charge. The handbooks are also available on CD, at no charge, on written request to IRBA's Communications Department: communications@irba.co.za.

Registered auditors are reminded that the additional controls required by the 2009 ClarityInternational Standard on Quality Control (ISQC) 1 *Quality Control* were due to be established by 15 December 2009.

CFAS STRATEGY FOR 2010 TO 2013

The CFAS Strategy Task Group met during October 2009 in order to propose and finalise a strategy for the 2010 to 2013 work programme for CFAS. This strategy aligns with the IRBA Strategy for 2010 to 2012 and the IAASB strategy and incorporates several additional projects specific to South Africa. CFAS plans to communicate its strategy to registered auditors early in 2010 and will invite comment thereon.

COMPANIES ACT, 2008 AND DRAFT REGULATIONS PURSUANT THERETO

The long awaited Government Notice 1663 of 2009 *"Rectification of the Companies Act, 2008 (Act No. 71 of 2008)"* (the "Act"); and Notice 1664 of 2009 *"Companies Act, 2008 (Act No. 71 of 2008) Companies draft Regulations pursuant thereto" (the "draft Regulations")* were published in Government Gazette No 32832 on 22 December 2009 for public comment. Government Gazette No 32832 containing the Notices and draft Regulations may be downloaded from the IRBA website at: www.irba.co.za.

Whilst supportive of the Department of Trade and Industry's initiatives to revise the corporate legislation in South Africa the IRBA has concerns regarding the far reaching implications of a number of the draft Regulations, and the due process followed by the dti in calling for comment on these simultaneously with comment on Rectifications to the Act. These concerns were expressed in IRBA's comments submitted on 22 January 2010. The comment letter may be downloaded from the IRBA's website at: www.irba.co.za. Registered auditors may also download the IRBA's *Comments on the Companies Act - Draft Regulations Issues* submitted to the Consumer and Corporate Regulation Division (the CCRD) drafting team in August 2009. These followed discussions with the CCRD drafting team during individual consultations, and at a workshop on 7 August 2009, attended by the Director: Standards and Professional Manager: Standards and other key stakeholders.

The Act and Regulations thereto have a significant impact on the economy, the general public and the auditing and other professions. The Rectifications may result in changes to the Act that potentially affect the draft Regulations and that are not known to the general public. In view of the importance of the Companies Act, 2008 and the Regulations to the

economy as a whole, registered auditors are urged to submit comments directly to the dti.

Amongst other matters, the draft Regulations provide for reviews of financial statements of small companies that meet certain thresholds, to be performed by professional accountants who are members in good standing of a member body of IFAC. The draft Regulations require such reviews to be performed in accordance with ISRE 2400 *Engagements to review financial statements* which standard is prescribed for use by registered auditors in South Africa. The IRBA views this regulation as being in conflict with the Auditing Profession Act that reserves such work to registered auditors and continues to make representations to the dti in this regard. A number of other draft regulations appear to contain errors and provisions that appear to be ultra vires the Act and are likely to be challenged by several constituencies.

Whilst this situation creates uncertainty for companies, close corporations and registered auditors, until such time as the Act, and draft Regulations pursuant thereto are promulgated and become effective, registered auditors must comply, inter alia, with the current Companies Act, 1973 (Act No. 61 of 1973) and the Auditing Profession Act, 2005 (Act No. 26 of 2005). Comments received will be considered by the Committee for Auditing Standards at its meeting on 17 February 2010 and by the Board Task Team preparing the IRBA comments to be submitted by 1 March 2010.

ACCESS TO AUDIT WORKING PAPERS: A GUIDE FOR REGISTERED AUDITORS

The Guide on Access to Audit Working Papers: A Guide for Registered Auditors (the Guide) was approved at the June 2009 CFAS meeting. Subsequent to this approval the impact on the Guide of the Clarified ISA 600 *"Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)"* that is effective for audits of group financial statements for financial periods beginning on or after 15 December 2009 necessitated further minor changes. The final changes to the Guide are to be considered at the February 2010 meeting of CFAS and the Guide will be issued thereafter.

CURRENT CFAS PROJECTS

The following projects are currently being undertaken by CFAS:

Implementation Monitoring and Impact Analysis Task Group: The IAASB is conducting an impact assessment relating to the *consistent and effective implementation* of the Clarity ISAs and ISQC 1 being implemented from 15 December 2009. CFAS completed and submitted the IAASB *Survey on the Implementation of the 2009 Clarity Standards* in South Africa to the IAASB in January 2010. The IAASB has also developed implementation guidance for auditors and will monitor the implementation issues in two stages during the period 2009 through to 2013 to determine whether the Clarity Standards improve audit quality and to identify requirements or application material that may require amendment in future.

A proposal for the revision of SAAPS 1 *Quality Control*, to align with the revised ISQC 1 International Standard on *Quality Control* has been approved by CFAS. It is envisaged that the revised SAAPS 1 will include examples of documentation templates.

A King III Report and Code of Conduct Task Group has been established to consider the implications of the King III Report and Code to identify those areas where implementation guidance for auditors may be developed. This task group will meet during 2010.

CFAS REPORTS STANDING COMMITTEE

REVISION OF SAAPS 2 AND SAAPS 3

The CFAS Reports Standing Committee met several times during the last quarter of 2009 to discuss and revise SAAPS 2 *Financial Reporting Frameworks and Audit Opinions* and SAAPS 3 *Illustrative Independent Auditors' Reports,* in order to align SAAPS 2 and 3 with the clarified ISAs. CFAS plans to issue the revised SAAPS 2 and updated illustrative reports in SAAPS 3 during the second quarter of 2010.

The revised SAAPS 2 will also deal with accounting frameworks applicable to public sector entities and government departments and SAAPS 3 will include illustrative audit reports required by the Auditor-General.

CFAS PUBLIC SECTOR STANDING COMMITTEE

CFAS has approved two project proposals submitted by the CFAS Public Sector Standing Committee (PSSC) for development of guidance for private sector registered auditors. These are: *Guidance on the audit of performance information* and *Guidance in the audit of financial statements in the public sector for private sector auditors involved in auditing in the public sector.* The Auditor-General will assist with resources in the development of the guidance which is intended to improve the quality of public sector audits. Work will commence on these projects during 2010.

REGULATED INDUSTRIES STANDING COMMITTEE

The Regulated Industries Standing Committee (RISC) continues to engage with many regulators in addressing requirements in statute and regulation for auditors to report on regulated industries.

RECENTLY COMPLETED PROJECTS INCLUDE:

- **Strate** – The revised Strate Guide Circular 04P/2009 (replacing Circular 03P/2009) – *Agreed Upon Procedures for Registered Auditors Reporting on Factual Findings in terms of the Central Securities Depository (CSD) Rules and the Securities Services Act (SSA)* was issued in October 2009. The guide can be downloaded from the IRBA website www.irba.co.za/index.php?option=com_content&task=view&id=95&Itemid=74

- **Retirement funds** – Board Notice 152 containing the section 15(4) Agreed Upon Procedures - *Factual Findings Report* was published by the Financial Services Board in Government Gazette 32729 on 20 November 2009.

- **Medical schemes** – minor changes to the ISA 800 and ISAE 3000 reports to the Medical Council for the 2009 financial year were agreed during January 2010 and may be downloaded from both the Medical Council website and the IRBA website. The directors of Standards and Practice Review respectively, participated in the Medical Schemes Workshops arranged by SAICA during December 2009 to present the implications of the Clarity ISAs for audits of Medical Schemes.

PROJECTS CURRENTLY IN PROGRESS INCLUDE:

- **Department of Trade and Industry** – Enterprise Investment Programme (EIP): Manufacturing Incentive Programme (MIP) and Tourism Support Programme (TSP). The task group met on several occasions with the dti to discuss the reporting requirements for grants awarded. Agreement regarding wording of an Agreed Upon Procedures Report is nearing completion and will be issued once approved by the dti and CFAS Reports Standing Committee.

- **Department of Trade and Industry** – Film and Television Production Incentives. The task group met to discuss reporting requirements. A number of accounting recognition and measurement issues arose that SAICA technical staff are advising on.

- *Attorneys' trust account assurance guide*. The Provincial Law Societies are presently working on a consolidated set of Rules for South Africa which will affect the detailed content of the guide. In the meanwhile the revised auditors' report agreed with the Provincial Law Societies in 2008 is to be used.

- **Home Loans and Mortgage Disclosure Act.** Discussions continue with the Office of Disclosure at the Department of Human Settlements, the South African Banking Association, bank auditors and compliance representatives from banks affected to resolve the reporting requirements on information submitted by Banks and others specified in the regulatory requirements.

Task Groups of RISC will work with SAICA's Technical Department and Project Directors in revising or withdrawing the following SAICA guides/circulars:

- Circular 2/2004 – The Auditor's Reporting Responsibilities in terms of Section 8.64 of the JSE Securities Exchange South Africa Listings.

- Circular 9/2005 – The Reporting Accountant's Reporting Responsibilities in Terms of Section 13 of the Listings Requirements of the JSE Limited.

- Guide to trading whilst factually insolvent. Revision of this Guide has been delayed pending publication of the Companies Act, 2008 Regulations relating to the Business Rescue sections in the Companies Act.

- Guide on *pro forma* financial information, the Revised Guide on profit forecasts, and the Guide on reporting on financial information contained in interim, preliminary, provisional and abridged reports.

- Department of Trade and Industry incentive programmes - Guidance for auditors and other accredited persons.

- Guidance for Auditors: Department of Trade and Industry - Strategic Industrial Projects Programme.

- Long Term Insurance Audit Guide and SASRIA.

IAASB PROJECTS

ASSURANCE REPORTS ON CONTROLS AT A SERVICE ORGANIZATION

The IAASB issued the new ISAE 3402 *Assurance Reports on Controls at a Service Organization* in December 2009. ISAE 3402 is effective for service auditors' assurance reports covering periods ending on or after 15 June 2011. CFAS will consider ISAE 3402 at its meeting on 17 February 2010 for recommendation to the Board for adoption and prescribing for use by registered auditors. The issue of ISAE 3402 is welcomed as it will provide guidance for audits of retirement funds, medical schemes and other entities that make extensive use of service organisations. Auditors are advised to gain a working knowledge of ISAE 3402 in order to communicate the implications to their audit clients.

REVISION OF ISRE 2400 AND ISRS 4410

The IAASB's project to revise International Standard on Review Engagements (ISRE) 2400 *Engagements to Review Financial Statements* and International Standard on Related Services (ISRS) 4410 *Engagements to Compile Financial Statements* is proceeding. The revised standards are expected to be issued by the IAASB in 2011.

ASSURANCE ENGAGEMENTS TO REPORT ON PRO FORMA FINANCIAL INFORMATION IN PROSPECTUSES

The IAASB considered an initial draft of the proposed International Standard on Assurance Engagements (ISAE) 3420 *Assurance Reports on the Proper Compilation of Pro Forma Financial Information Included in Prospectuses* at its December 2009 meeting. Topics addressed included: whether profit forecasts should be included within the scope of the ISAE; meaning of the term "properly compiled"; reporting on whether underlying financial information has been audited; work effort regarding unadjusted financial information; and modified opinions. The IAASB raised a number of queries that were referred back to the task group for consideration. A revised proposed ISAE 3420 will be presented for approval as an exposure draft at the IAASB's March 2010 meeting. The IRBA is participating in the development of this new ISAE as a correspondent member of the IAASB Task Group.

USING THE WORK OF INTERNAL AUDITORS

The IAASB discussed issues relating to the revision of ISA 610 *Using the Work of Internal Auditors* at its September 2009 meeting. Topics addressed included: definition of internal audit function; determining the extent of use of internal audit work; and provision of direct assistance by internal auditors to the external auditor on the external audit. The IAASB will consider a first draft of the proposed revised ISA 610 at its March 2010 meeting. The IRBA will review the revised draft ISA 610 once it has been exposed for comment.

AUDITING COMPLEX FINANCIAL INSTRUMENTS

The IAASB issued a consultation paper *Auditing Complex Financial Instruments* in October 2009. The purpose of this consultation paper was to seek views on a number of matters that required consideration in relation to the IAASB's plans to develop guidance relating to auditing complex financial instruments by revising its extant International Auditing Practice Statement (IAPS) 1012, *"Auditing Derivative Financial Instruments."* Comments were requested by 15 January 2010. The consultation paper is available for downloading at www.ifac.org/IAASB/ExposureDrafts.php.

ASSURANCE ON A GREENHOUSE GAS STATEMENT

The IAASB discussed issues relating to the development of proposed ISAE 3410 *Assurance on a Greenhouse Gas Statement* at its September 2009 meeting. Aspects addressed included: the extent of requirements that should be adapted from the ISAs; competency, quality assurance, and ethical requirements in performing an engagement under the ISAE; and reporting.

The IAASB determined that further public consultation on key issues was needed before considering an exposure draft and issued a consultation paper in October 2009. The purpose of this consultation paper was to seek views from practitioners and other stakeholders in relation to the IAASB's project to develop ISAE 3410 on *Assurance on a Greenhouse Gas (GHG) Statement.* Comments were requested by 19 February 2010. The consultation paper is available for downloading at www.ifac.org/IAASB/ExposureDrafts.php. A CFAS Task Group dealing with sustainability matters has considered the Consultation Paper and submitted comments thereon.

XBRL

At its September 2009 meeting, the IAASB considered issues relating to auditor association when data prepared using eXtensible Business Reporting Language (XBRL) is filed with audited financial statements, and whether such data falls within the scope of "other information" as described in extant ISA 720 *Other Information in Documents Containing Audited Financial Statements.* The IAASB issued a staff communication on the matter in January 2010. The IRBA will monitor developments in this area and consider whether guidance on XBRL or other technological issues will be required.

ETHICS

The International Ethics Standards Board for Accountants (IESBA) published the *Revised IFAC Code of Ethics for Professional Accountants* in July 2009, with an effective date of January 2011. The CFAE has received copyright permission to adopt Parts A and B and the Definitions in the Revised IFAC Code with further additions to accommodate specific requirements for registered auditors in South Africa.

The Committee for Auditor Ethics (CFAE) Task Group has completed its work on the Proposed *Rules regarding Improper Conduct and Proposed Code of Professional Conduct* approved by the Board at its meeting on 29 October 2009 for issue as an exposure draft. The Exposure Draft was published as Board Notice 157 in Government Gazette No 32742 on 27 November 2009 for public comment and incorporates an *Explanatory Memorandum, Rules regarding Improper Conduct and the Code of Professional Conduct.*

Comments are requested by **31 March 2010.** Comments received will be considered by the CFAE and it is expected that the new *Rules regarding Improper Conduct* and *Code of Professional Conduct* will then be recommended to the Board for approval and issue mid 2010.

Sandy van Esch
Director: Standards
Telephone: 087 940 8871
Facsimile: 086 575 6535
E-mail: svanesch@irba.co.za

LEGAL

QUARTERLY REPORT FROM THE DIRECTOR: LEGAL FOR THE PERIOD 1 JULY 2009 TO 30 SEPTEMBER 2009

INVESTIGATING COMMITTEE

The Investigating Committee met twice during this period. Complaints were withdrawn in five matters where the committee did not consider it necessary to pursue them.

The remainder of the matters which the committee considered were forwarded to the Disciplinary Advisory Committee with recommendations.

In addition, seven matters were resolved with the assistance of the directorate, prior to referral to the Committee, and the complaints were withdrawn.

DISCIPLINARY ADVISORY COMMITTEE

The Disciplinary Advisory Committee met twice during this period and disposed of 16 matters, as follows.

Decisions not to charge

- one matter in terms of Disciplinary Rule 3.5.1.1 (the respondent is not guilty of unprofessional conduct; this includes the situation where the conduct in question might be proved but even if so, it does not constitute unprofessional conduct
- six matters in terms of Disciplinary Rule 3.5.1.2 (the respondent having given a reasonable explanation for the conduct)
- three matters in terms of Disciplinary Rule 3.5.1.4 (there being no reasonable prospect of proving the respondent guilty of the conduct in question)

Decision to charge and matter finalised by consent

Six practitioners were fined.

- one matter related to poor audit work (R20,000, of which R10,000 was suspended on conditions, as well as a contribution to costs in the sum of R25,000)
- five matters arose out of practice review -

2nd cycle 2nd review:
- two practitioners were fined R40,000 of which R20,000 was suspended on conditions

2nd cycle 3rd review:
- one practitioner was fined R40,000 of which R20,000 was suspended on conditions;
- two practitioners were fined R30,000 of which R15,000 was suspended on conditions.

DISCIPLINARY COMMITTEE

The Disciplinary Committee met twice during this period. One matter had been postponed to 20 July 2009, and was finalised on that date but as the respondent indicated that he intends to 'review' the finding, it is not reported here. One matter was finalised.

FIRST MATTER

On 13 and 14 July 2009 the committee heard the case against Ms EN Oelofse. She was neither present nor represented. Due to the public interest in the matter, both English and Afrikaans summaries were prepared for the local press, and these are reproduced verbatim hereunder. The facts appear from the summaries.

MEDIA SUMMARY CONCERNING THE FINDINGS OF THE DISCIPLINARY COMMITTEE OF THE INDEPENDENT REGULATORY BOARD FOR AUDITORS REGARDING THE CONDUCT OF MS EN OELOFSE

Ms EN Oelofse was previously a Registered Auditor practising in Bloemfontein. The Independent Regulatory Board for Auditors (IRBA) received numerous complaints regarding the conduct of Ms Oelofse in her professional capacity. The complaints centred around grants made available by the Department of Trade and Industry (DTI) under its small and medium enterprises development project targeting the tourism industry.

The IRBA conducted an in-depth investigation. While the investigation was under way, Ms Oelofse cancelled her registration with the IRBA. The investigation nonetheless proceeded because the relevant legislation allows this.

The investigation culminated on 13 and 14 July 2009 in disciplinary proceedings against Ms Oelofse before the disciplinary committee of the IRBA. The disciplinary committee is chaired by Mr Willem van der Linde SC of the Johannesburg Bar and includes professional persons, the majority of whom come from outside of the auditing profession. Fourteen charges of improper conduct were brought against Ms Oelofse in terms of the relevant disciplinary rules. They included charges of dishonesty in the performance of her work as an auditor, as well as discreditable, dishonourable and unprofessional conduct in various respects.

The committee heard the charges in Bloemfontein. Mr Herman Truter of the DTI gave evidence about the incentive scheme for the tourism industry and about his own investigations into applications submitted to the scheme by Ms Oelofse, purportedly on behalf of her clients. His investigations revealed widespread abuse of the scheme in the applications involved. This included applications in respect of non-existent tourism developments, developments which manifestly did not qualify and the submission of applications which were fraudulently generated through the use of templates with standardised information.

A number of members of the medical profession in and around Bloemfontein testified about presentations given to the profession by Ms Oelofse encouraging them to submit applications for the grants and to become involved in property transactions on the basis of the grants in circumstances where the grants were, it later turned out, manifestly not payable. She encouraged them to engage in the dishonest practice of backdating applications. They also complained that after receiving payment in advance of her fees for the services related to the grants she often did not perform the services and made herself unavailable to them when they complained. A member of the public testified to her having advised him to deposit savings into an account to create the false impression that he had achieved the turnover required for the grant to be payable. Another testified to her signature having been forged on documentation submitted to the DTI in relation to an application for a grant and a claim for payment under the grant, which she had never requested.

Ms Oelofse was found guilty on seven counts of dishonesty and five counts of discreditable conduct. She was found not guilty on one of the charges of dishonesty. One charge of discreditable conduct could not be proceeded with as it was based on hearsay evidence. She was fined a total of R600,000. The fines were suspended, not as a mark of leniency, but to serve as a precondition to registration should she ever in future seek to re-register as an auditor.

In sentencing her, the Committee took into account that her conduct involved schemes aimed at misappropriation of public funds, her abuse of the trust placed in her by her clients, the dishonour which this tended to bring upon the profession, the fact that dishonesty and misrepresentation are inimical to the core function of an auditor and the corrupt and corrupting nature of her conduct.

The Committee recommended that the matter be brought to the attention of the relevant Director of Public Prosecution for possible criminal prosecution.
Monday 20 July 2009.

MEDIA VERKLARING: BEVINDINGS VAN DIE DISSIPLINÊRE KOMITEE VAN DIE ONAFHANKLIKE OUDITEURSRAAD AANGAANDE ME EN OELOFSE

Me EN Oelofse was voorheen 'n rekenmeester en ouditeur wat ingevolge die Wet op Openbare Rekenmeesters en Ouditeurs 80 van 1991 geregistreer was. Sy was derhalwe ook geag as sulks geregistreerd te wees ingevolge die Ouditeurswet 26 van 2005. Die Onafhanklike Ouditeursraad het verskeie klagtes ontvang omtrent haar professionele optrede. Die klagtes het verband gehou met aansoeke om toerisme-subsidies namens kliënte gerig aan Die Departement van Handel en Nywerheid. Die Ouditeursraad het 'n indiepte-ondersoek geloods. Tydens die ondersoek het Me Oelofse haar registrasie as ouditeur self gekanselleer. Die ondersoek het nietemin voortgegaan.

Die ondersoek het uitgeloop op 'n dissiplinêre verhoor ingevolge die Wet. Dit het in Bloemfontein plaasgevind gedurende die week van 13 Julie 2009. Die dissiplinêre komitee bestaan uit professionele persone, die meerderheid waarvan nie lede van die Ouditeursprofessie is nie. Die voorsitter is Adv. Willem van der Linde, SC van die Johannesburg Balie. Me Olofse het nie opgedaag nie.

Viertien klagtes van onbehoorlike gedrag in een of ander vorm is teen Me Oelofse ingebring. Dit het klagtes wat oneerlikheid behels ingesluit, en ook van oneerbare gedrag.

Verskeie getuies het getuienis voor die dissiplinêre komitee afgelê. Een van hulle was Mnr Herman Truter van die Departement. Hy het getuienis afgelê met betrekking tot die Aansporingskema wat die Departement geloods het om plaaslike klein- en mediumgrootte sakeondernemings in die toerismebedryf te ondersteun. Sy ondersoek na Me Oelofse se optrede het wydverspreide onreëlmatighede blootgelê. Dit het hoofsaaklik bestaan uit aansoeke om toerisme-subsidies wat deur Me Oelofse of haar praktyk namens kliënte gedoen is, sonder dat die onderliggende sakeonderneming ooit bestaan het, of in elk geval ooit sou kwalifiseer vir die toerisme-subsidie. Me Oelofse en haar praktyk het 'n fooi verdien in verband met hierdie aansoeke.

'n Aantal lede van die mediese professie in en rondom Bloemfontein het ook getuig. Hulle het vertel van die voorstellings wat Me Oelofse en haar praktyk aan hulle gemaak het om hulle te oorreed om eiendom te koop en dan aansoeke in te dien sodat die toerisme-subsidies wat hulle in die toekoms van die Departement sou ontvang, dan aangewend kon word om vir die eiendomme te betaal. Heelparty van die aansoeke was egter gebasseer op standaard-inligting wat vooraf reeds in die vorms ingevul was, sonder inagneming van die betrokke feite van elke aansoek. In meeste gevalle was die aansoeke ook teruggedateer. Die getuienis het ook aangetoon dat, in sommige gevalle, kliënte se handtekeninge vervals is.

Mettertyd, soos wat die aansoeke gedraai het, het Me Oelofse bloot van die toneel af verdwyn, en haar voormalige kliënte kon haar nie in die hande kry nie. Sy het nie gereaggeer op oproepe nie.

Me Oelofse is skuldig bevind aan sewe klagtes van onbehoorlike gedrag wat oneerlikheid behels, en vyf klagtes van onbehoorlike gedrag wat onprofessionêle gedrag behels.

Met die oplegging van 'n vonnis het die komitee inaggeneem dat Me Oelofse se gedrag openbare fondse op die spel geplaas het; dat dit wanvoorstelling op 'n breë front behels het, en dat heelparty lede van die publiek betrokke was. Die komitee het ook as n verswarende feit inaggeneem dat Me Oelofse die klerke in haar kantoor betrek het by haar onwettige optrede.

Haar vonnis het ingesluit dat dit verklaar word dat indien sy nie self haar registrasie gekanselleer het nie, sou die dissiplinêre komitee dit in elk geval gelas het. Boonop is sy 'n boete van R600,000 opgelê, en dit is gelas dat indien sy in die toekoms weer sou aansoek doen om registrasie as 'n ouditeur, sy eers die boete sou moes betaal.

Die komitee het aanbeveel dat die aangeleentheid onder die aandag van die Direkteur van Openbare Vervolging gebring word.
Dinsdag 21 Julie 2009

SECOND MATTER

On 20 July 2009 the committee finalised the hearing of the part heard case against a practitioner. The matter had been postponed to this date due to his non attendance at a previously set down hearing, as a result of ill health. He was neither present nor represented. As the practitioner has indicated that he intends 'reviewing' the matter, it is not reported on here.

QUARTERLY REPORT FROM THE DIRECTOR: LEGAL FOR THE PERIOD 1 OCTOBER 2009 TO 31 DECEMBER 2009

INVESTIGATING COMMITTEE

The Investigating Committee met twice during this period.

One complaint was withdrawn in circumstances where the committee did not consider it necessary to pursue the complaint. Five matters were resolved with the assistance of the directorate, prior to referral to the Committee, and the complaints were withdrawn.

The remainder of the matters which the committee considered were forwarded to the Disciplinary Advisory Committee with recommendations.

DISCIPLINARY ADVISORY COMMITTEE

The Disciplinary Advisory Committee met twice during this period and disposed of 18 matters, as follows.

Decisions not to charge

- two matters in terms of Disciplinary Rule 3.5.1.1 (the respondent is not guilty of unprofessional conduct; this includes the situation where the conduct in question might be proved but even if proved does not constitute unprofessional conduct)
- six matters in terms of Disciplinary Rule 3.5.1.2 (the respondent having given a reasonable explanation for the conduct)
- three matters in terms of Disciplinary Rule 3.5.1.4 (there being no reasonable prospect of proving the respondent guilty of the conduct asserted)
- one matter in terms of Disciplinary Rule 3.5.1.5 (in all the circumstances it is not appropriate to charge the practitioner with unprofessional conduct).

Decision to charge and matter finalised by consent

Six practitioners were fined.

- one matter related to conduct as a director of a company (R50,000)
- one matter related to negligence (R20,000 of which R10,000 was suspended on conditions)
- one matter related to a JSE referral (R10,000)
- one matter related to a Law Society trust account (R10,000 of which R5,000 was suspended on conditions)
- two matters arose out of practice review-

  refusal to co-operate in the review process: one practitioner was fined R40,000 of which R20,000 was suspended on conditions

  2nd cycle 3rd review: one practitioner was fined R50,000 of which R20,000 was suspended on conditions;

DISCIPLINARY COMMITTEE

The Disciplinary Committee met once during this period, and the matter was finalised.

In addition I am able to report on two matters heard previously where the findings were confirmed by the Board during this quarter.

FIRST MATTER

On 4 February 2009 the committee heard the case against Mr Preller of the firm J H Preller. He was present and unrepresented. The matter arose out of his fourth review in the second cycle. There were two charges against him as follows:

THE CHARGES

The first charge (the trading company's financial statements)
The respondent was found guilty of improper conduct within the meaning of rule 2.1.5 of the old disciplinary rules in that, without reasonable

cause or excuse, he failed to perform any work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the board may reasonably expected, or he failed to perform such work or duties at all, as set out below.

Facts giving rise to the first charge
In respect of his audit of the trading company's financial statements the respondent failed to keep audit working papers and/or he failed to obtain audit evidence, alternatively he failed to keep adequate audit working papers and/or he failed to obtain adequate audit evidence, and/or he failed to comply with generally accepted auditing standards, in respect of [19 instances which were listed]:

The second charge (the property company financial statements)
The respondent was found guilty of improper conduct within the meaning of rule 2.1.5 of the old disciplinary rules in that, without reasonable cause or excuse, he failed to perform any work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the board may reasonably expected, or he failed to perform such work or duties at all as set out below.

Facts giving rise to the second charge
In respect of his audit of the property company financial statements the respondent failed to keep audit working papers and/or he failed to obtain audit evidence, alternatively he failed to keep adequate audit working papers and/or he failed to obtain adequate audit evidence, and/or he failed to comply with generally accepted auditing standards, in respect of [13 instances which were listed]:

The finding and sentence of the committee were delivered by the chairman, Adv WHG van der Linde SC.

FINDING

We found Mr Preller guilty of the two charges of improper conduct set out in the charge sheet. Those charges were that Mr Preller was guilty of improper conduct within the meaning of Rule 2.1.5 of the old disciplinary rules in that, without reasonable cause or excuse, he failed to perform any work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform such work or duties at all. The charges were one each relating to two different companies. They were taken together for purposes of sentencing.

We then heard argument in mitigation from Mr Preller. The *pro forma* complainant presented the evidence of Ms O'Connor and also made submissions. We deliberated and thereafter imposed a sanction. In view of the lateness of the hour, we intimated that our reasons would follow later. These are those reasons.

SENTENCE

The sanction we imposed was the following:

1. The registration of Mr Preller is cancelled and his name is removed from the register referred to in section 6 of the Auditing Profession Act, 2006 of 2005, and he is prohibited from re-applying for registration before 4 February 2018.
2. The order in paragraph 1 above is suspended until 4 February 2018 for as long as Mr Preller undertakes not to perform the attest function, signs an affidavit to that effect annually, and in addition delivers it to the IRBA annually on or before a date determined by the IRBA.
3. The reference to "attest function" in the previous paragraph is a reference to the following services:

   "(a) the examination, in accordance with Generally Accepted Auditing Standards, or any other applicable auditing standards, of financial statements with the objective of expressing an opinion as to their fairness and as to their compliance with the requirements of applicable statutes.

   (b) The audit of other reports and representations of a financial nature."
4. Mr Preller is directed to contribute to the costs of these proceedings in an amount of R20,000.00.
5. Publication of the facts of the case, the judgment, the name of the firm concerned and that of Mr Preller is to take place in IRBA News.

From Mr Preller's submissions in mitigation it appeared that he was 61 years old. He was sequestrated in 1992 and thereafter suspended by the Board for a year. SAICA suspended him for ten years. In 1998 he underwent an undisclosed personal tragedy. After his third practice review in about 2003/2004, a senior clerk abused his facilities and stole about 30% of his clients. That was his second financial blow.

He explained that his third ex-wife, with whom he lives, has been without income for 1½ years. He explained that he was on a low, financially speaking, and that he could not retire early. He explained that he needed to be able to work and he requested that the Committee suspend any sentence to be

imposed. Alternatively, he requested that the Committee postpone any sentence which it might impose until June 2010 when he expected that amending legislation would make it possible for him to carry on practising in his current practice without having to be a registered auditor.

He said that after the practice reviews through which he had been, he had set up his audit working paper requirements properly. He explained that his disposable income was between R15,000 and R18,000 per month. He drew attention, too, to a medical problem that was still beleaguering him.

Ms O'Connor for the *pro forma* prosecutor testified to Mr Preller's previous convictions. On 19 August 1992 a twofold process occurred. First, the Disciplinary Committee considered the fact of Mr Preller's sequestration but recommended that his registration not be cancelled. Second, the Disciplinary Committee conducted a disciplinary enquiry pursuant to Mr Preller having been found guilty of illicit diamond trading. Mr Preller was found guilty of improper conduct and was given a one year suspension, suspended for three years. He was directed also to make a contribution of R6,000 towards the costs of the proceedings.

On 4 November 1993 a disciplinary proceeding took place to enquire into the failure of Mr Preller to make the R6,000 contribution towards costs. He was found guilty and suspended for one year with effect from 1 January 1994. This suspension was published in *Maneo* and in Accountancy SA.

On 19 July 1996 Mr Preller underwent his first practice review. Six months later he underwent a re - review.

On 29 September 1998 a second review in the first review cycle was conducted. The results were referred to the investigating committee. Pursuant thereto a consent order was made in terms of which Mr Preller was fined R15,000, suspended for three years, on condition that he was not found guilty of an offence arising out of a practice review.

On 25 August 2000 the third review in the first cycle took place. The results were referred to the Investigating Committee. This committee referred it to the Disciplinary Committee and a hearing was held on 30 October 2002. He was found guilty of a contravention of old disciplinary rule 2.1.5. The sentence was that his name be removed from the register of accountants and auditors and he was prohibited from re - applying to register as an accountant/auditor subject to certain conditions. These included that he was permitted to re-apply after the expiry of three years provided a satisfactory report by the Practice Review Department supported such an application.

Despite the fact that Mr Preller was not entitled to practice, Practice Review had to produce a report. It resolved to test Mr Preller by having him review a set of working papers. He passed that test and re - applied for registration; this was granted on 9 March 2006.

Seven months later on 19 October 2006 his practice was reviewed again. This was his fourth review and took place in, and on the basis of the criteria for, the second review cycle. The result of that fourth review is the charges of improper conduct now before this Committee.

The *pro forma* complainant submitted that Mr Preller's personal circumstances ought not to have any impact on the case and that his record shows his total disregard for the review process. Despite having had an opportunity to beef up the standard of his audits, there has not been any improvement. The *pro forma* complainant submitted that Mr Preller simply did not care. His failure to keep audit evidence went to the root of the attest function, according to the submission. Since only a small percentage of review cases ultimately land up before the Disciplinary Committee, and since there are various opportunities to improve the standard of an audit, the transgressions concerned must have been serious.

The *pro forma* complainant pointed out that Mr Preller had already had his right to practice suspended but this did not have any meaningful result. He asked rhetorically, *"what more must one do?"*

In reply Mr Preller drew attention to the fact that there was no evidence to show that there had not been any improvement and he submitted that in fact there has been improvement in his audit work. He pointed out that there was no evidence to suggest that his conduct had in any way prejudiced the public and said that he was highly regarded in the community in which he practised. He explained that there were a number of companies for which he did audits, as well as trusts and the trust accounts of two attorneys firms. He said that if his registration were cancelled, this would impact severely on the work that he did.

He explained that he had qualified way back in 1977. From a personal point of view, he liked to become fully involved in his client, that is to say, to perform the secretarial work, prepare the financial statements, and thereafter to audit those financial statements.

In considering an appropriate sanction we took account of Mr Preller's personal circumstances. It is clear that his personal life has run along a rocky path. We think that it is probable that this would have had an impact on his professional life and to that extent his misconduct ought to be regarded with less moral opprobrium.

Against him there are two major factors. The first is that the facts substantiating the charges of which we have found Mr Preller guilty illustrate that (although we have not seen the actual audit evidence) the two audits concerned were performed with little if any regard to the requirements of ISA230. We indicated, in the reasons we gave for our judgment, the extent to which

the retention of audit evidence fell short of the standard. It follows that we approach the question of the appropriate sanction from the point of view that the misconduct concerned was serious.

The second major factor which counts against Mr Preller is that he has, to date, not passed a single practice review. It is true that the subsequent reviews exact a higher standard of compliance from the practitioner than do the earlier ones; but still, one would have expected that a registered auditor would have taken to heart the failure of the first practice review, and would have gone out of his way to avoid a recurrence.

It is difficult to reject the *pro forma* complainant's submission that Mr Preller, so far as practice reviews are concerned, appears not to care at all.

Against these factors counting against Mr Preller, there is a factor which counts in his favour. It is that there is no evidence that the quality of the verification work done in the course of his audits, per se, is suspect (although his failure to retain audit evidence prevents verification of this). There was no evidence that anyone has been prejudiced by any of his audits, despite the fact that Mr Preller has been practising for many years.

In the result, the impression we have of Mr Preller is that he has not been keen to grasp the new generation of auditing standards concerning the retention of audit evidence. Nor do we think he is likely soon to embrace these standards, if at all. On the other hand, he is plainly an intelligent and honest man, if a maverick, who is still able in the final years of his professional life to make a meaningful contribution not only to the community within which he lives and works, but also to himself and to those who depend on him.

In our view, it would be disproportionate to prevent him from rendering any professional services at all, when the demonstrated remissness concerns only the attest function.

The *"public practice"* of a *"registered auditor"* under the Auditing Profession Act 26 of 2005 is defined as *"the practice of a registered auditor who places professional services at the disposal of the public for reward."* The concept of *"professional services"* is not defined in the Act. It is therefore appropriate to consider what professional services are, as a fact, placed at the disposal of the public for reward by registered auditors.

The Code of Professional Conduct as contained in the Manual of Information: Guidelines for Registered Accountants and Auditors which was issued by the Board as of the commencement date of the Act (1 April 2006) is deemed to have been prescribed by the IRBA in terms of Section 59(8)(c). The code sets out a comprehensive description of the work performed in the profession. This is the following:

> "'Professional work, professional services and professional business' are regarded as relating to the following:
>
> 2.12.1 *<u>The Attest Function (audit services)</u>*
>
> *(a) The examination, in accordance with Generally Accepted Auditing Standards, of financial statements with the objective of expressing an opinion as to their fairness and as to their compliance with the requirements of applicable statutes.*
>
> *(b) The audit of other reports and representations of a financial nature.*
>
> 2.12.2 *<u>The Financial Reporting Function (accounting services)</u>*
>
> *(a) External financial reports: the preparation of financial statements in accordance with Generally Accepted Accounting Practice and applicable statutes and the interpretation of those financial statements.*
>
> *(b) Internal financial statements and reports: the design and operation of internal accounting systems to provide management with information which will enable it to plan, monitor and control its business.*
>
> 2.12.3 *<u>The advising function (advisory and fiduciary services)</u>*
>
> *(a) Taxation services: the interpretation and application of revenue laws and procedures and of tax planning.*
>
> *(b) Management consulting services: the provision of consulting services to management of enterprises. These services include advisory services relating to planning, control, cost accounting, financial management and reporting, data processing and related systems.*

(c) *Other services: these services include investigations, valuations, secretarial services, trusteeships, the planning and administration of estates, judicial management and liquidation and insolvency work."*

A person who is a *"Registered Auditor"* in terms of the Act is therefore a person who places these professional services, either all of them or some of them, at the disposal of the public for reward. But a *"Registered Auditor"* is not obliged to place all of these services at the disposal of the public for reward. A person who does not place the attest function at the disposal of the public for reward, is still a *"Registered Auditor"* for the purposes of the Act. And the practice of the IRBA recognises this fact. There are a number of Registered Auditors who do not engage in the attest function and who confirm this on affidavit on an annual basis to the IRBA.

The advantage of an order which prevents Mr Preller from performing the attest function, but permits him to continue to perform the other professional services, is that he remains subject to the regulatory framework of the IRBA. If his registration is cancelled in its entirety, then he will not be subject to any control whatsoever.

In the result in our view the appropriate sanction would be one whereby Mr Preller is prevented from performing the attest function, at least for a significant period of time; but is not prevented from performing the other professional services that are performed by a *"Registered Auditor"*. In the result we made the order to which I referred at the outset of these reasons.

SECOND MATTER

On 20 July 2009 the committee finalised the hearing of the part heard case against Mr Meshach Mighty Abakah-Gyenin of the firm Abakah & Co. The matter had been postponed to this date due to his non attendance at a previously set down hearing, as a result of ill health. He was neither present nor represented.

Written reasons for the committee's findings were delivered by the Chairman Adv WHG van der Linde SC as follows, and the charges appear from the finding:

INTRODUCTION

The respondent is Mr Meshach Mighty Abakah-Gyenin, an accountant and auditor registered under the previous Public Accountants' and Auditors' Act 8 of 1991, and thereafter registered under the repealing Act, the Auditing Profession Act 26 of 2005. The latter Act came into operation on 1 April 2006.

At all times relevant to the charges pressed against the respondent, he acted in the capacity of auditor to practising attorneys [C & C], [ANM & Co], [B & Associates], [N Attorneys] and [SCV & Co]. The respondent was also the auditor of a concern known as [College]. There are ten charges of improper conduct against the respondent. The first two charges arise from a review carried out by the practice review department of the IRBA on 26 April 2006 of the attest function files of the respondent in respect of attorneys [C & C], and in respect of [College].

The third, fifth, seventh and ninth charges arise from the reports submitted by the respondent to the Cape Law Society in terms of Rule 13.20.1 of the rules of that Society in respect of the other firms of attorneys mentioned above. The fourth, sixth, eighth and tenth charges arise from the alleged failure on the part of the respondent in each instance to deal appropriately within a reasonable time with correspondence or other communications from the IRBA, or from any other person, which requires a reply or other response, as envisaged in old disciplinary rule 2.1.14. The *"other person"* referred to in each instance is the Cape Law Society.

The proceedings commenced on 10 November 2008. The respondent was not represented and conducted his own defence. The matter was not completed on that date, and so was postponed to Monday, 16 March 2009 at 08h30. It did however not proceed on that date, because the respondent did not attend, and it was postponed to Monday, 20 July 2009 at 08h30, in circumstances that appear more fully from the record of the proceedings of that date, but which are not relevant now.

The respondent was not present at the commencement of the proceedings on 20 July 2009 and after a 30 minute adjournment, the *pro forma* prosecutor, Mr C Adendorff, proved that there had been personal service on the respondent of a notification of the continuance of the disciplinary hearing on 20 July 2009 at 08h30. Also, a transcript of the proceedings of 16 March 2009 was also served on the respondent. The committee ruled in terms of new disciplinary rule 6.3.1 that the hearing ought to proceed in the respondent's absence.

It should be stressed at the outset that a subpoena was issued on 19 September 2008 and served on the respondent's office on 1 October 2008 in terms of which the respondent was requested to produce at the hearing all his audit working paper files, time sheets, documents, records, correspondence, financial records and other files pertaining to his work done in respect of the five attorneys firms, as well as his work done in respect of the audit for the year ended 31 December 2004 of [College]. The respondent did not at any stage of the proceedings produce any of the documents listed in the subpoena.

THE CHARGES

The first charge is that the respondent is guilty of improper conduct within the meaning of old disciplinary rule 2.1.5 in that he failed, in the respects set out in paragraph 12 of the charge sheet, to perform his duties as auditor of the attorneys firm [C & C] with such degree of care and skill as in the opinion of the board

may reasonably be expected of him, or he failed to perform the work or duties at all. The respects set out in paragraph 12 are a number of facts, all of which identify various aspects of the audit for the year ending 28 February 2005 in respect of which there was no, or no adequate, audit evidence.

The second charge is of the same nature as the first charge, but related to the respondent's client, [College], for the year ended 31 December 2004. The facts relied on are set out in paragraph 14, and they too relate to a number of respects in which there was no, or no adequate, audit evidence of the audit carried out in respect of the relevant financial year.

The third charge is also of improper conduct as envisaged in old disciplinary rule 2.1.5, but here reliance was placed on the inadequacy of the respondent's report to the Cape Law Society appearing at page 49 of the bundle in respect of the financial year ended 28 February 2005, of the trust account of attorneys firm [ANM & Company].

The fourth charge was one of improper conduct within the meaning of old disciplinary rule 2.1.14 in that the respondent failed to answer or to deal appropriately or within a reasonable time with correspondence or communications from the Law Society and from the IRBA which required a reply or other response. The correspondence and other communication (a telephone call) are set out in paragraph 18.1 of the charge sheet at bundle page 159.

The fifth charge is the same as the third charge, and related to the like report by the respondent in respect of attorneys [B & Associates] for the financial year ended 31 July 2006.

The sixth charge is again one of improper conduct as envisaged in old disciplinary rule 2.1.14, relating to the failure to deal appropriately with correspondence from the Law Society or the IRBA. The correspondence concerned is set out at paragraph 22.2, page 161 of the bundle.

The seventh charge is the same as the third charge, and related to the trust account report in respect of [N Attorneys] for the year ended 30 June 2006, and inadequacies in that regard.

The eighth charge relates again to failure to deal appropriately with correspondence from the Law Society and the IRBA; the correspondence relied upon is set out in paragraph 26.1 of the bundle.

The ninth charge is, as before, one of improper conduct within the meaning of old disciplinary rule 2.1.5 relating to the trust account report in respect of attorneys [SCV & Company]. The report concerned is in respect of the financial year ended 28 February 2006 and appears at bundle, page 135.

The tenth and final charge relates again to failure to deal with correspondence, this time in relation to the [SCV] matter; the correspondence that was not appropriately dealt with according to the charge is set out in paragraph 30.1 of the charge sheet at page 166 of the bundle.

THE EVIDENCE

On the merits of these charges the witnesses called by the *pro forma* prosecutor were Mr Flatwell of the Cape Law Society; Ms Bailey, then from the IRBA; Mr Mashishi, at the relevant time employed in the practice review department of the IRBA; Mr Theunissen, who carried out work in relation to the charges on behalf of the IRBA; and Ms O'Connor, the Director: Legal of the IRBA. Such participation as the respondent afforded these proceedings consisted of cross-examination of Mr Flatwell and Mr Mashishi. He did not complete the cross-examination of Mr Mashishi. He was present when Ms Bailey testified but did not challenge her evidence. He was not present when Mr Theunissen and Ms O'Connor testified and accordingly did not challenge their evidence.

Dealing first with the first two charges, i.e. those relating to the practice review of the audit of the attorney's trust account for the year ended 28 February 2005, and of the audit of [College] for the year ended 31 December 2004, Ms Bailey explained that the purpose of engagement reviews is to monitor the work of registered auditors in their performance of the attest function. It is the function of auditors, she explained, to keep abreast of the applicable standard. She testified that there is a detailed website of the IRBA which contained the current auditing standards. She explained that engagement reviews have a statutory basis, since they are carried out in terms of Section 47 of the current Act. Practitioners are reviewed on a cyclical basis. Detailed notes are kept of the findings, and these are then discussed with the practitioner. They are ultimately put into a report which is mailed to the practitioner as a final report. The report is also forwarded, on an anonymous basis, to the practice review committee and the committee then determines whether the review report is satisfactory or not.

The purpose of the review is to establish whether the audit standards have been complied with. One of those standards requires that sufficient audit evidence to be retained. It is therefore unnecessary to interact with the practitioner in the performance of the review itself

because there ought to be sufficient documentation on file, without reference to the auditor, from which it can be established whether the relevant auditing standards have been complied with.

The result of a review is either that the file was satisfactory; or that the practitioner requires a re-review; or that the matter be referred to the investigation committee. A matter is referred to the investigation committee for one of four reasons: blatant disregard of the standards; the public was at risk having regard to the manner in which the audit was carried out; the practitioner failed to cooperate with the practice reviewer; or upon a re-review there is insufficient evidence of improvement.

There are approximately 3,000 practitioners who perform the attest function. The practice review department is currently in its third review cycle and has to date performed 8,302 engagement reviews. Of those engagement reviews 304 have been referred to the legal department for investigation, i.e. 3.7% of all the engagement reviews. Of the 304 so referred, only 33 have ended before the disciplinary committee, being 0.4% of the entire population of reviews.

In the case of the respondent, his review was referred to the investigation committee because there was insufficient evidence of improvement when the practice review department went back to do a re-review.

Ms Bailey proved her own affidavit at page 4 and following of the bundle; the respondent's response to the practice review issues at page 34 of the bundle; and finally the practice review's response to the respondent's response at page 37 of the bundle. She also proved the initial review of the respondent's files which was done on 20 January 2005, the report of which went out on 24 January 2005 (page 13 of the bundle). The comments of the practitioner the first time round was *"these matters will be addressed."* This is a default response which practitioners are warned will be included in the report in the absence of any other response. The same comment is recorded in respect of the re-review (page 7).

The respondent did not cross-examination Ms Bailey. Although Ms Bailey's evidence served as a general backdrop to both the first and the second charges, the witness who dealt with the specifics of both the first and the second charges, was Mr Mashishi.

Mr Mashishi testified concerning the re-review on 26 April 2006. He dealt first with **the first charge**, and explained that the audit of the attorney's trust account was a first review of the file. The notes he made pursuant to that review appears at pages 21 to 28 of the bundle. These documents make provision for comment by the respondent. The respondent signed off each of the pages without any specific comment.

He confirmed the facts substantiating the first charge as set out at pages 148 to 150 in paragraph 12.1 to 12.1.5 of the charge sheet. There was no direct cross-examination by the respondent of Mr Mashishi's evidence concerning the first charge.

Concerning **the second charge** Mr Mashishi explained that [College] file was the matter that had been reviewed previously. This is important, because it turned out that Mr Abakah had offered to Mr Mashishi that he should review the audit file of [College] for the subsequent year, i.e. the year ended December 2005. As explained by Ms Bailey, however, the point of the re-review was to see whether improvement had occurred. One way of seeing whether improvement had occurred, is to review the audit file of a client whose audit file had been previously reviewed; and so, if there had been any improvement, the 2004 audit file ought already to have reflected it. With reference to pages 21 to 28 of the bundle, and particularly page 24, the witness testified that the respondent wrote in the column headed *"Practitioner's Comments": "2005 Audit file has been produced using a text book or has been based on all SAAS auditing standards which we prepared (illegible) but not yet signed off."*

Mr Mashishi explained that whereas the review of the first file (the attorney's trust account) took 1.5 hours and the discussion 30 minutes, the review of the second file took 4 hours and the discussion 1 hour.

Mr Mashishi was taken to paragraph 14.1 to paragraph 14.1.11, page 151 of the charge sheet, and he confirmed the facts there set out as giving rise to the second charge. He referred also to a letter written by the respondent, undated but received by the IRBA on 5 October 2006. In that letter the respondent wrote, relation to the audit of [College], that the audit was shared between his office and another practitioner's office, located in Springs. This resulted in some of the audit files being kept at the respondent's office and others at the office of the other practitioner in Springs. In the letter the respondent says:

> *"The fact that not all the files were available for practice review was mentioned to the reviewer who insisted that he needed to work on any file regarding the College audit. We recommended that the 2005 audit files which were all available in our office be presented for review but this request was declined."*

In his evidence Mr Mashishi said that when the respondent mentioned to him that some of the files of [College] were in Springs, he offered to go to Springs and to review the files there. In response to this offer, the respondent said that they would check within his office to see whether the files were not perhaps within the Midrand office. After 5 to 10 minutes he came back saying that they had located [College] files, and gave them to Mr Mashishi saying that it was no longer necessary for Mr Mashishi to go to Springs.

Mr Mashishi added that when he reviewed [College] files there was nothing in these files to link them to any other files kept at any other

place. Concerning the offer that the respondent made that Mr Mashishi should review the 2005 audit files, he said that he declined the request because the practice review rules do not permit practice reviewers to review any file in respect of which the audit opinion has not been signed off.

Mr Mashishi also said that the audit areas which according to the third paragraph of the respondent's letter were indeed covered by such audit files of [College] as were available at the respondent's office in Midrand, were in fact not evidenced by audit evidence that he encountered during his review.

Mr Mashishi referred to a further letter by the respondent, again undated, but received by the IRBA on 22 February 2007. In the letter the respondent again contended that the working papers in respect of [College] audit files were not available in his office. However, he also wrote that the first file, that of the attorney's accounts working papers, was also not entirely inspected by Mr Mashishi. He wrote that during the review a lot of time was spent arguing about [College] files not being present, and that very little time was spent on the practice review itself. Tellingly, the third paragraph of the letter reads:

> *"In view of fact that I have supporting documentation and audit evidence for the queries I need to be given an opportunity to respond to the queries in an investigation committee and not in a disciplinary committee which becomes costly for my office."*

It has already been pointed out that no documentation was presented by the respondent.

In his cross - examination the respondent taxed the witness on the time actually spent in reviewing as opposed to the time actually spent in discussion. He put to Mr Mashishi that the latter had computer problems and that this took up time initially. This was denied by Mr Mashishi. The respondent put it to Mr Mashishi that the 2005 [College] audit files comprised four to five files whereas the 2004 files comprised only two thin files; and that Mr Mashishi should have realised that this meant that the 2004 files were not complete. Mr Mashishi said that there was no evidence in the files that he reviewed that other files existed. He acted on the basis that the 2004 [College] files were all there. The fact that large sections of audit work were not covered by audit evidence did not raise concerns with him, because as practice reviewer his job is to write down exactly what he sees on the audit file.

Mr Mashishi also said that he would have expected the respondent to say, in the discussion concerning [College] file, that the file was not complete and that other files were in Springs. The respondent did not. That matter had been raised earlier but was dealt with when the respondent himself came back to say that all the files had been located. Mr Mashishi said that the respondent was raising matters in cross-examination which he ought to have raised during the discussion at the time of the review of [College] files.

The respondent said to Mr Mashishi that he had taken the trouble in respect of the 2005 audit papers to appoint a professor in auditing, [FH], and that they had put a lot of energy into making sure the 2005 [College] audit was correctly done. The respondent taxed Mr Mashishi again, in the light of this fact, for his failure to have reviewed the 2005 audit file. In the course of answering, Mr Mashishi disclosed that he had in fact called Ms Bailey from the respondent's office when he was told that all the files were not available for review and that some were in Springs; and that it was she who said to him that he should offer to go to Springs to complete the review there.

Mr Mashishi said that he did not recall ever speaking to Professor [H] and denied that such a person was available in the closing meeting on the discussion of [College] audit files.

The respondent's cross - examination of Mr Mashishi concerning [College] audit file was not completed by the time the matter had to be adjourned.

The evidence of Mr Flatwell and of Mr Theunissen was presented to substantiate charges three, five, seven and nine. Mr Flatwell heads the trust account department of the Cape Law Society. The Cape Law Society administers attorneys practising in the Eastern, Northern and Western provinces. His department ensures that the Law Society's accounting rules are complied with, and in particular accounting rule 13 which deals with accounting requirements generally, and with accounting requirements for trust account transactions in particular. The trust account department reviews the annual audit reports which are provided by auditors and relies on their accuracy. The Cape Law Society acts as agent for the Attorneys Fidelity Fund in collecting interest paid on attorneys' trust accounts.

The third charge related to the report in respect of attorneys [ANM & Co] for the financial year ended 28 February 2005, appearing at page 49 and following of the bundle. Mr Flatwell explained that his department looks particularly first at compliance with accounting rules 13.9 and 13.14.1. Accounting rule 13.9 provides:

> *"A firm shall regularly and promptly update its accounting records and shall be deemed not to have complied with this rule if, inter alia, its accounting records have not been written up for*

more than one month and have not been balanced within two months after each date on which the trust creditors lists referred to in rule 13.14 are to be extracted."

Accounting rule 13.14.1 provides:

"Every firm shall extract at intervals not more than three calendar months and in a clearly legible manner, a list showing all persons on whose account money is held or has been received and the amount of all such monies standing to the credit of each such person, who shall be identified therein by name, and shall total such list and compare the said total with the total of the balance standing to the credit of the firm's trust banking account, trust investment account and amounts held by it as trust cash, in order to ensure compliance with rule 13.13.3."

The form in accordance with which the report is made, requires in paragraph 4 that the date of the inspection is disclosed; that the date to which the books had been written up is to be disclosed; and that the date on which trust creditors were last balanced is to be disclosed. He said with reference to paragraph 4.3 of the report, that disclosure in this section will show immediately whether there are debit balances in the trust ledger. This implies a transgression of the rules of the Law Society. In that event the report ought to be qualified as envisaged in paragraph 9.

Paragraph 6 of the form deals with interest earned on monies deposited in terms of section 78(1) of the Attorneys Act, 53 of 1979, and invested in terms of section 78(2)(a) of the Act. Monies invested in terms of section 78(2A) of the Act attract interest for the client and do not get paid over. Monies invested in terms of section 78(2)(a) of the Act cannot readily be identified as belonging to one particular trust creditor, and interest earned on those monies are required to be paid over to the Law Society for on - payment to the Attorneys Fidelity Fund.

Mr Flatwell explained that if there is a difference between the interest recorded in paragraph 6.4 of the report as having been paid over during the period under review, and the database of trust interest received kept by the Cape Law Society, then the Cape Law Society addresses a letter to the auditor setting out an amended interest reconciliation and calling for the auditor's confirmation of it.

Mr Flatwell explained that the original audit report by the respondent of attorneys [ANM & Co], indicated in paragraph 6.4 that no monies had been paid over to the Law Society, and in the result the amount carried forward was identical to the amount brought forward (R6,404.73). The Cape Law Society accordingly wrote a letter to the respondent on 7 October 2005, enclosing a suggested interest reconciliation, and asking the respondent to confirm in writing that he agreed with it.

Mr Flatwell also made it plain that if in paragraph 4 of the report the date on which the books were written up and the trust creditors balanced was more than three months before the date on which the books were inspected, then a qualification of the report in terms of paragraph 9.1 was expected.

There was a response to the respondent's letter of 7 October 2005, at pages 54 to 57, in the form of an amended report. The witness did not regard this as a satisfactory response. The amended report disclosed that the books were inspected not on 6 July 2005 but on 7 July 2005; and reported that the books had been written up to 30 April 2005 and trust creditors also balanced on that date. The first report (at page 49) was completed on 8 August 2005, and records that the books were inspected on 6 July 2005. Both these dates are after 30 April 2005, and if the books had indeed been written up to 30 April 2005, one would have expected that the first report at page 49 would have disclosed it.

Next, paragraph 6 had been restated in the amended report. This reflected an amount carried forward of R1,090.03. This casting shows that the whole amount of refundable bank charges was deducted, and not only to the extent of interest earned during the year.

Since the Cape Law Society was not satisfied with this response, it wrote another letter to the respondent on 12 January 2006, requesting an explanation for the submission of the amended report, indicating why the report should be accepted in place of the original 2005 audit report. The respondent was also asked why the figures reflected in paragraph 6 of the amended audit report did not correspond with the amended reconciliation suggested by the Cape Law Society on 7 October 2005; and also why the paragraph 4 dates differed from the original dates in the first report.

The respondent responded on 23 February 2006 in a completely inappropriate way: the response merely illustrated precisely how the amount of R339.40 in respect of interest earned during the year was made up, on a monthly basis.

Accordingly, on 5 April 2006 the Cape Law Society again wrote to the respondent, asking for a proper response. No response was received. On 3 May 2006 this was followed up. In response the Cape Law Society received a one page document, which is page number 3 of the audit reports, and which now correctly reflected the interest reconciliation. There was no covering letter furnishing any explanation. The matter was then referred to the IRBA.

Mr Theunissen's evidence on this charge was also that the first report at page 49 ought to have been qualified to say that the books had not been written up every three months. Paragraph 6 should have reflected, he said, the amount paid over to the Fund; and refundable bank charges up to the amount of interest earned during the year ought to have been deducted. He

said that it was unacceptable for the auditor to rely on the attorney for the information contained in the report, and the respondent ought himself to have performed a bank reconciliation, which would have reflected a payment to the Law Society. In his view, the audit was therefore not properly done.

He opined that the amended report was also not satisfactory, because the bank interest deduction was still not properly done; and there was no express withdrawal of the first report.

Concerning the last submission by the respondent, i.e. the single page appearing at page 63, he said that it was unacceptable that it was sent to the Cape Law Society as a single page without any covering letter explaining that the page had to replace some other page; and why.

The fifth charge related to attorneys [B & Associates]. The report appears at page 86 and it is in relation to the financial year ended 31 July 2006. Mr Flatwell said that the Cape Law Society did not have any difficulty with the values disclosed or with the audit report per se. The difficulty was with paragraph 6.2 which reflected that no interest had been earned during the year whereas paragraph 4.3 reflected that there were trust creditors of R59,160.94, none of which had been invested either under section 78(2)(a), or section 78(2A). That being so, interest would probably have been earned, particularly since the Attorneys Fidelity Fund had negotiated a particular preferential rate of interest with the banks.

In such a case the Law Society would write to the auditor asking him to confirm that no interest had been earned on the particular trust account. Such a letter was written to the respondent on 13 April 2007. No response was received, and it was followed up on 11 May 2007 by another letter. Although a further letter was written on 12 June 2007 calling for a response, a response was eventually only received from the respondent on 23 October 2007. He confirmed that no interest was received in the bank statement for the year under question.

Mr Flatwell said that the Cape Law Society laid its complaint in respect of this affair with the IRBA on 2 August 2007, and so this response by the respondent only came after the complaint had been laid. Mr Flatwell said that the Cape Law Society accepted the explanation in relation to the absence of any interest received.

Mr Theunissen said in relation to the report here concerned that there were shortcomings because the fact that no interest was earned is unusual. Also, the alternative date for comparison of the list of trust balances shown on the trust accounts in the ledgers, with the ledger accounts, was January 2005, which fell outside of the financial year in respect of which the report applied (31 July 2006). However, as Mr Flatwell said in response to a question by Mr Jagga, the Law Society actually accepted the report.

In the light of this evidence, as appears later in this document, we concluded that a case of improper conduct was not made out against the respondent on the fifth charge.

The seventh charge concerns attorney [N]. The report related to the year ended 30 June 2006 (page 98). Mr Flatwell raised a difficulty with paragraph 6.4 and resultantly 6.5 of the report at page 100. In paragraph 6.4 it was reflected that no amounts of interest were paid over to the Fund during the period under review. However, according to the records of the Law Society, some R22,231.53 had in fact been received. The Law Society restated paragraph 6.4 and consequently the amount carried forward in paragraph 6.5. The amount carried forward in paragraph 6.5 was now reflected as a debit balance of R16,379.58.

Mr Flatwell said that the fact that the respondent had missed that interest had actually been paid over to the Fund potentially gave rise to a trust shortfall. Mr Flatwell conceded that it was possible that the interest was paid over to the Fund by means of the business account, explaining why the respondent did not pick this up in his reconciliation.

The Cape Law Society wrote a letter on 24 April 2007 to the respondent asking him to confirm in writing the amended interest reconciliation to provide for the R22,231.53 that had been paid over during the course of the year. The respondent responded on 20 August 2007, and wrote agreeing with the interest reconciliation of the Cape Law Society for the year ended 30 June 2006. The explanation continued:

> *"The difference between your interest reconciliation and that of our firm was as a result of omission of payments to the Law Society for the period under review. This was due to the fact that the client failed to furnish us with information concerning payments to the Law Society for the period."*

The respondent also submitted a revised report and attached it to the letter. The revised report now reflected that the amount carried forward to the next financial year in respect of interest earned in the period under review, was a debit of R16,379.58.

Mr Theunissen said that in his view there were shortcomings to the first report. In his view, in particular, the impact of the fact that R22,231.53 had been paid over during the course of the year was that the trust account would be in deficit, and accordingly that the report should have

been qualified in paragraph 9. In his view the amended report did not solve the issue because it remained unqualified, and it did not withdraw the first report.

The ninth charge concerned attorney [SCV & Company]. The report in respect of this attorney related to the financial year ended 28 February 2006. As in the case with the fifth charge, paragraph 6.2 of the report reflected that no interest had been earned. However, in the previous year some R20,936.70 had been earned by way of interest. In Mr Flatwell's view it was accordingly unlikely that no interest would have been earned in the year concerned. On 9 May 2007 the Cape Law Society wrote to the respondent asking him to provide the Society with the actual interest earned that was credited to the firm's trust banking account. No response was received to this letter and it was followed up on 13 June 2007. Again no response was received and the letter was followed up on 18 July 2007. This again elicited no response. However, on 12 December 2007 the respondent wrote a letter, without addressee, in relation to this firm of attorneys saying:

> *"Unfortunately we are yet to receive the relevant facts and information from the client and the bookkeepers regarding the interest received, if any existed, at year end."*

Mr Theunissen expressed the opinion that the fact that there was approximately R52,000 in the trust account and yet no interest was earned raised questions. He pointed out too that the year end was 28 February 2006 and yet the books were inspected only on 14 October 2006. He did concede that this was not necessarily the fault of the respondent. In his view the respondent's letter of 12 December 2007 was not a satisfactory response because the letter was not addressed to anyone in particular; it was written only on 12 December 2007, more than a year after the inspection to which it related was conducted on 14 October 2006; and the respondent ought not to have been reliant on receiving information from the client and the bookkeepers regarding the interest received, but ought himself to have obtained it in his audit.

In his cross-examination of Mr Flatwell, the respondent established that there are trust accounts on which no interest is earned. He accordingly put it to Mr Flatwell that there was no basis on which the Cape Law Society was entitled to query a report which reflects that no interest was earned. Concerning the question whether there ought to have been a pertinent response by letter to the questions raised in this regard by the Cape Law Society, the respondent put it to the witness that many years ago he had agreed with the Cape Law Society that it would be acceptable simply to put up an amended report. The agreement was struck with [SA]. Mr Flatwell was unaware of this agreement. The respondent also put it to Mr Flatwell that there had been only two instances where he did not pick up that interest had been paid over to the Law Society. The witness could not dispute this.

The respondent also taxed the witness on the fact that letters were addressed to his staff members and not to him. The witness responded by saying that letters addressed for the attention of his own staff does come to his attention, implying that there was no reason why letters addressed to the respondent's staff, would not reach him.

The respondent debated with the witness the fact that it was not easy for the respondent to obtain the information which the Cape Law Society requested of him and therefore it is not appropriate that a barrage of letters is sent to the respondent in that regard. The witness answered that it would have been prudent for the respondent simply to have answered the letters by saying that it would take time for him to respond to them.

The respondent again taxed the witness concerning the absence of an explanation where a revised report is submitted, saying that this had been the practice for some twelve years. The witness also said in response to a question by the respondent that the Law Society has agreements with some banks that interest be paid direct to the Attorneys Fidelity Fund by the bank. In those instances it would be very difficult for the auditor to determine that a direct payment had occurred.

In response to questions from the panel, Mr Flatwell said that amendments to reports are a regular feature, but generally the response is a letter and not a revised report.

Charges four, six, eight and ten, which are the charges relating to the failure to deal appropriately with correspondence or communications in relation to each of the charges listed immediately before them, were covered by the evidence of Ms O'Connor. She testified to the correspondence relating to the fourth charge as contained in paragraph 18.1; to the correspondence relating to the sixth charge as contained in paragraph 22.2; to the correspondence relating to the eighth charge as contained in paragraph 26.1; and to the correspondence relating to the tenth charge as contained in paragraph 30.1.

FINDINGS ON GUILT

The first and second charges, relating to practice review, are in our view established by the evidence of Ms Bailey and Mr Mashishi. We refer specifically to the facts set out in paragraph 12.1 to 12.1.5 relating to charge one, and paragraph 4.1 to 4.1.11 relating to charge two.

We believe that Mr Adendorff for the *pro forma* prosecutor is correct in submitting that the evidence of Mr Mashishi concerning charge one is really unchallenged, since there was no substantive cross-examination by the respondent of Mr Mashishi on this score. We therefore agree that a finding of improper conduct within the meaning of rule 2.1.5 of the old disciplinary rules is apposite.

Concerning charge two, the real issue is whether one accepts the evidence of Mr Mashishi, or the contentions of the respondent, concerning the question whether Mr Mashishi was told that he had available (eventually) all the audit files for the year ended 31 December 2004 in respect of [College]. In this regard we take into account that Mr Mashishi testified on oath, that his evidenced generally was satisfactorily, and that the respondent chose not to testify. However, even without having to make a credibility finding, the fact that the respondent had the opportunity but did not produce the working papers for 2004 in respect of [College] audit at any subsequent time, is telling. We are constrained to agree with Mr Adendorff that the inference is that those audit working papers do not exist, and therefore that the facts asserted in paragraphs 14.1.1 to 14.1.11 of the charge sheet have been established. Accordingly we find the respondent guilty of improper conduct as charged in paragraph 13.1 of the charge sheet.

The third charge concerns the report in respect of attorney [ANM & Co]. The difficulties that persist with that report, and the attempts to correct it, are the following.

First, even if the respondent was justified in operating on the basis of an arrangement as allegedly struck with [SA] (to put in an amended report), that arrangement may apply where the amended report addresses the difficulties identified in the first report. However, in this case the amended report did not address the difficulties; in fact, it raised more questions.

Second, the questions raised by the amended report include why it is that initially the respondent said that the books were inspected on 6 July 2005 and later that they were inspected on 7 July 2005. In the cross-examination, the respondent simply said that this was an error. But the error is not explained.

Third, the initial report which was prepared on 8 August 2005 after an inspection on 6 July 2005, reported that the books had been written up up to 28 February 2005 and trust creditors last balanced on 28 February 2005, and yet there was no qualification in paragraph 9.1 that rule 13.14.1 had not been complied with.

Fourth, the amended report recorded that the books had been written up up to 30 April 2005 and the trust creditors' last balanced on 30 April 2005; and yet there is no explanation why this information was not reflected in the first report which after all was completed after 30 April 2005, pursuant to an inspection which took place after 30 April 2005.

Fifth, the manner in which paragraph 6 was completed in the amended report (page 56) reflects that the author did not know that the amount to be deducted in respect of refundable bank charges was limited to the amount of interest earned during the period under review.

Sixth, the response by the respondent on 23 February 2006 to the Cape Law Society's letter of 12 January 2006 reflects a complete misunderstanding of what it was that the Cape Law Society was requesting the respondent to do.

Finally, the explanation on 1 October 2007 (page 74) reflects, disquietingly, a lack of understanding of what is expected in such an audit. In the first paragraph it is said that the trust audit report was not correct because the Law Society received certain information which was not provided to the auditor. But it was the duty of the auditor in the first place to have confirmed the accuracy of the information in the attorney's accounts by himself obtaining the information required for such verification. If he had obtained the bank statements, these would have reflected the payment to the Law Society. There is thus no proper explanation why the auditor did not pick up the payment, either from the bank statements or, for example, by directly enquiring from the client.

The explanation in the 1 October letter for the differing dates is also unacceptable, since it makes no sense.

In the result, in our view, the third charge has been established and the respondent is found guilty of improper conduct as charged in paragraph 15.1 of the charge sheet.

Charge four is the first of four charges dealing with failure to respond or deal adequately with correspondence or communications from the Law Society or the IRBA, requiring a reply or other response. In our view the evidence of Ms O'Connor and Mr Flatwell established the facts substantiating charges four, six, eight and ten, and we find the respondent guilty of improper conduct as charged in paragraphs 17.1, 21.1, 25.1, and 29.1 of the charge sheet.

The fifth charge concerns the trust account report of attorney [B & Associates]. As already intimated in the discussion of the evidence, in our view no case has been established against the respondent and he is accordingly found not guilty of the fifth charge.

The seventh charge concerns the trust account report of [N Attorneys]. It will be recalled that in this report the respondent failed to pick up that R22,231.53 had been paid over to the Attorneys Fidelity Fund during the period under review. When this was pointed out to him, he submitted a

revised report which reflected that that amount had been paid over to the Attorneys Fidelity Fund; which reflected that the amount carried forward to the next financial year in respect of interest earned in the period under review was a debit amount of R16,379.58; which certified that this debit amount *"agrees with the balance as recorded in the books of account"*; and yet which did not qualify the report nor furnish any explanation for what, at face value, raised the question whether the trust account was in debit (since greater interest appeared to have been paid out than had been received and, on the face of it, this would have been incorrectly paid out of the trust creditors account).

What weighs with the committee is that, as pointed out by the Cape Law Society in its letter of 4 September 2007 to the IRBA, it is no explanation on the part of the respondent to say that the attorney's firm failed to furnish him with information concerning payments made to the Law Society for the period under review, "where the audit of an attorney's trust account is based on a definitive audit process". The auditor is not required merely to express an opinion that the information in the report fairly presents the information contained in it, as in the case of the statutory report required in the case of company audits. On the contrary, the auditor is required to provide definitive, audited information in paragraph 6 of the report. In these circumstances we conclude that the respondent is guilty of improper conduct as charged in paragraph 23.1 of the charge sheet pertaining to the seventh charge.

Concerning the ninth charge, the gravamen of the complaint is that paragraph 6.2 of the report reflected that no interest had been earned whereas on the face of it there was a strong probability that interest had in fact been earned. In our view this is not sufficient to establish improper conduct and we find the respondent not guilty of this charge.

DISCUSSION AND FINDINGS ON SANCTION

The *pro forma* prosecutor proved previous convictions. This involved a finding of generally unacceptable conduct during April 2006 following on a hearing in October 2005, in turn following a reference to the IRBA in October 2004. The finding was one of improper conduct as envisaged in old disciplinary rule 2.1.5, and this attracted a fine of R5,000, half of which was suspended for five years on condition that the respondent was not found guilty of improper conduct as defined in the said rule 2.1.5.

The respondent was also found guilty in the same hearing of six counts of improper conduct as defined in old disciplinary rule 2.1.14. He was fined R10,000, half of which was suspended for five years on condition that the respondent was not found guilty of a similar contravention. The respondent was also ordered to contribute towards the costs of the proceedings in the amount of R12,500.

The *pro forma* prosecutor pointed out that the respondent failed to pass his second review in the second cycle. The respondent still owes R12,304.80 to the practice review department in respect of the practice review carried out, as well as R20,000 in respect of past fines. His current annual registration free of R1,505 has not yet been paid either.

The *pro forma* prosecutor argued for, first, a cancellation of the respondent's registration under section 51(3)(a)(iv) of the Act. He submitted too that the committee should recommend that the respondent not be allowed to re-register until all debts to the IRBA have been paid in full and until he has completed the continuing professional development course on attorneys trust accounts with the IRBA. He asked that the committee should direct that all the Law Societies be notified of the respondent's cancellation of his registration and that publication of the respondent's name, the name of his firm, and the facts and findings by the disciplinary committee including those relating to sentence, be published in IRBANews. He submitted that the committee should direct the publication of an approved summary of the matter in the popular press in the area in which he has practised.

The reason why it is so often said that sentencing is the most difficult part of hearings of this kind, is that there are no hard and fast rules to be identified and applied, secure in the knowledge that the answer must be right. The result of a finding concerning sentence is necessarily judgmental and that endeavour, particularly where it involves a professional person, is unpleasant. But it has to be done, and in terms of the Auditing Profession Act, it is the function of this disciplinary committee to impose an appropriate sentence on the respondent.

Our difficulties have not been eased by the respondent's absence. We consequently know nothing of him personally, of his dependants, of his commitments, of his income, of the number of employees in his practice, or of what other activities he may gainfully pursue.

All we know is that he has previous convictions, and that the charges of which we have found him guilty are undoubtedly serious. What we find particularly aggravating is that it would appear that most of the attorneys involved are small practices in rural areas, far away from the hurly-burly of Midrand where the respondent's other clients include [College], whom one can assume is more sophisticated than the potential clients of the attorneys firms. It is they who are most exposed to improper keeping of attorneys' trust accounts, and by extension improper audits of attorneys' trust accounts.

The impression we have of the respondent's conduct in relation to these audits of the trust accounts is that they were particularly poorly done. The reaction to the Cape Law Society's corrections reflected a misunderstanding of basic concepts

relative to the trust accounts, borne out by the practice review covered by the first charge. It is difficult to escape the conclusion that the respondent's audit of these trust accounts was not only ill - informed, but also seriously wanting in providing any of the independent scrutiny and verification which an auditor is relied upon to provide. This conclusion is aggravated by the fact that there was a previous negative review; and a previous conviction.

CONCLUSION

In our view it is unavoidable that the respondent's cancellation of his registration as Registered Auditor, and the removal of his name from the register referred to in section 6 of the Act, must be ordered, and we so direct.

We direct also in terms of new disciplinary rule 8.3, that the name of the respondent, and the name of the respondent's firm, as well as the charges against him and the finding in respect of the respondent relative to those charges, as well as this sentence, be published in IRBA News, and that the Law Societies in the Republic all be copied with that information.

THIRD MATTER

On 2 November 2009 the committee heard the case against Mr [T]. He was present and unrepresented. The matter arose out a complaint by a client regarding the liquidation of a company.

The finding and sentence of the committee were delivered by the vice chairman, Adv A Dodson. They are reproduced in full.

FINDING

The committee has deliberated on the matter and has come to a decision as follows. The respondent faces two charges. The first charge is that:

> "The respondent is guilty of improper conduct within the meaning of Rule 2.1.21 of the old disciplinary rules in that in the respects set out in paragraph 7 he conducted himself in a manner which was improper or discreditable or unprofessional on the part of a practitioner, of which tended to bring the profession of accounting into disrepute."

The facts giving rise to the first charge are set out in paragraph 7 as follows:

> "During or about the period from 2002 to 2008, respondent rendered professional services or was engaged to render professional services to [S]. Those professional services involved *inter alia* accounting services and advice, writing up of accounting records, the completion and rendering of tax returns and acting as accounting officer. [S] being defined as [S] Investments Closed Corporation. In the course of his engagement on behalf of [S], the respondent was put in possession of documents belonging to [S] which were relevant to the respondent's engagement as outlined in 7.1. During or about 2007 Mr [K] of Westrust was appointed by [S] to assist with the voluntary liquidation of [S]. Despite requests therefor, the respondent failed and/or refused within a reasonable time and/or failed entirely to deliver to [S] and/or its representatives, the complainant, or Westrust, documents belonging to [S] and to which - the possession of which it was entitled, namely [S]'s accounting records and books of account for the period 1 March 2002 to 28 February 2006, the necessary reconciling entries to [S]'s books of account from March 2002 to date. [S]'s 2006 tax assessment and [S]'s register of members. The respondent had no right to retain the documents belonging to [S]."

The second main charge is that:

> "The respondent is guilty of improper conduct within the meaning of Rule 2.1.14 of the old disciplinary rules in that he failed to answer or to deal with appropriately within a reasonable time, correspondence or other communications from the Board or other persons which required a reply or a response."

The alternative charge is that :

> "The respondent is guilty of improper conduct within the meaning of Rule 2.1.21 of the old disciplinary rules in that in respects set out in paragraph 9 of the charge, he conducted himself in a manner which was improper or discreditable or unprofessional on the part of a practitioner, or which tended to bring the profession of accounting into disrepute."

The facts giving rise to the second charge which are alleged to by the *pro forma* complainant, are as follows:

> "During or about the period from 6 July 2007 to the present, respondent failed to answer or to deal with appropriately within a reasonable time the following communications from the entities or persons indicated below, which communications required a reply or other response."

And then follows the table which makes reference to various letters and telephone calls from variously Mr [K] of Westrust and Ms Pillay and Ms O'Connor from the Board. In support of his case, the *pro forma* complainant led the evidence of the complainant, Mr [K], Ms Pillay and Ms O'Connor. The complainant, I will explain the significance of below, a person who claimed to hold power of attorney on behalf of the

late member of the closed corporation referred to. Mr [K] being the accountant from Westrust who was instructed to proceed with the winding up of the closed corporation, and Ms Pillay and Ms O'Connor who are the representatives of the Board. The respondent, who represented himself, testified in his own defence and did not call any further witnesses.

The circumstances in which the committee wishes to hand down its decision today and without delay, are such that of necessity the decision which we have prepared is an abbreviated one which deals with the essential points. The committee reserves the right, should it ever become necessary, to amplify upon the reasons which are given.

Happily there is in fact from a factual perspective, very little that is in dispute between the respective parties, and both parties are to be commended in this regard in ensuring that the dispute was narrowed down to its essentials. Essentially, save for the contestation in relation to the power of attorney, all of the correspondence which was referred to in the bundle and which was relevant or ultimately relevant to the matter, was admitted by the respondent and the defence revolves around questions other than their authenticity.

Dealing first with **charge 1**. The decision in relation to the first charge revolves around a general power of attorney which was purportedly signed by the late Ms [S] on the 2nd April 2001. The power of attorney is referred to in correspondence in the bundle of documentation, but was not itself included in the bundle of documentation but was handed up in the course of the proceedings. The respondent objected to the admission of the power of attorney. That objection was made on the basis that he had not had sufficient warning in relation to the document in order to prepare himself to deal with it. The committee decided to overturn the objection and to admit the document on the basis that it was relevant and as clarified by the respondent its authority in the sense of the signature of Ms [S] was not challenged.

What was suggested was that the general power of attorney was later withdrawn or countermanded by Ms [S] and the committee recorded that the acceptance of the document was subject to the respondent's right to lead such evidence as to the withdrawal or the countermanding of the power of attorney. It was on the basis of the general power of attorney that the complainant sought to stand in the shoes of the late Ms [S] before her death as the member of the CC, and it was then in that capacity that he testified that he ultimately instructed Mr [K] of Westrust, an accountant, to proceed with the winding up of the closed corporation.

It was in the course of that process that Mr [K] acting in accordance with his instruction, asked for certain documentation referred to in paragraph 7.4 of the charge, and which ultimately it was common cause was not provided. However, the respondent testified that he was under no obligation to provide the documentation called for because the general power of attorney had been withdrawn. Specifically to quote from the statement from which he read in testifying in his defence, he said the following :

> "I was originally approached by [the complainant's brother] and Ms [S] to look after the affairs of Ms [S] as the complainant's brother was emigrating to Canada and he had been assisting Ms [S] financially by paying her medical aid in cash from time to time. The complainant's brother undertook to continue with the medical aid and would assist further if possible. He and Ms [S] advised me that the complainant had been given a power of attorney by Ms [S], but that due to certain problems with the complainant, this power of attorney had been revoked in writing and they were experiencing problems with obtaining the return of the document."

Now the difficulty which we have with the evidence which was led by the respondent in this regard is that essentially and fundamentally the evidence amounts to hearsay evidence in respect of both Ms [S] and the complainant's brother. Although it is so that Ms [S] has passed away, that position could potentially have been remedied either by leading the evidence of the complainant's brother or in appropriate circumstances producing the written withdrawal or some similar documentation to show that beyond the level of hearsay that the power of attorney which had been adduced was in fact withdrawn or countermanded. No such evidence was adduced. However, the respondent's answer to this is that the effect of only including or putting the document up at today's hearing, has been that he has not been in a position to investigate this aspect.

Now of course the first difficulty in relation to this argument is that it is not the authenticity of the document *per se* which is challenged, and indeed its existence was admitted, but rather the suggestion that the document was later countermanded or withdrawn. As a result, any preparation that needed to have been done related in fact to the alleged withdrawal of the power of attorney or countermanding of the power of attorney, and not the document itself, and that on its own in our submission or in our view, undermines seriously the basis for the respondent's defence in this regard. He has known about the existence of the general power of attorney since 2002 at least, and this was apparent from an e-mail which he handed up in the course of the proceedings.

Crucially, not once in any of the documentation which is admitted and which formed part of the bundle, was it ever suggested by the respondent that the general power of attorney had been withdrawn and on that basis he was not obliged to make the

relevant documentation available to Mr [K].

On the contrary, he suggested that he would in due course co-operate with the requests and provide the documentation which was requested, and notwithstanding those undertakings, the documentation it is common cause, was not provided.

It is also significant in relation to the complaint of a lack of opportunity to investigate the matter, that in a letter, an e-mail letter which appears at page 63 of the bundle, which was addressed to Ms Pillay of the Board, the respondent said the following:

> "I have serious questions in connection with the power of attorney held by the complainant which I need to investigate, as well as his standing since the passing of Ms [S]."

Now that e-mail was sent on 25 March 2009 and pertained to a motivation for a postponement. That postponement was in fact granted. It was not the only reason for the request, but it was part of the reason for the request for postponement. The postponement was duly granted and some seven months have passed since that time in which the respondent would have indeed had the opportunity to investigate.

Despite this, he conceded in his evidence that he had made no efforts to contact the complainant's brother in order to take this further. In addition, as I have indicated, it is also apparent from the bundle of documentation that reliance would indeed be placed on the power of attorney, notwithstanding the fact that it was not included in the bundle of documents itself.

Accordingly we reject the basis of the respondent's defence and find that the effect of the general power of attorney, was that he was indeed obliged to provide the documentation presented and failed to do so. However, there is a further aspect which needs to be dealt with in relation to the first charge, and that is the respondent's contention that the complainant in fact lacked standing to bring these proceedings before the Board, and the basis for that argument was a concession which was made by the complainant in the course of his evidence that the deceased or the late Ms [S] kept her trust in the respondent and it was conceded by him in cross-examination by the respondent that he may in pursuing these proceedings have acted, as he put it, in the interests of the late Ms [S] but not necessarily in accordance with her will.

Now the difficulty with that argument is twofold. In the first place, in the general power of attorney provision is expressly made on the third page of the document as follows, in broad terms. It includes

> "the power to commence and prosecute and to defend, compound and abandon all actions, suits, claims and demands and proceedings in regard to me or my property or in relation to my affairs in or before any court or other body of persons in the Republic of South Africa, and in any territory or country anywhere in the world."

The second difficulty which we have with this argument is that it is the committee's interpretation of the relevant statute and rules that once the Board has knowledge of possible unprofessional conduct on the part of a practitioner, it is duty bound to investigate and if necessary prosecute such conduct, notwithstanding that it might ultimately transpire that in relation to the particular complaint concerned, the complainant does not have standing. That is in the nature of a professional body whose aim is to ensure the maintenance of proper standards in the profession which it oversees. In those circumstances the committee finds that:

> "The respondent is guilty of the first charge, in other words that he is guilty of improper conduct within the meaning of Rule 2.1.21 of the old disciplinary rules in that he conducted himself in the respects found in a manner which was improper or discreditable or unprofessional on the part of a practitioner, of which tended to bring the profession of accounting into disrepute."

That brings me to the **second charge.** Again, we were assisted happily in this regard, by the acceptance that all of the correspondence and communications which formed the basis of the complaint were accepted as having been sent and received or communicated and received, and in addition to that the non-response to all of that correspondence and those communications on the part of the respondent, was indeed conceded.

His defence in relation to this charge was essentially based at the end of the day on the same defence as that which pertained to the first charge, which is essentially to say that because of the withdrawal of the power of attorney, he was not in any way obliged to respond to any of the requests that were contained in the documentation or the communications. Now as we have already indicated, that defence has been rejected and the committee has found that there was an entitlement to request the documentation referred to in paragraph 7.4 of the charge on the basis of the power of attorney. In any event it was made clear by the respondent under cross-examination, that he only relied on that defence in respect of the period following 21 August 2007, which is the time when he indicated that he took up the attitude that because of the alleged jurisdictional problem of the Board and the problem in relation to the power of

attorney, entitled him to adopt an attitude of non-co-operation.

However, the correspondence and communications complained of in six respects precede that date with correspondence or communications having taken place in respect of both the Board and Mr [K] of Westrust, on 6 July 2007, 30 July 2007, 10 August 2007, 13 August 2007, 15 August 2007 and 17 August 2007. In any event it is the view of the committee that if the respondent had a basis for objecting to - or not responding to the correspondence, his duties as a professional person in the circumstances were not to ignore the correspondence and the communications, but to articulate the basis of his objection to the communications on each occasion that he received a communication, and he was not entitled to take up an attitude of non-co-operation, particularly in circumstances where this had not been properly communicated or the basis for it had not been properly communicated either to Mr [K] of Westrust or to either of the persons representing the Board. In those circumstances we find the Respondent guilty in respect of the second charge, in other words that:

> "He is guilty of improper conduct within the meaning of Rule 2.1.14 of the old disciplinary rules in that he failed to answer or to deal with appropriately within a reasonable time, correspondence or other communications from the Board or other persons which required a reply or other response."

On that basis there is no need to deal with the alternative charge. That then is the decision of the committee.

DISCUSSIONS AND FINDING ON SANCTION

Deliberations in relation to the question of sanction are always a difficult matter and hence something of a delay in our coming to a conclusion. The committee was at pains to come to an appropriate decision, bearing in mind the usual factors that are taken into account in relation to such matters. As has been indicated previously, the perspectives from which a sanction is considered are the particular nature of the offence which has been committed, the impact of that offence on the community in the sense of the broader community as well as the narrower community of the auditing profession, and then thirdly one looks at what is an appropriate sanction from the perspective of the particular practitioner concerned.

Dealing first with the question of the offences in respect of which you have been found guilty. We have taken into account the fact that you have indeed a previous conviction and that is a matter of concern that the committee sees you here again today, notwithstanding that earlier conviction. We have also taken into account particularly in relation to the second charge, a concern that at least at the time of the commission of the offence you adopted a particularly belligerent attitude and a stubborn attitude as far as your professional duties were in relation to correspondence.

We are pleased that you have indicated at the end, at the very end of your evidence, that you have an element of contrition as far as that is concerned and that you accept that your conduct was not appropriate. But it is nonetheless something which the committee needs to take into account, particularly bearing in mind that one of the complaints against you in the previous hearing also related to the failure to respond to correspondence.

In many respects it looks inoffensive at first glance when one considers that type of offence, but the reality is that it undermines the profession, it causes frustration to the public and what is also of concern is that it is a matter that is so easily dealt with. It is so easy to respond to correspondence and to eliminate that as a potential cause of criticism of the profession. It really is easy to get it out of the way and it should not be a matter which is coming before the committee again as far as you are concerned. And in that regard we would certainly like to send a signal to the profession as a whole that that type of offence, which is becoming alarmingly common, should be something that becomes prevalent.

In relation to the impact on the community, I have already to some extent canvassed that. The offences with which we are concerned led to the negative impact upon members of the public in relation to both offences. There were or have been serious delays in the winding up of a closed corporation which ought to have been wound up a long time ago. Inconvenience was caused to the firm Westust, which was completely unnecessary. The matters were relatively simply and easily resolved, and were not resolved, and that is a matter of great concern.

As far as the third component is concerned, which is the particular practitioner concerned, again I have already gone into this to some extent. We have taken into account the fact that you do have a previous finding and sanction in respect of similar offences and as we have indicated, that is a matter of concern, as is the attitude which has been taken up. In your favour we have taken into account that you operate a relatively small practice. You do not appear to be in a position to pay a very substantial fine. The committee would not like to see your practice being brought to a halt. They would like to see you continuing to practice, but to be doing so in a matter which upholds the proper values of the profession and which is without any future blemish, and to that extent the committee has attempted to come to an appropriate sanction which will allow punishment to be accompanied by an opportunity of reform and getting yourself back onto the straight and narrow as far as that is concerned. In relation to the issue of costs, again there were conflicting considerations.

The committee is not convinced that all responsibility is to be laid at your door as far as the postponements are concerned. The committee accepts

that there were medical reasons in relation to one of the postponements, religious reasons in relation to the other of the postponements and that if a finger were to be pointed strongly, those would require further investigation and has in fact taken place. By the same token it must be borne in mind that when the civil courts deal with a question of costs, it usually simply goes with the person making the request. So by and large the person who is requesting the postponement is the person who pays for the costs of the postponement even if they have a genuine reason for the postponement, medical or otherwise, and that is something which we also need to some extent to take into account.

It is also our view that a different attitude on your part in relation to your co-operation with - or lack thereof - with the Board, might well have led to these proceedings being resolved at an earlier stage. We say that notwithstanding our acceptance that you presented an argument of sorts, although reject it in respect of the first charge.

Taking all of those considerations into account, it is our view that you should not be singled out as far as the postponements are concerned, but at the same time that the costs of the proceedings before today's date should be treated together with the costs of today's proceedings as a global figure for costs so that you will carry responsibility in relation to both components, the postponed part of the proceedings and today's proceeding in a certain percentage, which I will come to.

Perhaps the committee can also express at the same time a concern about the increasing tendency at a late stage for parties to seek postponements of these proceedings and to emphasise the unnecessary costs and difficulties which are created, and logistical difficulties which are created when people seek a postponement at a late stage. The committee is made up of professional people who have other commitments. They especially set aside the time to be able to make themselves available for these proceedings, and apart from that an enormous amount of work on the part of the Board goes into preparation for these proceedings. Plane ticket reservations are made, hotel reservations are made and so on and it is a logistical nightmare when a matter has to be repeatedly postponed and reconvened. Taking into account all of the considerations which I have mentioned, the sanction upon which the committee has decided is that in respect of both the first and the second charge you should be sentenced to a fine of R25,000.00.

In so far as the question of costs is concerned, the decision of the committee is that you should pay 50% of the overall costs, including both today's costs and the costs leading up to today's costs. And as sought by the *pro forma* complainant, publication in IRBA News of the conviction, the circumstances of conviction, the penalty imposed or the sanction imposed, but not the name of the practitioner nor the name of his firm.

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

COMPLIANCE – REPORTABLE IRREGULARITIES

NUMBER OF IRREGULARITIES REPORTED TO IRBA RISES

The IRBA received 857 Reportable Irregularities in the period 1 April to November 2009, with several months still to go in this financial year. This is fast approaching the number notified in the previous financial year (1130).

NOMINATION OF AUDITORS FOR THIRD PARTIES

IRBA is frequently requested by various outside parties to provide nominations of Registered Auditors in terms of court orders, settlement agreements, shareholders' agreements, and the like.

The requests range from valuations of shareholdings, partnerships and members' interests to audits of joint ventures, formal arbitrations, splitting of assets in divorce settlements, trust funds and appointment to audit committees.

The Registrar hereby calls upon all Registered Auditors who wish to be included in the register to forward their acceptance letter which confirms availability, language proficiency, area/s of specialisation, hourly rate and a detailed CV.

Names of Registered Auditors who respond positively will be kept on file for nomination when the need arises.

For any further clarification please do not hesitate to correspond directly with the Registrar at registry@irba.co.za.

INDIVIDUALS ADMITTED TO THE REGISTER OF THE BOARD From 01 JULY 2009 To 31 DECEMBER 2009

Abdool Majid Taskeen
Allison David Martin
Ansley Liesl
Aziz Omar Mohammed Fahim
Berry Katherine Joy
Bezuidenhout Hendrik Christoffel
Bird Juan Stephen
Bohme Leonard Hendrik Neil
Bosch Sandra
Boshoff Septimus
Brown Greg Lavington
Carrim Aadila Yoosuf
Chesaina Rottok Kibert
Chilenge Malson
Choshane Zacharia Mmutlanyane
Claassens Martha Francina
Clampet Michael August
Coetzee Jorani Beatrice
Colyvas Blais Dionisios
Combrinck Sarle
De Klerk Ilana
De Wee Conrad Randall
Delomoney Rodney
Diedericks Georgia Agnes Diane
Du Preez Regardt Helgard Petrus
Edwards Bryan Trewinnard
Els Catharina
Eygelsheim Maria Catharina
Fouche Melissa
Gani Sabeeha
Gillen Heinrich William
Govender Michelle Neeveshnee
Greeve Lukas Johannes
Groenewald Abraham Petrus Johannes
Hofart Gregory Dean
Holthuizen Susara Isabella Johanna
Hurter Zelda
Janse Van Rensburg Michelle
Jansen Van Rensburg Eugene Theodorus
Jansen Van Vuuren Susanna Elizabeth
Joubert Sunette
Kapp Adele
Klonaridis Natalie Ruth
Lamula Enock
Lila Nopasika Vuyelwa
Mabotsa Thabo Claude
Magadla Alupheli Kwanele
Mahola Nolwazi
Mahowa Shepherd
Marchbank Melanie Shirley
Matwadia Mohamed
Metzger Karen
Mohammadali Haji Ahmed
Molapo Khethisa Nathan
Moodley Dhanaseelan
Moodley Kubenderan
Motau Hlokammoni Grathel
Mothipe Mmakgodu Sarah
Mtyelwa Alicia
Myburg Chantal
Ndwandwa Sazi Asanda
Ngqongwa Lodrick Luyolo
Nortje Johannes Fanus
Patterson Shelley
Peer Haroun
Pieterse Juan
Ratau Tumelo Given
Robinson Kelly Anne
Saffy Dean Bernard
Samjowan Atish Kewalpersad
Schaafsma Martin August
Shaw Mark
Singh Sharitha
Smal Werner
Smit Louise
Soopal Niren Coomar
Stock Antoninette
Struwig Sybrand Johannes
Strydom Sarel Jacobus Johannes
Swanepoel Anna Johanna Fredrieka
Theunissen Bea
Tonge Colm Maxfield
Van Der Merwe Jacobus Johannes
Van Der Walt Regardt
Van Der Westhuizen Louise
Van Heerden Christo Johann
Van Koesveld Thomas
Van Straten Lelanie
Venter Stefanus Strydom
Voss Deddel
Wecky Mandy
Whitefield Candice-Anne

INDIVIDUALS RE-ADMITTED TO THE REGISTER OF THE BOARD From 01 JULY 2009 To 31 DECEMBER 2009

Ally Zunaid
Bailie Daniel Hermanus
Coetzee Aletta Magdalena
Du Plessis Cornelius Jacobus Louis
Greyling Gerrit Willem
Howard Trevor Rupert
Maseng Modise Ishmael
Mbili Cynthia Ntobeningi
Meinie-Anderson Natasha Irene
Mentz Willem Wouter
Meyer Suzanne
Mitchell William
Mohamed Yusuf
Newman Duane
Rapp Arnold
Roeloffze Lynette
Sikuza Monwabisi Mandisi
Sklar Darryl
Terheyden Annelie Elizma
Tromp Juan-Pierre
Van Dyk Adrian Sarel
Van ZyL Jacob Petrus Cilliers
Vilakazi Khothamani Brian Lincoln
Wandrag Jan Lodewyk
Welsh Colin Alexander
Wilson Elizabeth

INDIVIDUALS REMOVED FROM THE REGISTER OF THE BOARD From 01 JULY 2009 To 31 DECEMBER 2009

Edge Donald Hartley (Deceased)
Lief Stanley Wilfred (Deceased)
Nel Willem Andries (Deceased)
Paiken Stanley (Deceased)
Prinsloo Christoffel Bernadus (Deceased)
Swaby Antony John (Deceased)

Jones Judi (Emigrated)
Kaidos George Panagiotis (Emigrated)
Muller Lizette (Emigrated)
Sherwood Gary Neil (Emigrated)
Van Der Westhuizen Moira Marcella (Emigrated)
Van Zyl Warrick Boyd (Emigrated)

Abakah-Gyenin Meshach Mighty (Removed)

Azoulay Amihi (Resigned)
Bartel Dennis George (Resigned)
Bohler Susan (Resigned)
Bossert Christiaan Frederick (Resigned)
Breytenbach Jacobus Johannes (Resigned)
Burger Jacobus Nel (Resigned)
Campbell David Tennant (Resigned)
Cason Janine (Resigned)
Dias Marco Paulo Da Silva (Resigned)
Els Frans Sarel Jacobus (Resigned)
Fakir Dharmini (Resigned)
Fletcher Ivor Stephen (Resigned)
Fourie Ignatius Johannes (Resigned)
Galeni Nomfuyo (Resigned)
Greeve Lukas Johannes (Resigned)
Hope Ronald Michael (Resigned)
Kotze Lizette (Resigned)
Lee Jonette (Resigned)
Mapaure Cynthia Nomsa (Resigned)
Marais Eldorette (Resigned)
Naidoo Joyshree (Resigned)
Parsons Mark Julian (Resigned)
Pather Lushandren (Resigned)
Purves Alexander John (Resigned)
Riba Lerato (Resigned)
Rippon Michael Henry (Resigned)
Scholtz Anita (Resigned)
Schulz Ferdinand Volker (Resigned)
Semenya Derrick Phuti (Resigned)
Shukla Rashika (Resigned)
Smolensky Derek Warren (Resigned)
Swart Wessel Hendrik (Resigned)
Theron Dewald Anthony (Resigned)
Vally Imtiaz Ahmed Suleman (Resigned)
Van Den Berg Wilna (Resigned)
Van Esch Sandra Dawn (Resigned)
Van Rooyen Francois (Resigned)
Van Zyl Pieter Hendrik (Resigned)
Veltkamp Jan Willem (Resigned)
Visser Theresa (Resigned)
Weldon Sean Guy (Resigned)
Wentzel Allan Edward (Resigned)
Whitaker Rory Edmand (Resigned)

Grobler Christiaan Gerhardus (Retired)
Hollis Jeremy Roy (Retired)

Francois Opperman
Registrar
Telephone: *087 940 8865*
Facsimile: *087 940 8876*
E-mail: *registry@irba.co.za*

STAKEHOLDER NEWS

The SAICA Free State summer conference was held from 2-4 October 2009 at Black Mountain Hotel, Thaba Nchu, outside Bloemfontein.

Thabang Motloi *(CA)*; **Ewald Muller** *(SAICA Senior Executive – Standards)*; **Div Lamprecht** *(SAICA Central Region - Regional Executive)*; **Bernard Agulhas** *(CEO-IRBA)*

Professor Vassi Naidoo presented a public lecture on *"The importance of culture in the global economic crisis"* at the University of Johannesburg in September 2009

Left to right :
Professor Amanda Dempsey *(Board member and Executive Dean of the Faculty of Economic and Financial Sciences, UJ);*
Professor Vassi Naidoo *(Vice Chairman, Deloitte UK-London);* **Bernard Agulhas** *(CEO, IRBA)*

CHINESE DELEGATION VISIT

At the request of the South Africa–China Economic and Cultural Exchange, a senior government auditor delegation from China met with the IRBA CEO and directors in October 2009. This was part of a fact-finding visit with various audit bodies in South Africa, including the Auditor-General and government departments at provincial and municipal level. IRBA hosted the delegation at its offices in Greenstone.

CORPORATE SOCIAL RESPONSIBILITY

In the latter half of 2009 the IRBA embarked on a more formalised Corporate Social Responsibility programme. The first initiative was a donation to the Thembalami Care Centre, located on the border of Alexandra in Gauteng, which provides sheltered accommodation to frail pensioners of limited means, primarily persons receiving a social or disability grant from the Government. Over a two month period staff donated enough non-perishable food items and toiletries to fill an entire car boot, and a handover was done just before Christmas.

The letter below was received from Thembalami:

On behalf of the staff members and residents of Thembalami Care Center we would like to wish you a prosperous and happy new year!

Whilst I was on leave during December 2009, I was informed by Matron Paulina that your organization delivered boxes of groceries. I therefore would like to make use of the opportunity to express our appreciation for your kind donation. We already utilized some of the tin stuff towards a function at the Care Center and some other items were also useful.

Donations like yours go a long way in helping to provide and care for our less fortunate residents in our care.

Thank you so much for considering our Care Center as part of your outreach program.

I hope that we are going to work well together during this year.

Kind regards,
Elize Raath
Complex Manager

An entire bootload of groceries donated by the IRBA staff

SAICA CSR committee members Henriette Fortuin (third from left) and Kokeleco Gaelejwe (far right) at the hand over to Thembalami staff on 23 December

COMMUNICATIONS

In the interests of improved communication with Registered Auditors and other stakeholders, a list of Communiqués sent by bulk e-mail during the period July 2009 to January 2010 is set out below. These communiqués may be downloaded from the IRBA website, under the various "News" tabs.

19 August 2009	IRBA appoints four new directors
1 September 2009	Notice re IRBA's VAT status – SARS deregisters IRBA as a vendor for VAT purposes from 31 August 2009
8 October 2009	Annual Report 2009
9 October 2009	IRBA 2009 firm annual fees: confirmation of firm details
14 October 2009	IAASB Releases New Tools to Support Clarity ISA Implementation
13 November 2009	2009 IRBA News October issue #10 is now available
24 November 2009	Board Notice 128 of 2009, Government Gazette No. 32615 of 9 October 2009 Adoption of Auditing Pronouncements and Handbook of International Standards on Auditing and Quality Control 2009 Edition

25 November 2009	IAASB Staff Practice Alert Helps Auditors Plan More Effective Use of External Confirmations
26 November 2009	The Controlling Body of Strate Issues Strate Circular 04P/2009
27 November 2009	Board Notice 157 of 2009, Government Gazette no. 32742 of 27 November 2009 Explanatory Memorandum and Exposure Draft of Rules Regarding Improper Conduct and Code of Professional Conduct for public comment by 31 March 2010
27 November 2009	South Africa's 2nd Place Ranking per the Global Competitiveness Survey in terms of the Strength of its Auditing and Reporting Standards
30 November 2009	IAASB Seeks Views on Auditing Complex Financial Instruments
1 December 2009	IAASB Issues Consultation Paper to Enhance Reporting on Greenhouse Gases
2 December 2009	IFAC Presses for Action to Adopt and Implement Global Financial Standards
17 December 2009	2010 Manual of Information and Handboek vir Inligting are now available
7 January 2010	International Standard on Assurance Engagements (ISAE) 3402 Assurance Reports on Controls at a service organisation issued by the IAASB
8 January 2010	Department of Trade and Industry publishes Draft Regulations to the Companies Act, 2008 (Act No. 71 of 2008) for Public Comment by 1 March 2010

GENERAL NEWS

LETTERS

Attention: BP Agulhas

Dear Sir

I have recently received your Annual Report. It is not often that I want to read an Annual Report from cover to cover, but your IRBA Annual Report definitely warrants a proper read! I really must congratulate you and your team for an excellent production.

I also appreciate being on your mailing list despite having retired after 34 years as a Registered Accountant & Auditor. Nevertheless, my interest in the profession is still very much alive!! I wish you well in your endeavors to continue to lead the South African profession into the future.

Regards
Roland M Hudson-Bennett CA(SA)

We continue to strive to improve our communication with stakeholders as part of demonstrating our commitment to transparent regulation. We are also thankful to, and appreciative of, those retired members that continue to support the profession.

CEO

irba
INDEPENDENT REGULATORY BOARD FOR AUDITORS

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:
Joanne Johnston at jjohnston@irba.co.za

Website: www.irba.co.za