irba news
INDEPENDENT REGULATORY BOARD FOR AUDITORS

ISSUE 8
February 2009

IN THIS ISSUE

MESSAGE FROM THE CEO

I had hoped that I would step into my new role at a time when there was less attention on the auditing profession. It does not seem, however, that there will ever be such a time, and it appears that all we can do is to face the challenges and provide the solutions as best we can for those that exist at the present moment. However, this may not be enough. There are still ghosts from the past and more importantly, visions for the future, which will demand much of our attention.

Looking at the present, we need to think about the auditing profession's response to the credit crisis. Although SA has not as yet felt the impact of this global financial time bomb as severely as some other

countries, we are an international player, and all indicators show that things are not going to get better soon. What this means for the profession is simply that the public will yet again increase its expectation of what the auditor should do to protect their financial interests, and while we need to support and guide auditors during this period, we also need to address the needs of the public.

It is in times like these that renewed focus is placed on matters such as auditors' liability. In line with international practice, and given the constantly changing demands to which the auditor is continuously exposed, we have commenced with a project to consider the liability of auditors, and will need to develop a model appropriate for the South African environment.

This project forms part of a larger project, which is to consider amendments to the Auditing Profession Act. Soon after the enactment of the new audit legislation in 2006, the Honourable Minister of Finance, Minister Trevor Manuel, indicated that the legislation would, like most other new Acts, require a period to be tested and if necessary, areas identified where processes could be improved. Having almost neared the three year milestone, we are probably in a good position to identify those areas where we could improve on our service delivery and so better discharge our mandate. The Board has approved a project proposal to draft amendments to the audit legislation, which will be presented to the National Treasury.

The IRBA has always prided itself in its reputation in the global arena, and was recently ranked 4th out of 134 countries for accounting and auditing standards in the Global Competitiveness Survey.While we appreciate the need to address local issues, we shall continue to pursue all avenues to participate in international standard setting and regulatory processes, which ultimately provides SA with the opportunity to influence those standards and regulatory matters which impact the country. Presently, we serve on several task forces of the International Federation of Accountants' Committees and Boards, on which we have representation. A founding member of the International Forum of Independent Audit Regulators, a body which strives to achieve consistent audit regulation through sharing of information and experiences, we will continue to make a contribution based on our own regulatory framework.

Another major imperative for the IRBA is that other international regulators recognise our regulatory processes and the standards we expect from auditors. We will continue to work towards a process of mutual cooperation by continuously strengthening our processes and specifically, our status as an independent audit regulator. Various factors, including composition of committees and the funding of the IRBA, will determine perceptions of our independence and we must ensure that this is achieved through liaison with the relevant stakeholders.

It is expected that the new Companies Act will become effective towards the middle of 2010. While we are not presently in a position to determine the full impact of its new provisions, we appreciate that the removal of the audit requirement and introduction of reviews of annual financial statements of private companies may require audit firms to reconsider the scope of their services, human resource requirements and business models. We are pleased, however, that our comment to have an alternate assurance engagement for those companies has been included in the new Act. Depending on the regulations as to who can perform such reviews, this may further impact on the business decisions firms need to make.

Although the country continues to experience reasonable economic growth over a sustained period, such growth remains below the set target. However, there is an increased focus to graduate to a first economy through job creation, entrepreneurship, growth in foreign direct investment and the development of small business. With growth comes a demand for skills, including financial skills. Furthermore, transformation remains a national imperative and given that the CA Charter is expected to be gazetted shortly, we must continue to work with accredited institutions towards a transformed profession. The IRBA must define its role to effectively influence and assist the education role players.

Soon the country will engage in its fourth national and provincial election and government departments will come under close scrutiny regarding service delivery issues. Under the aforementioned circumstances, we must ensure that investor confidence is maintained through the maintenance of appropriate audit and ethics standards that will support such an environment, and assure the public that a well regulated and capital market exists. This will require a reputable audit profession to provide investors and capital providers with reliable and credible financial information.

I would like to thank those who sent their good wishes and support, as well as for your commitment to maintaining a strong and dependable auditing profession, while we pursue our common goal to protect the financial interests of the public. In delivering on our part of the mandate, I am committed to creating an environment in which our mutual objectives will be achieved.

Bernard Peter Agulhas
CEO
Telephone: *087 940 8797*
Facsimile: *087 940 8873*
E-mail: *bagulhas@irba.co.za*

PRONOUNCEMENTS ISSUED BY THE CFAS

THE AUDITOR ATTENDING THE ANNUAL GENERAL MEETING: A GUIDE FOR AUDITORS

The Auditor Attending the Annual General Meeting: A Guide for Auditors has been approved by the Independent Regulatory Board for Auditors (IRBA) and was issued by the Committee for Auditing Standards (CFAS).

The Guide deals with the designated auditor's responsibility, in terms of the Companies Act, No 61 of 1973, as amended, to attend the Annual General Meeting (AGM) of a widely held company and when relevant a limited interest company, in order to respond to questions that are relevant to the audit of the financial statements. This Guide is intended to assist designated auditors to determine when a question is relevant to the audit of the financial statements, to which the designated auditor may respond, and to be aware of questions addressed to the designated auditor, that may not be within the scope of the audit, and should be referred to the Chairman of the AGM who in turn refers the question to the responsible party.

The Guide is effective and may be downloaded from the IRBA website at www.irba.co.za

SAAPS 3 (REVISED) ILLUSTRATIVE INDEPENDENT AUDITOR'S REPORTS

The South African Auditing Practice Statement (SAAPS) 3 (Revised) Illustrative Independent Auditor's Reports has been approved by the Independent Regulatory Board for Auditors (IRBA) and was issued by the Committee for Auditing Standards (CFAS).

The purpose of SAAPS 3 (Revised) is to provide guidance and illustrative reports that reflect the effect of legislative and regulatory requirements and reporting standards on the form and the content of the independent auditor's report issued in South Africa on a complete set of general purpose financial statements, where the financial statements have been prepared in accordance with a financial reporting framework that is designed to meet the common information needs of a wide range of users, and for the independent auditor's reports on financial statements where other financial reporting frameworks or basis of preparation have been applied.

The explanatory guidance and illustrative reports in SAAPS 3 (Revised) has been amended to conform to International Standard on Auditing (ISA) 700, The Independent Auditor's Report on a Complete Set of Financial Statements which became effective for all auditors' reports on a complete set of general purpose financial statements dated on or after 31 December 2006. These include the following:

- The reference to the term "*Directors*" instead of the term "*Management*" in the illustrative reports for companies in South Africa as directors are the persons responsible in terms of Section 286 of the Companies Act, Act No. 61 of 1973 (the "Companies Act") for the annual financial statements of a company. This reflects the application in the case of companies in South Africa of ISA 700.
- The illustrative reports in SAAPS 3 (Revised) now identify both the *title of each financial statement and the relevant page number/s*, as it is well established practice in South Africa to refer to page numbers comprising the annual financial statements on which the auditor reports. The illustrative reports in SAAPS 3 identified the subject matter of the auditor's report only by way of page numbers, whereas ISA 700 requires that the title of each statement that comprises a complete set of financial statements be identified.
- The illustrative reports for companies in SAAPS 3 (Revised) include a reference in the introductory paragraph to the *directors'* report as comprising part of the complete set of financial statements, as required by Section 286 of the Companies Act. This is aligned with ISA 700.

SAAPS 3 (Revised) now includes an Appendix containing illustrative reports other than those on a complete set of general purpose financial statements, namely, reports issued in terms of ISA 800 for other forms of entities where the financial statements have been prepared in accordance with a financial reporting framework that is designed to meet the financial information needs of specific users ("special purpose financial statements"), interim review reports issued in terms of ISRE 2410 and a report for entities that have adopted the SA Statement of GAAP for SMEs as their financial reporting framework.

Updates to the illustrative reports in the Appendices may be made periodically by the Secretariat without further exposure, unless such amendments affect the other guidance contained in SAAPS 3 (Revised).

In terms of the Auditing Profession Act, Act No. 26 of 2005, the auditor's signature on an audit report should clearly identify both the firm that is the registered auditor and the individual registered auditor responsible for the audit engagement.

A new Appendix 6 with examples of Afrikaans translations of selected illustrative reports will be added to SAAPS 3 Illustrative Independent Auditors Reports shortly and will be made available from the IRBA website: www.irba.co.za. CFAS has commenced work on updating of both SAAPS 2 and

SAAPS 3 to take account of changes arising from the IAASB Clarity Project affecting the reporting ISAs. It is anticipated that this project will be completed by the second half of 2009 and will be available to auditors around September 2009 in order to prepare for the application of the Clarified ISAs effective for audits of entities with financial years commencing on or after 15 December 2009.

SAAPS 3 (Revised) is effective and may be downloaded from the IRBA website at www.irba.co.za

SAAPS 2 (REVISED) FINANCIAL REPORTING FRAMEWORKS AND AUDIT OPINIONS

SAAPS 2 (Revised), Financial Reporting Frameworks and Audit Opinions, has been approved by the Independent Regulatory Board for Auditors (IRBA) and was issued by the CFAS.

The purpose of SAAPS 2 (Revised) is to provide clarity to auditors concerning the effect that the financial reporting framework or basis of accounting applied by an entity has on the auditor's report in South Africa.
Amendments were necessitated by changes to the Companies Act No. 63 of 1973 (the "Act"), as amended, occasioned by the Corporate Laws Amendment Act, Act No. 24 of 2006, which became effective on 14 December 2007. The guidance and examples in SAAPS 2 (Revised) have been revised to reflect the effect of the amendments regarding the types of companies and the applicable financial reporting frameworks in accordance with the Act.

Amendments were also made for the effect on the recognised financial reporting frameworks applied in South Africa of the adoption by the Accounting Practices Board of the South African Statement of Generally Accepted Accounting Practice for Small and Medium-sized Entities (the SA Statement of GAAP for SMEs). The examples of auditor's reports have also been updated for these changes and are issued in SAAPS 3 (Revised), Illustrative Independent Auditor's Reports (see above).

SAAPS 2 (Revised) is effective and may be downloaded from the IRBA website at www.irba.co.za

IAASB AUDIT PRACTICE ALERT FOCUSES ON FAIR VALUE ACCOUNTING ESTIMATES

To assist auditors in addressing the challenges of auditing fair value accounting estimates, the staff of the International Auditing and Assurance Standards Board (IAASB), an independent standard-setting board under the auspices of the International Federation of Accountants (IFAC), released an audit practice alert. The alert was developed following consultation with the IAASB's Task Force on Fair Value Auditing Guidance, which is considering the need for new or modified guidance in light of current marketplace issues.

The purpose of the alert is to highlight areas within the International Standards on Auditing (ISAs) that are particularly relevant in the audit of fair value accounting estimates in times of market uncertainty.

Recent events in some of the world's largest financial markets continue to call attention to the difficulties in establishing fair values. This Staff Audit Practice Alert responds to calls from the Financial Stability Forum and others for further guidance on the audit of fair value accounting estimates. This alert will be relevant to audits of all entities that have investments in financial instruments, especially those in illiquid markets.

The alert also directs auditors to the recently revised ISA 540 (Revised and Redrafted), Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures, which was influenced by the changes in the credit markets during 2007. While not effective until audits of financial periods commencing on or after 15 December 2009, it includes guidance that is likely to be useful to auditors planning their 2008 engagements.

The Staff Audit Practice Alert, Challenges in Auditing Fair Value Accounting Estimates in the Current Market Environment, may be downloaded from the IFAC website at www.ifac.org.

IAASB NEARS FINALISATION OF THE CLARITY PROJECT WITH THE ISSUANCE OF EIGHT STANDARDS

The IAASB moved closer to completion of its Clarity Project with the release of seven clarified International Standards on Auditing (ISAs) and one clarified International Standard on Quality Control (ISQC) on 16 December 2008, following the consideration and approval by the Public Interest Oversight Board (PIOB) of the due process. To date, the IAASB has released 29 final redrafted ISAs and one final

redrafted ISQC in the new clarity style. The newly issued standards are as follows:

- ISQC 1 (Redrafted), Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements;
- ISA 220 (Redrafted), Quality Control for an Audit of Financial Statements;
- ISA 500 (Redrafted), Audit Evidence;
- ISA 501 (Redrafted), Audit Evidence-Specific Considerations for Selected Items;
- ISA 505 (Revised and Redrafted), External Confirmations;
- ISA 520 (Redrafted), Analytical Procedures;
- ISA 620 (Redrafted), Using the Work of an Auditor's Expert; and
- ISA 710 (Redrafted), Comparative Information-Corresponding Figures and Comparative Financial Statements.

The PIOB has also considered and approved the due process of four additional ISAs that were approved by the IAASB at its meeting. However, in finalising ISA 210 (Redrafted), Agreeing the Terms of Audit Engagements, the IAASB approved conforming amendments to the following four reporting standards:

- ISA 700 (Redrafted), Forming an Opinion and Reporting on Financial Statements;
- ISA 800 (Revised and Redrafted), Special Considerations-Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks;
- ISA 805 (Revised and Redrafted), Special Considerations-Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement; and
- ISA 810 (Revised and Redrafted), Engagements to Report on Summary Financial Statements.

The IAASB agreed that these four ISAs will be issued only after the PIOB has considered and approved the due process applied to ISA 210 (Redrafted), which is expected in February 2009. The IAASB recognises that the four reporting standards present fewer implementation challenges than other ISAs, and so the interest in issuing a final text including conforming changes outweighs the desire to make them immediately available. By issuing eight of these standards the IAASB are fulfilling their commitment to make the standards available as soon as practicable.

In addition to ISA 210 (Redrafted), the IAASB approved new ISA 265, Communicating Deficiencies to Those Charged with Governance and Management, and ISA 402 (Revised and Redrafted), Audit Considerations Relating to an Entity Using a Service Organization. Subject to PIOB approval, these ISAs will be released in March 2009.

The IAASB considers that, with its approval of the final three ISAs (subject to PIOB approval) and its review of consistency, its work in redrafting its international standards under the Clarity Project is now complete.

All clarified ISAs will be effective from a single date, for audits of financial statements for periods beginning on or after 15 December 2009 and may be downloaded from the IRBA website at: www.irba.co.za. The IAASB also plans to publish the set of Clarified ISAs in a new Handbook, expected to be released in April 2009.

GLOBAL FINANCIAL CRISIS

To assist professional accountants in addressing issues related to the global financial crisis, IFAC and the IAASB has focused on three IFAC Activities which can be accessed at: http://www.ifac.org/financial-crisis/

1. To increase awareness among preparers and auditors of existing and newly developed guidance that can assist them in reporting on financial instruments;
2. To encourage further convergence in reporting standards on financial instruments, while at the same time strongly supporting (the continuation of) fair value accounting since reducing transparency is not in the interests of investors; and
3. To participate in and promote discussions of best practice with respect to the audits of financial institutions and other organizations that are affected by the current crisis

The Member Activities on the IFAC website pages on the Global Financial Crisis, list initiatives undertaken by IFAC members and associates and others and regional publications issued to address the global financial crisis may be accessed under Member Activities at: http://www.ifac.org/financial-crisis/member-activities.php.

In addition, relevant links to international organisations, such as standard setters and others, provide access to documents or other resources and guidance issued to address the global financial crisis. These may be accessed at: http://www.ifac.org/financial-crisis/relevant-links.php.

IAASB STAFF AUDIT PRACTICE ALERT - AUDIT CONSIDERATIONS IN RESPECT OF GOING CONCERN IN THE CURRENT ECONOMIC ENVIRONMENT

In January 2009, the IAASB staff released its second Staff Audit Practice Alert entitled. This second alert deals with the effect of the credit crisis and economic downturn on an entity's ability to continue as a going concern and whether these Audit Considerations in Respect of Going Concern in the Current Economic Environment effects ought to be described in the financial statements. It also raises awareness of issues surrounding liquidity and credit risk that may create new uncertainties for entities or exacerbate those already existing and auditors' awareness about matters relevant to the consideration of the use of the going concern assumption in the preparation of the financial statements in the current environment.

In particular, management, those charged with governance and auditors alike will be faced with the challenge of evaluating the effect of the credit crisis and economic downturn on an entity's ability to continue as a going concern and whether these effects on the entity ought to be described, or otherwise reflected, in the financial statements.

While the Staff Audit Practice Alert, "Challenges in Auditing Fair Value Accounting Estimates in the Current Market Environment [October 2008]," refers to going concern in the context of the effects of valuation in illiquid markets, this second alert addresses wider issues that are likely to be relevant to auditors of entities in all industries and of all sizes. While this second alert refers principally to International Standard on Auditing ISA 570, Going Concern, it also deals with other ISAs (for example: ISA 240, ISA 315, ISA 540, ISA 560 and ISA 580) that contain requirements and guidance to assist the auditor in dealing with other issues that may also require particular attention in the current environment, such as inventory valuation, allowances for doubtful receivables and the availability of credit. It provides additional guidance for auditors in evaluating management's use of the going concern assumption. It also raises awareness of issues surrounding liquidity and credit risk that may create new uncertainties for entities or exacerbate those already existing. As such, this alert will be useful for auditors as well as management of entities of all sizes.

The IAASB Staff Audit Practice Alert, Audit Considerations in Respect of Going Concern in the Current Economic Environment, may be downloaded from the IFAC website at http://www.ifac.org/financial-crisis/.

GLOBAL RECOGNITION

SA Ranked 4th in Global Survey

The World Economic Forum Global Competitiveness Report 2008/2009 ranked South Africa No. 4 for its auditing and reporting standards out of 134 countries surveyed. The result of visionary and forward looking decisions made 15 years ago by leading members of the profession and many hours of hard work by the Auditing and Accounting Standard Setting Committees at the IRBA and SAICA gave South Africa a global competitive edge. Thanks to all who have contributed so much over so many years to enable SA to hold its head up proudly in the global market place. The Country Economy Profile and full report may be downloaded from http://www.weforum.org/documents/gcr0809/index.htm.

CFAS RE-EXPOSES GUIDE ON ACCESS TO WORKING PAPERS

CFAS re-exposed the Proposed Guide: Access to Audit Working Papers: A Guide for Registered Auditors for comment in January 2009

The proposed guide was initiated as a result of requests from registered auditors seeking guidance in circumstances when other auditors or third parties request or require access to their audit working papers which support an audit of financial statements. It was first exposed in June 2007 for a three month period after which a subcommittee considered all the comments received and amended the proposed guide accordingly. The CFAS considered the amended proposed guide at its September 2008 meeting and recommended further amendments, necessitating re-exposure. The CFAS approved the proposed guide for re-exposure at its November 2008 meeting.

Purpose of the proposed guide
The proposed guide deals with the circumstances in which registered auditors are requested or required to grant access to audit working papers which support an audit of financial statements. This guidance applies when auditors are requested to provide access, in particular circumstances, to their audit working papers, to the client, to another auditor or to a third party. Guidance is provided in respect of

access requested in the following circumstances:

- By the principal auditor or other auditors in a group audit situation;
- By a successor auditor where there is a change in auditors; and
- By investigators conducting a due diligence or similar engagement.

The guidance also deals with circumstances where auditors are required by law, or agree to be contractually bound, to provide access to audit working papers.

Request for Comments
The CFAS invites comments on all matters addressed in the proposed guide. In responding, commentators are requested to refer to the relevant paragraphs within the proposed guide. The responses should include the reasons for the comments and specific suggestions for any proposed changes to wording. The closing date for comments is 30 April 2009. The proposed guide and Invitation to Comment are available on the IRBA website at www.irba.co.za

REGULATED INDUSTRIES

The Regulated Industries Standing Commitee (RISC) continues to work with many regulators in addressing requirements in Statute and Regulation for auditors to report on regulated industries. Projects currently in progress include:

- Assisting the SAICA BASEL II Task Group with developing the suite of Regulatory Reports on the BASEL II Regulatory Returns to the South African Reserve Bank – Bank Supervision Department;
- Medical Schemes Council – developing an Audit Guide to assist auditors of Medical Schemes;
- Developing an Assurance Guide and Report for auditors Reporting to the Provincial Law Societies on Attorneys Trust Accounts; and
- Engaging with the JSE Limited in connection with matters relating to Bulletin 3 / 2008 – The Introduction of a JSE Register of Auditors and their Advisors
- The Controlling Body of Strate Issues Circular 03p/2009
  - o The Controlling Body of Strate issued 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) which replaces Circular 02P/2007.
  - o The purpose of this Circular is to provide guidance to Registered Auditors when reporting in terms of the CSD Rules and the SSA on the Participant's compliance with the relevant sections of the SSA, Board Notice 17 of 2005 published in Government Gazette No. 27231 on 31 January 2006 and Board Notice 58 of 2005 published in Government Gazette No. 27735 on 8 July 2005.

The Strate Circular can be downloaded from the Strate website at www.strate.co.za

PUBLIC SECTOR

IFAC'S PUBLIC SECTOR ACCOUNTING STANDARDS BOARD LAUNCHES WORK ON INTERNATIONAL PUBLIC SECTOR CONCEPTUAL FRAMEWORK

The International Public Sector Accounting Standards Board (IPSASB), an independent standard-setting board of the International Federation of Accountants (IFAC), has issued for comment the first in a series of consultation papers focused on the development of an international public sector conceptual framework. Entitled *Conceptual Framework for General Purpose Financial Reporting by Public Sector Entities*, the consultation paper represents a landmark achievement for the public sector financial reporting community.

The consultation paper identifies the IPSASB's preliminary views on the objectives and scope of financial reporting, the qualitative characteristics of information included in general purpose financial reports and the characteristics of public sector reporting entities.

Comments on the consultation paper are requested by March 31, 2009. It may be viewed and downloaded by going to http://www.ifac.org/Guidance/ or www.irba.co.za. Comments may be submitted by email to EDComments@ifac.org. They can also be faxed for the attention of the IPSASB Technical Director at +1 (416) 977-8585, or mailed to the IPSASB Technical Director at 277 Wellington Street West, 6th Floor, Toronto, Ontario M5V 3H2, Canada. All comments will be considered a matter of public record and will ultimately be posted on the IFAC website.

SMEs

IFAC ISSUES A POLICY POSITION: IFAC SUPPORTS A SINGLE SET OF AUDITING STANDARDS: *IMPLICATIONS FOR AUDITS OF SMALL AND MEDIUM-SIZED ENTITIES, AND* SEEKS INPUT ON A CONSULTATION PAPER: MATTERS TO CONSIDER IN A REVISION OF ISRE 2400, ENGAGEMENTS TO REVIEW FINANCIAL STATEMENTS

The International Federation of Accountants (IFAC) issued a policy position titled IFAC's Support for a Single Set of Auditing Standards: Implications for Audits of Small and Medium-sized Entities. The paper sets out IFAC's view that International Standards on Auditing (ISAs) are designed to be applicable to audits of financial statements of entities of all sizes, and highlights the ways in which the International Auditing and Assurance Standards Board (IAASB) considers the needs and perspectives of small and medium-sized entities (SMEs) in the development of those standards.

The paper emphasises that the consistent use of the ISAs is essential to meeting the public interest expectations of an audit. If auditors intend to issue an ISA audit report, they must comply with the ISAs. This enables a consistent level of assurance to be associated with the word "audit," and allows users to make decisions in the light of a common understanding about the reliability of financial statements. The paper also emphasises the importance of professional judgement in determining the most effective approach for a particular audit.

The paper points out that SMEs in some jurisdictions have an alternative to obtaining an audit; they may obtain a review of their financial statements. International Standard on Review Engagements 2400, Engagements to Review Financial Statements, requires a different level of work effort by the practitioner and results in a different and lower level of assurance. The IAASB will be considering changes to this standard in light of the current needs of the marketplace. A new consultation paper, commissioned by the IAASB and developed by staff of several national auditing standard setters, including the IRBA, seeks input on the elements that would provide a relevant and cost-effective assurance service that is an alternative to an audit for SMEs in particular.

The policy position may be downloaded from the IFAC website at: www.ifac.org
The consultation paper may be downloaded from the IRBA website at: www.irba.co.za

Sandy van Esch
Acting Director: Standards
Telephone: 087 940 8871
Facsimile: 087 940 8874
E-mail: svanesch@irba.co.za

IFIAR MEETING

On 22-24 September 2008, independent audit regulators from 21 countries participated in the fourth meeting of the International Forum of Independent Audit Regulators ("IFIAR"). The IRBA was proud to host this meeting in Cape Town. The meeting included addresses by the Accountant-General of South Africa, Mr Freeman Nomvalo, Prof Linda de Vries, Vice-Chairman of IRBA, as well as Kariem Hoosain, who during his time as IRBA's CEO was instrumental in obtaining IFIAR membership for South Africa, and who facilitated our hosting of this very auspicious meeting.

The meeting was chaired by Paul Boyle, Chairman of IFIAR and Chief Executive Officer of the UK Financial Reporting Council, and by Prof Dr Steven Maijoor, Vice-Chairman of IFIAR and Managing Director of the Netherlands Authority for the Financial Markets.

The European Commission also participated as Observer on 24 September.

IFIAR was joined by delegations led by the global CEOs of the international networks of each of BDO, Deloitte Touche Tohmatsu and KPMG for individual discussion with each firm regarding their global quality monitoring arrangements. Similar discussions were held at IFIAR's previous meeting in April in Oslo with delegations led by the global CEOs of the international networks of Ernst & Young, Grant Thornton and PricewaterhouseCoopers.

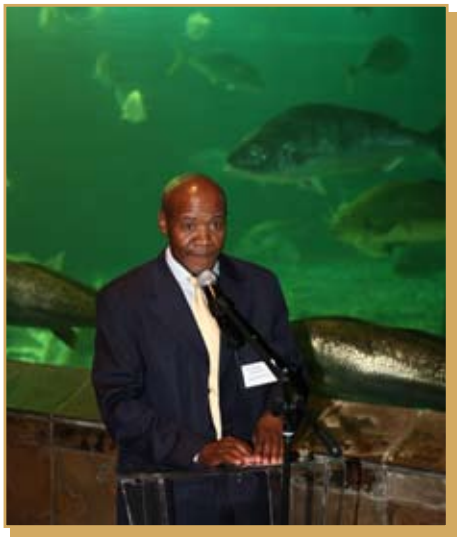
At the meeting the Auditors' Public Oversight Committee (Hungary), UDVA (Audit Oversight Authority, Slovakia) and the Financial Supervisory Commission (Chinese Taipei) were admitted as members, thus bringing the membership up to 27 jurisdictions.

The Members adopted the Charter which had been drawn up at the previous meeting in Oslo. The Charter confirms that the activities of IFIAR are as follows:-

i. Sharing knowledge of the audit market environment and practical experience of independent audit regulatory activity, with a focus on inspections of auditors and audit firms.
ii. Promoting collaboration and consistency in regulatory activity.
iii. Providing a platform for dialogue with other organizations that have an interest in audit quality.

The Charter sets out IFIAR's procedures for decision-making and its internal administrative arrangements.




More pictures on page 35

QUARTERLY REPORT FROM THE DIRECTOR: LEGAL FOR THE PERIOD 1 JULY 2008 TO 30 SEPTEMBER 2008

INVESTIGATING COMMITTEE

The Investigating Committee met twice during this period and forwarded a number of matters to the Disciplinary Advisory Committee with recommendations.

Two matters were disposed of by the directorate before referral to the Investigating Committee, as the complaints were withdrawn.

DISCIPLINARY ADVISORY COMMITTEE

The Disciplinary Advisory Committee met twice during this period and disposed of 17 matters, as follows.

Decision not to charge

Two matters in terms of Disciplinary Rule 3.5.1.1 (the respondent is not guilty of unprofessional conduct).

Two matters in terms of Disciplinary Rule 3.5.1.2 (the respondent having given a reasonable explanation for the conduct).

Two matters 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:

Cautioned
One practitioner was cautioned: the matter related to 'poaching' of staff.

Reprimanded
One practitioner was reprimanded: the matter was tax related.

Fined
Nine practitioners were fined. The matters were as follows:

- One related to 'assisted holding out' (R25,000, of which R20,000 was suspended on conditions).
- One related to minor statutory irregularities concerning the incorporated firm (R10,000 of which R5,000 was suspended on conditions).
- One was deceased estate related (R10,000 of which R5,000 was suspended on conditions).
- One was independence related (R20,000).
- Five arose out of practice review. **

2nd cycle 2nd review:

- ➢ one practitioner was fined R40,000 of which R20,000 was suspended on conditions;
- ➢ one practitioner was fined R40,000 of which R20,000 was suspended on conditions, in addition the previously suspended fine of R15,000 was imposed;
- ➢ one practitioner was fined R30,000 of which R15,000 was suspended on conditions;
- ➢ one practitioner was fined R30,000, of which R10,000 was suspended on conditions;

2nd cycle 3rd review:

- ➢ one practitioner was fined R40,000 of which R20,000 was suspended on conditions, in addition the previously suspended fine of R15,000 was imposed.

** In certain of these cases the imposition of sentence was postponed indefinitely on condition that the practitioner in question either withdrew from the Board's register, or became non-attest.

DISCIPLINARY COMMITTEE

The Disciplinary Committee did not meet during this period.

QUARTERLY REPORT FROM THE DIRECTOR: LEGAL FOR THE PERIOD 1 OCTOBER 2008 TO 31 DECEMBER 2008

INVESTIGATING COMMITTEE

The Investigating Committee met twice during this period and disposed of one matter in which the complaint was withdrawn.

One matter was disposed of by the directorate before referral to the Investigating Committee in which the complaint was withdrawn.

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

DISCIPLINARY ADVISORY COMMITTEE

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

Decision not to charge

One matter in terms of Disciplinary Rule 3.5.1.1 (the respondent is not guilty of unprofessional conduct).

One matter in terms of Disciplinary Rule 3.5.1.2 (the respondent having given a reasonable explanation for the conduct).

One matter in terms of Disciplinary Rule 3.5.1.4 (there being no reasonable prospect of proving the respondent guilty of the conduct in question).

One matter in terms of Disciplinary Rule 3.5.1.5 (that in all the circumstances it is not appropriate to charge the respondent).

Decision to charge and matter finalised by consent:

Fined
One practitioner was fined. The matters arose out of practice review (2nd cycle 4th review). He was fined R40,000 of which R15,000 was suspended on conditions, as well as the imposition of a previously suspended fine of R15,000. The imposition of the punishment was postponed for as long as he continued not to attest.

DISCIPLINARY COMMITTEE

The Disciplinary Committee met five times during this period. Two matters are part heard; one resumed on 9 and 10 February 2009 and the other on 16 March 2009.

On 8 October the committee continued to hear the part heard case against Mr [N]. The matter was not finalised on that date and resumed again on 12 November 2008. There were four charges against the practitioner, which appear from the finding.

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

FINDING

CHARGES
Mr [N] is a registered auditor. He is charged with four separate charges of improper conduct under the disciplinary rules deemed to have been prescribed by the Independent Regulatory Board for Auditors ("the Board") in terms of the Auditing Profession Act No. 26 of 2005.

The first charge is that he infringed Disciplinary Rule 2.1.21 (conduct in a manner which is improper or discreditable or unprofessional or unworthy or which would tend to bring the profession of accounting into disrepute).

The facts giving rise to the first charge are set out in paragraphs 6.1 – 6.5 of the schedule of charges (incorporating the amendment referred to below) as follows:

"6.1 During or about the period from August 2005 to January 2005:

6.1.1 the practitioner dispatched, alternatively caused to be dispatched, further alternatively permitted to be dispatched (further alternatively took no reasonable steps to prevent the dispatch of) a letter on a letterhead of his firm, dated on or about 26 September 2005 addressed to the company and/or the close corporation, in which he used the designation and the initials;

6.1.2 the practitioner dispatched, alternatively caused to be dispatched, further alternatively permitted to be dispatched (further alternatively took no reasonable steps to prevent the dispatch of) a letter on a letterhead of his firm dated 10 January 2006 and marked "to whom it may concern", in which he used the designation and the initials;

6.1.3 the practitioner dispatched, alternatively caused to be dispatched or circulated, further alternatively permitted to be dispatched or circulated (further alternatively took no reasonable steps to prevent the dispatch or circulation of) a brochure of the firm [M] & [M] Attorneys which reflected the name of the practitioner in conjunction with the initials.

6.1.4 the practitioner signed the following documents which the practitioner knew or ought to have known would form part of and would be used in support of an application by Mr [S] (trading as [AKR] Guest House) for incentives in terms of the Small/Medium Enterprise Development programme:

6.1.4.1 declaration by the external auditor, dated 31 August 2005;

6.1.4.2 report of the accounting officer dated 31 August 2005 in relation to the financial statements of [S] trading as [AKR] Guest House for the year ended on 28 February 2005;

6.1.4.3 report of the independent auditor to the Board for Manufacturing Development in terms of the Small/Medium Enterprise Development Programme in relation to the application by [S] for incentives, dated 31 August 2005;

6.1.4.4 letter addressed to the Department of Trade and Industry, SMEDP Tourism, concerning the size of a property, dated 30 August 2005;

6.1.4.5 letter addressed to the Department of Trade and Industry, SMEDP Tourism, relating to the erection cost of certain buildings, dated 30 August 2005

in all of which documents the practitioner used the designation and the initials.

6.2 The use of the designation and the initials is restricted to members of the South African Institute of Chartered Accountants and members of the Cape Society of Chartered Accountants and members of the Natal Society of Chartered Accountants, members of the Orange Free State Society of Chartered Accountants, members of the Transvaal Society of Chartered Accountants, or of any successor-in-title to any of those societies. The use of the designation and the initials by a person who is not a member of the South African Institute of Chartered Accountants or any of the societies referred to above is an offence in terms of the Designation Act.

6.3 At all relevant times the practitioner was not a member of the South African Institute of Chartered Accountants or of any of the professional societies referred to in 6.2 and was therefore not entitled to use the designation and the initials.

6.4 By using or by permitting the use of, or by failing to prevent the use of, the designation and initials in the manner referred to above the practitioner contravened section 4(1) and/or section 4(2) of the Designation Act. The practitioner is accordingly guilty of improper conduct within the meaning of rule 2.1.21 of the disciplinary rules.

6.5 If the practitioner did not himself despatch the letters and the brochure referred to in 6.1 then by permitting the letterhead of his firm and the brochure to be despatched in circumstances in which that despatch was not under his supervision or control (or in failing to take reasonable steps to prevent the despatch of the letter) the practitioner is guilty of improper conduct within the meaning of rule 2.1.21 of the disciplinary rules."

The second charge against the practitioner is that he infringed one or more or all of-

- Disciplinary Rule 2.1.5 (failure to perform 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 failure to perform such work or duties at all);

- Disciplinary Rule 2.1.20, read with clause 8 of the Code of Professional Conduct (which requires that practitioners not undertake or continue with any assignment unless they have the necessary professional competence to do so);
- Disciplinary Rule 2.1.21 (conduct in a manner which is improper or discreditable or unprofessional or unworthy or which would tends to bring the profession of accounting into disrepute).

The alleged facts on which the second charge is based are set out in paragraphs 8.1 to 8.4.5 of the charge sheet as follows:

"8.1 During or about 2006 the practitioner acted as auditor of the company and as accounting officer of the close corporation.

8.2 During or about April 2006 the practitioner was engaged to prepare and audit the annual financial statements of the company for the year ended on 28 February 2006 and furnish the accounting officer's report in respect of those financial statements.

8.3 During or about April 2006 the practitioner was also engaged to advise the company and the close corporation in relation to their income tax returns and tax affairs.

8.4 The practitioner failed to perform his duties in terms of his engagements with the required degree of care and skill and/or with the required level of professional competence and care, and/or he failed to conduct himself with courtesy and consideration towards his clients, in the following respects:

8.4.1 he failed to prepare the financial statements of the company, or to audit the financial statements of the company, timeously or at all;

8.4.2 he failed to prepare the annual financial statements, and he failed to furnish the accounting officer's report, in respect of the close corporation timeously or at all;

8.4.3 he failed to keep appointments with the clients' representative and/or he cancelled appointments made to meet the clients' representative without notice or without adequate notice;

8.4.4 he failed to deliver documents to the clients' representative timeously or at all despite his undertakings that the documents would be delivered;

8.4.5 he failed to contact the clients' representative to discus issues relating to his engagement despite having given undertakings to do so."

The third charge against the practitioner is that he infringed either or both of –

- Disciplinary Rule 2.1.14 (failure to answer or deal appropriately within a reasonable time, correspondence or other communications from the Board or other persons which required a response);
- Disciplinary Rule 2.1.21 (conduct in a manner which is improper or discreditable or unprofessional or unworthy or which would tend to bring the profession of accounting into disrepute).

The facts giving rise to the third charge are set out in paragraph 10 of the charge sheet as follows :

"10. During or about the period from May 2006 to April 2007 the practitioner failed to answer or to deal with appropriately within a reasonable time, the following correspondence or other communications from the Board and/or from Mr [S] (the representative of the company and the close corporation), all of which correspondence or other communications required a reply or other response."

There follows a table listing, first, communications from Mr [S] and, second, five communications in the form of letters from the Board.

The fourth charge against the practitioner is that he infringed –

- Disciplinary Rule 2.1.20 (failure to observe the provisions of the Code of Professional Conduct); and/or
- Disciplinary Rule 2.1.21 (conduct in a manner which is improper or discreditable or unprofessional or unworthy or which would tend to bring the profession of accounting into disrepute).

The facts giving rise to the fourth charge are set out in paragraph 12 of the charge sheet as follows :

"12.1 During or about 2005 and 2006 the practitioner shared offices and/or office facilities with a firm of attorneys known as [MM].

12.2 The sharing of offices by attorneys with an auditor in public practice is a breach of the rules of the Law Society of the Northern Provinces, and the practitioner knew or must have known that

it was such a breach. The practitioner accordingly assisted and/or enabled and/or caused the attorneys' firm to breach the provisions of the rules of the Law Society of the Northern Provinces. The practitioner is accordingly guilty of improper conduct within the meaning of rule 2.1.21.

12.3 By being associated with the attorneys' firm in the manner aforesaid the practitioner breached paragraph 7 of the Code in that that association was likely to affect the appearance of the practitioner's independence as a registered account and auditor, and he was therefore guilty of improper conduct within the meaning of rule 2.1.20."

Clause 7 of the Code of Professional Conduct deals with the requirement of independence.

SUMMARY OF EVIDENCE

In support of the charges, the pro forma complainant on behalf of the Board led the evidence of Mr [D], Project Director, Ethics and Discipline of the South African Institute of Chartered Accountants ("SAICA") and Mr [S], Director of what is referred to in the charges as "the company" being [L] Guest House, [EN] (Pty) Ltd; and a member of what is described in the charges as "the close corporation", being [AKR] CC.

Mr [D]

Mr [D] testified to his having checked the records of the South African Institute of Chartered Accounts and as to the fact that those records reflected that the practitioner had been struck off the register of members of SAICA for the non payment of his subscriptions with effect from 29 September 2000. On that day, a letter had been addressed to the practitioner confirming his having been removed from the membership of SAICA.

The letter addressed to the practitioner specifically pointed out the following:

"Ek maak u attent daarop dat u nie meer geregtig is om die benaming Geoktrooieerde Rekenneester (Suid-Afrika) te gebruik nie. Trouens, indien u dit sou doen, is u skuldig aan 'n strafbare oortreding onderworpe aan 'n maksimun boete van R20,000."

The fact of the termination of the practitioner's membership of SAICA was in fact common cause as was the fact that he was aware that he was from that time onwards no longer entitled to use the designation chartered accountant or the initials CA(SA).

Mr [D] also drew the committee's attention to the statutory provision which prohibits the use of that designation and that initials being the Chartered Accountants Designation (Private) Act No. 67 of 1993.

He testified further that the use of the designation and the initials on the two letters in the bundle which bore the practitioner's letterhead as well as the designation and initials as aforesaid as well as the brochure referred to in the charge sheet would constitute an offence.

SAICA's complaint to the Board had originated when they received a copy of a "To whom it may concern" letter dated 10 January 2006 on the practitioner's letterhead in connection with a certain Mr [C] purporting to certify the latter's income as being not less than R80,000 per month.

He was unable to recall how the letter had come into SAICA's hands. He could only say that a copy of the letter had been sent to his secretary.

Under cross-examination, [D] was not able to testify in relation to the second letter bearing the facsimile transmission date of 26 September 2005 and bearing the designation and initials, nor in relation to the brochure referring to the practitioner and bearing his designation. Nor was he able to dispute what was put to him in cross-examination by the practitioner's counsel to the effect that the practitioner's letterhead had been used without his knowledge in a fraudulent scheme which had been investigated and uncovered by Absa.

Mr [S]

Mr [S] testified that he was a director of the company and a member of the CC and that these entities were involved in the operation of a guest house in Pretoria North trading under the name and style of [AKR].

He testified further that he instructed the practitioner to draw up the "statutory accounts"... for the company and the CC in April of 2006. He testified further that he had been introduced to the practitioner by a financial consultant by the name of Mr [E]. He testified to having delivered the documentation for purposes of drawing up the accounts to the offices of a firm of attorneys, [MM].

He also testified to having received the second offending letterhead but could not recall whether it originated from the practitioner or from the financial consultant, Mr [E]. He confirmed that the telephone number on the letterhead was that of the firm of attorneys [M and M].

He also testified to having "picked up" the brochure of [MM] on one of his visits to the firm, this being the brochure which also forms the subject matter of the first charge. The brochure is a brochure of the law firm, referring to its areas of specialisation and identifying the attorneys engaged in the firm along with their areas of expertise. Included as part of the brochure is a photograph of the practitioner and below his name appears the following :

"B.Comm (ACC), Hons B.COMPT, CA(SA), CIA (USA)
XXXXXX Auditors will assist you with
- business plans
- auditing and taxation – private and companies income tax, value added tax, VAT, pay as you earn
- registration of companies, trusts and close corporations."

Mr [S] testified further to a series of missed meetings, unreturned telephone calls and unreturned email correspondence pertaining

to preparation of the financial statements for the company and the close corporation. This, he testified, culminated in the practitioner having failed to prepare the financial statements of the company and close corporation in accordance with his instructions and having been required to return the papers to him, whereupon he arranged with another auditor or accountant to perform the task. He testified that he did get "a series of documents which I understand was the work that had been undertaken but it certainly was not a recognisable financial statement".

At the conclusion of his evidence in chief, Mr [S] was asked whether, once he had secured the financial statements from the new firm of auditors, he was able to lodge an application with the Department of Trade and Industry ("DTI") for a grant forming part of the DTI's small / medium enterprise development programme for manufacturing and tourism. In response he said that he was not able to do so. When asked why he said:

"Because there was a problem. I went to see the DTI and there was a problem with the actual grant itself and it needed some additional work to be done. It was nothing to do with [the practitioner] and the failure of the accounts, the non-production of the accounts, it was an entirely separate issue."

Mr [S] was subjected to a lengthy and testing cross-examination.

The thrust of the cross-examination was to the effect that-

- Where he had not attended meetings with Mr [S], the practitioner had had a justifiable reason for not doing so, for various reasons, including health-related reasons;
- On a more careful examination of the exchange of correspondence, letters received from Mr [S] had been adequately responded to by the practitioner;
- The practitioner had responded to all telephone messages left for him; and
- Most importantly, the practitioner was faced with an impossible dilemma in dealing with his instruction to prepare the financial statements because Mr [S] had received a grant from the DTI on the basis that he was a sole proprietor trading in his own name, whereas Mr [S] had asked him to prepare the financial statements on the basis that the business of the guest house was being conducted through the close corporation and the company.
- The practitioner was aware that the financial statements were needed for purposes of further claims to be submitted to the DTI and that he was aware that the grant from the DTI formed a crucial asset or source of income for his business. If the financial statements had been submitted to the DTI in the name of the close corporation or company, because the grant had originally been applied for and granted in the name of Mr [S] as sole proprietor, the grant would have been refused.

In support of the contention that the DTI grant had been applied for and granted in the name of Mr [S] as sole proprietor, a bundle of copies of documentation relating to the grant (bundle B) was put up on behalf of the practitioner and the various documents put to Mr [S]. The documents included the original application to the DTI, the contract concluded with the DTI in relation to the award of the grant and an addendum to it, the documentation submitted for purposes of the first claim under the grant and documentation relating to the first payment made under the grant. The documentation had been provided by a Mr [E], the consultant who had assisted the practitioner with and represented him in relation to, the application for the DTI grant and the subsequent submission of a claim.

Those documents certainly confirmed that the grant had indeed been applied for and granted at its inception on the basis that Mr [S] operated as a sole proprietor.

Mr [S]'s response was to the effect that the documentation had largely been prepared on his behalf as between the practitioner and the financial consultant, Mr [E], with much of it being in Afrikaans and beyond his comprehension because he was unable to speak the language. However there are certain documents which form part of the bundle which are in English and from which Mr [S] ought to have been aware that they were submitted on the basis of his conducting the guest house business under his own name.

Mr [S] disputed that he had been called on by the practitioner first to resolve the problem with the DTI i.e. that he would be seeking in respect of his second and subsequent claims to be doing so in the name of the close corporation and not in his individual name. However, when pressed on the issue, he denied that the practitioner had ever raised the problem in correspondence with him. The cross-examination culminated in the following exchange :

"Counsel : Mr [S] what financial statements would you have presented to the DTI for the next payment? In whose name would the guest house have been?

Mr [S] : I am going to say this to you for the last time. I am not at liberty to discuss anything with regard to the DTI... I have been told it is with my solicitor and the DTI."

It was then put to Mr [S] that the

problem he had with the DTI was precisely the problem which the practitioner had identified as an obstacle to the preparation of the financial statements. Mr [S] refused to respond to this assertion.

The practitioner

The practitioner evidence was to the following effect. He confirmed that he was removed from the register of Chartered Accountants on account of non-payment of fees. Thereafter, he indicated that he operated "from different clients' offices and certain items are from my own home. I still have an office today but mostly out of clients' offices, to use previously a word of 'gypsy', very much a 'gypsy' working from – doing your work at your clients' offices and premises." The work he did was as an accountant and not as a chartered accountant.

He indicated that he does the books of the attorneys firm [M and M] ("the attorneys firm") on a daily basis, and that he also prepares their financial statements but that auditing work in this regard is done by another firm of auditors. His arrangement with them, he said, was that he would do their work on their premises, that he could also see his own clients on their premises but was not allowed to do work for other clients on their premises.

The brochure, he explained, had been prepared in the late 1990's. After he was removed as a member of SAICA in 2000, he says that he gave strict instructions to everybody that he was not allowed to disseminate any documentation representing that he was a chartered accountant or bearing the designation or the initials. He said that his profile had been included in the brochure before that time because, apart from doing their books of account, he was also called in to advise some of the attorneys' firm's clients in relation to certain matters. He pointed out that, if regard is had to the content of the brochure, it is clearly outdated and relates to the time before 2000.

He explained that he had, subsequent to receiving the complaint against him, asked the receptionist what she would do if she was asked for information about the firm and discovered that she was still handing out the outdated brochure. He disavowed any knowledge that this was taking place or that he had authorised it to take place.

In relation to the first letter containing the offending letterhead, dated 10 January 2006 (Bundle A p5), the practitioner testified that he had been called in by an investigator at Absa Bank enquiring about whether he had provided letters certifying various persons' income for purposes of bank loans. This was in the course of 2006. Abs's investigation showed that someone at a firm of lawyers in Pretoria had fraudulently used his letterhead to create letters of this nature. He denied having any knowledge of this process or having ever authorised the particular letter which formed, in part, the subject matter of the first charge. In support of his defence, he produced an email from a certain [T], specialist investigator at Absa Forensic Services addressed to him on 2 April 2008 which read as follows:

> *"Absa Bank received various mortgage loan applications supported by fraudulent certificates of income on the letterheads of accountant [JN]. A certain [TAI], who was employed by attorneys [VZBR], who submitted the applications to Absa, admitted to falsifying the letters.*
> *The matter is to be investigated further by the South African Police Service."*

The practitioner testified that he considered the offending letter to be part and parcel of this "scam".

In relation to the second offending letterhead which had been faxed to Mr [S] by, according to him, either the practitioner or Mr [E], the practitioner testified as follows. He had no idea as to its origin. He acknowledged that he had old letterheads from his days as a chartered accountant which he used as scrap paper. He testified that he had known Mr [E] for longer than 20 years, that they had lived near each other and that their children had grown up together. They were friends.

The white circle in the black square on the top left-hand side of the page showed that the original of that document was at some stage filed in a filing system involving a single punched hole on the top left-hand corner of the page. He said that he never used such a filing system. He also denied that he would ever send anybody a blank letterhead.

He went on to testify about his first meeting with Mr [S] which he said took place in February 2005 and was for the purposes of preparing a DTI claim for his first year of business, being the year ending February 2005. This followed his being contacted by Mr [E] and asked to meet with Mr [S] for purposes of assisting in preparing the DTI documentation.

He testified that they he and Mr [S] met a further time in April 2006 when Mr [S] asked him to prepare the financial statements for his business. He claims that at this meeting, he pointed out to Mr [S] that if he wished to conduct the business of the guest house through the close corporation, he would have to negotiate this with the DTI because the original claim was sought and granted to him in his personal capacity as sole proprietor. The practitioner testified that Mr [S] undertook to resolve the matter with the DTI before he would be expected to produce the financial statements. Pending a resolution of the matter with the DTI, his advice to Mr [S] was for him to continue trading as a sole proprietorship so as not to lose the grant. He testified that the DTI grant represented an important asset in Mr [S]'s business, regard being had to the total asset value of the business and its annual turnover.

The practitioner testified that he was well-versed in the matter of DTI grants because he had previously worked for the Corporation for Economic Development, the fore-runner to the current Development Bank of South Africa and had some 20 years

experience in this work.
He testified to having presented to Mr [S] a provisions set of draft financial statements in the name of the company. These referred to him as "chartered accountant" because that was the designation built into the software programme which he used for the preparation of the accounts. When accounts were finalised, all references to chartered accountant would be deleted.

In relation to the complaint of failing to answer or deal appropriately or within a reasonable time with correspondence, he testified generally that he dealt with the correspondence which had been sent by Mr [S] but conceded that correspondence received from the Board had not been dealt with properly. He said that he had instructed his then attorneys to deal with the correspondence and that they had failed to do so. However he accepted that he ought at least to have written to the Board to say that he had referred the matter to his lawyers to deal with. These, incidentally, were the same attorneys whose employee was involved in the "scam" involving his letterhead.

The practitioner also referred the committee to various documents in bundle B to show that the DTI grant application was made by Mr [S] as sole proprietor, that the financial information and financial statements presented to the DTI were presented as those of Mr [S] as a sole proprietor and that the claim that was subsequently made pursuant to the approval of the grant was also made by Mr [S] in his personal capacity. As pointed out above, bundle B included all of the DTI related documentation which was put up under cover of a letter from Mr [E] to the practitioner dated 18 February 2008 enclosing all of the relevant documentation. Significantly, as will become apparent below, this bundle of documentation, wherever it referred to the practitioner as "chartered accountant" had the word "chartered" deleted and to the extent that it included some documentation on the practitioner's correspondence, the relevant letterheads referred to "[JN] Accountants". There was also no reference to the designation CA(SA). The words "external auditor" had also been deleted.

Mr [S] in his evidence had expressed some hesitation about whether his version of the DTI-related documentation in Bundle B corresponded in this regard i.e. in regard to the deletions referred to above. He expressed a desire that he have the opportunity to check his records in this regard.

When it became apparent that the matter would have to be postponed at the end of the practitioner's evidence in chief, I requested the Board to take the necessary steps to obtain Mr [S]'s version of the documentation and make it available to both parties before the resumption of the hearing.

The matter was then postponed at the end of the practitioner's evidence in chief on 7 April 2008.

Resumed hearing on 8 October 2008

The amendment

At the resumption of the hearing on 8 October 2008, the committee was informed that Mr [S] had not been able to locate his copies of the documentation which constituted bundle B. However, the pro forma complainant indicated that evidence would be led in relation to the corresponding documentation lodged with the DTI itself. Before seeking leave to lead this evidence, he applied for leave to amend the charge sheet so as to provide for the insertion of paragraph 6.1.4 referred to above.

There was no objection to the amendment or to the applications by the pro forma complainant to re-open his case and for leave to lead the evidence of a Mr [T] of the DTI in support of the added charge. It was agreed that Mr [T] would be interposed and that after his evidence, the practitioner would resume his evidence in chief in order to deal with the evidence led.

Mr [T]

Mr [T] testified that he was a deputy-director working in the incentive administration section. Mr [T] confirmed in evidence that the DTI had on record the same DTI-related documentation as that which appeared in bundle B put up by the practitioner. He testified that the bundle of documentation produced by him, exhibit C3, was a certified copy of the original records at the DTI in relation to Mr [S]'s claim.

A number of ostensibly identical documents in bundle B, put up by the practitioner, and bundle C3, put up by Mr [T] were then compared and contrasted by Mr [T]. What the comparison revealed is that-

- Where the references to "external auditor" in various documents in bundle B had been deleted, there were no corresponding deletions in the documentation lodged with the DTI as reflected in bundle C3;
- In the five documents in the DTI documentation which reflected the practitioner's letterhead, he was described as "[JN] Chartered Accountants" and the designation "CA(SA)" was included (in this case completely different letterheads appeared rather than there being any manual or manuscript deletions), whereas in Bundle B the corresponding five letterheads reflected "[JN] Accountants"; and
- On the "Declaration by the external auditor / accredited person", there were no deletions in the DTI records, whereas in bundle B put up by the practitioner, the word "chartered" had been

manually deleted in the words "[JN] Chartered Accountants" as well as the two references to "external auditor" in the equivalent document.

Similar deletions were lacking in the DTI documentation and present in Bundle B, in respect of –

- a document entitled "[NSAKR] Guesthouse Verslag Van Die Eienaar";
- a document entitled "[NSAKR] Guesthouse Aantekeninge Tot Die Finansiële State";
- the second page of the "Report of the Independent Auditor" (which refers not only to "[JN] Chartered Accountants" but also to "Designation : chartered accountants").

According to Mr [T]'s evidence, a system operated whereby all incoming original documentation was immediately scanned into the relevant database upon receipt by the registry in the incentive administration section and the originals also retained on file.

In relation to his cross-examination, the following were the main aspects to be noted.

- When any documentation is received, it is scanned and goes on to the computer system. Before it can be scanned, there must be a date stamp on it at the point of entry or registry.
- The certified copies which he had brought were either photocopied directly from the originals in the file or printed out from what was scanned on to the database.
- Mr [T] testified that not every page in a set of documents that was submitted would be stamped. Often the first page of the document and the signature page would be stamped.
- On the "Declaration by the external auditor / accredited person" a DTI stamp dated 26 September 2005 appears in the DTI record but not on the version in bundle B put up by the practitioner. The reverse applied to the document entitled "Aantekeninge Tot Die Finansiële State".
- Cross examination focussed on the latter document and it was put to Mr [T] that not only was the version in bundle B a "better version", but a version of the document bearing the original DTI stamp as it appears in bundle B, showing the purple ink of the stamp, was handed up as exhibit "B81". This document also reflects the word "chartered" as being deleted. Mr [T] was confronted with this and asked whether he could explain why the version in his records did not have the word "chartered" deleted.
- A similar line of attack was pursued in respect of the signature page of the lease agreement where, again, the version in the DTI's records did not contain a stamp whereas the version in bundle B and another version, annexure "B82" put to the witness, bore a stamp, the latter showing the original purple colour of the stamp.
- In this regard he was cross-examined on the basis of his evidence that the better version of the document would be used from their records as between the scanned and original versions, whereas here his version did not reflect a stamp, whereas that put up by the practitioner did.
- In respect of the document "Reconciliation / to first claim for small medium enterprise development programme" it was again put to Mr [T] that the version presented by the practitioner, annexure "B83", was a "better version" because it bore the original purple stamp, whereas Mr [T]'s certified copy did not. On the version put up by the practitioner, the words "external auditor" are deleted. It was also put to Mr [T] that that document must have been received by the DTI because it bore the original stamp. At the same time, Mr [T] was unable to explain why his version did not have the words "external auditor" deleted.
- Similar cross-examination followed in relation to the first two pages of the documentation submitted to the DTI. The first pages both bore a stamp but that put up by the practitioner bore the original purple stamp (B84). The second page put up by the practitioner (B85) had a stamp whereas that produced by Mr [T] did not. In response to this, Mr [T] pointed out that "on the original that we only stamped here and there, but sometimes the consultant request for more stamps and then we stamp it on his copy but not on mine because it is not showing here anything."
- When it was put to Mr [T] that he must have received the versions with the purple stamps and the deletions as put up by the practitioner, his response was that he could not vouch for what happened after the copies were stamped and handed back to the consultant, the innuendo being that the proof-of-lodging copy of the documents may have been interfered with subsequent to the lodging of the original.

Also of significance is that Mr [T] testified that they would only work with originals, they would not work with a copy. The copy would be handed back to the applicant or the consultant lodging a document on his, her or its behalf.

The practitioner's resumed evidence
In the light of the new evidence of Mr [T], it became necessary for the practitioner to testify further in chief before his cross-examination could proceed. He testified that the procedure in relation to the claim submitted to the DTI on behalf of Mr [S] would have been as follows:

- The consultant, Mr [E], would have prepared the claim documentation.

- That would have been provided to him.
- He would then have taken the draft financial statements required for the claim and prepared by him at his office.
- He would have checked to see that the financial figures contained in the claim documentation as prepared by Mr [E] were correct.
- He would then have taken all of the documentation and signed and initialled wherever necessary. In the course of signing-
  - *"I must have noticed that the word 'chartered' was used and went back and deleted where necessary and corrected every one I could see"*
  - *save for one which he allegedly skipped on page B34.*
- The documentation would then be lodged with the DTI either by the client or Mr [E]. In this case it must have been Mr [E] because he was the repository of the copies received back from DTI.
- Shortly before the present disciplinary enquiry commenced, he received his copy of the claim documentation (and the other DTI-related documentation) from Mr [E].
- This was sent by him directly to the practitioner in a sealed envelope by registered mail and the practitioner in turn provided the documentation received from Mr [E] to his legal team. This included the documents bearing the original purple stamps which were put to Mr [T] in cross-examination.
- He was unable to explain how the DTI came into possession of the documentation testified to produced by Mr [T] containing the designation and the initials.
- He denied that he had ever represented to the DTI that he was a chartered accountant.

Cross-examination of the practitioner

The cross examination of the practitioner which followed, of necessity dealt with the entire gamut of his evidence. The order which I follow is that which was followed in cross examination.

Under cross-examination on the issue of his use of the attorneys' premises, the practitioner indicated that the offices of [MM] were also used for purposes of a point of contact. That is why he used their telephone number and the firm's reception took messages for him.

He testified that he did not do audits and that the references to "auditor" on the draft financial statements which he prepared for the company were merely the product of the software which he would later have deleted. He had subsequently corrected this on the programme.

He conceded in cross-examination that the physical address on the draft financial statements was that of the attorney's firm but also pointed out that the postal address was his home address. He estimated that he visited the offices of [MM] at least three times a week. He conceded that other documentation including the two letterheads that formed the subject matter of the first charge and the brochure gave his address as being that of the attorney's firm.

Later in his cross-examination he clarified his role at the firm of attorneys further. He said that he was sometimes described as the office manager, that he "looked at [the firm's] total management function as such" and that he received an agreed monthly amount in return for his services, but he denied that he was an employee.

Under cross-examination about the letters which form the subject matter of the first charge, he elaborated that the letterheads which he used as scrap paper were in quite large quantities and that anyone who had access to his office would have access to them. He testified that "today I realise I should have destroyed it at that stage", presumably referring to the time when he was removed from the register of members of SAICA. He denied ever having given Mr [E] blank letterheads of his.

In relation to the second letter forming the subject matter of the first charge, he conceded that the letter could have come from Mr [E]. Beyond that he was not able to give any explanation as to how the letterhead could have got into Mr [S]'s hands.

In relation to the brochure, he had difficulty remembering how it came about. It may have been produced at a time when it was contemplated that he would work full time for the firm of attorneys. He testified that the brochure was no longer used as the attorneys' firm now did their marketing on the internet. He testified further that he had made sure that he was not mentioned in their advertising on the internet. He sought to distance himself from any involvement in the preparation of the brochure. He denied ever having seen the brochure in the reception area.

He claimed that he notified a wide range of people at the time of his being removed from the register of members of SAICA, of this fact. He did so orally but could not recall whether he had also done so in writing. He insisted that he had informed Mr [E] of the fact that he was no longer a chartered accountant, and had also informed Mr [M], the senior partner or director of the attorneys firm. He also claimed to have told the person responsible for the firm's website of this fact.

It was then put to him that the firm's brochure on the internet still referred to the practitioner and referred to him as a chartered accountant. The practitioner asked to see a copy of the printout of the website. His advocate initially objected, but the objection to the production of the document was ultimately withdrawn. The document indeed refers to the practitioner and describes his qualifications as "B Comm (ACC) Hons B Compt, CA(SA), CIA (USA)".

In relation to the sharing of offices, he said that he had discussed the situation with Mr [VS] from the relevant Law Society and Mr [VS] had confirmed that provided that the practitioner did not have a name board outside the offices, it was in order that he saw clients at and had an office at the attorneys' firm.

Under cross-examination, he gave a more detailed version of what took place when the DTI claim documentation was signed. On this occasion he clarified that before the documentation was presented for signature he sends the draft accounts to Mr [E] because they have a special programme for preparing the "reconciliation" for purposes of the claim. He recalled that the meeting where signature had taken place had taken place at the attorneys firm, [MM] and only he and Mr [E] had been in attendance. At that stage Mr [E] lived in Pretoria. Mr [E] had brought the documentation to his office. During this meeting he had noticed that the claim documentation referred to him as chartered accountant and included documents containing the designation and the initials. He had therefore deleted these references and arranged for the corrected letterheads to be prepared by one of the persons in the firm's office and inserted into the bundle of documentation. He could not recall whether he had signed one or more sets of the claim documentation.

Once this had been done, the documentation was handed to Mr [E] and the practitioner did not have anything more to do with it until the present Tribunal hearing.

In relation to the circumstances giving rise to the second charge, the practitioner insisted under cross-examination that he had, a few times, raised with Mr [S] what his problems were with the preparation of the financial statements. He stated that he had also contacted DTI and they had indicated that they could not deal with him because they had to either speak to the consultant or to the claimant himself.

He had prepared the draft financial statements in the name of the company as a form of discussion document.

He had never been paid by Mr [S] for any of the work which he did for him. He also explained that part of his difficulty with the preparation of the documentation was that he understood Mr [S] to expect him to prepare separate sets of financial statements for the DTI on the one hand and the Receiver of Revenue on the other, which he considered to be an act of fraud.

In relation to his failure to respond to correspondence from the Board, he accepted that his conduct had been unacceptable and testified that he had personally apologised to Ms [O] at the Board's offices.

Under re-examination, the practitioner testified, inter alia, that there had also been an inspection by the Law Society of the attorney's premises and at that stage they had had no objection to his operating from there.

At the conclusion of his evidence, members of the committee put a range of questions to the practitioner relating to difficulties they had with his version of events, primarily relating to the difficulties they had with his version as to having signed the claim documentation and having effected the deletions reflected in Bundle B at the time of his meeting with Mr [E] before submission of the documentation to the DTI. The content of and the practitioner's response to these questions is taken up in the discussion below.

After the practitioner's evidence was complete, his counsel was asked whether he was closing his case. At that point he indicated that he may yet wish to call Mr [E] as a witness, primarily "to prevent any implications that [the practitioner] himself was instrumental to any changes". This was a reference to concerns which had been raised by the committee during its questioning that the circumstances may point to alteration of the DTI proof-of-lodgement documentation after lodging of the original. (This is dealt with below.) On this basis a postponement was sought. After argument, the postponement was reluctantly granted in order to enable the practitioner to call Mr [E] as a further witness on behalf of the defence.

At the commencement of the hearing today, the practitioner's counsel indicated that he did not intend calling Mr [E] who he said was unwilling to testify. He therefore closed the practitioner's case. Argument was then heard.

The committee has carefully considered all of the oral and documentary evidence presented before it as well as the helpful argument presented by the pro forma complainant and the practitioner's counsel.

FINDINGS

Decision on the first charge

In relation to the first offending letter appearing at page 5 of bundle A, the committee accepts the practitioner's explanation that the letter was sent by somebody else as part of a fraudulent scheme and that he was not responsible for generating or dispatching the letter concerned. The committee also accepts that there is no evidence that he knowingly permitted the letter to be sent.

The charge however incorporates a further alternative complaint that he failed to take reasonable steps to prevent the dispatch of the letter. This aspect is returned to later in the committee's decision.

In relation to the second offending letter or letterhead at page 31 of bundle A, the evidence of Mr [S] was that the letter either came

from the practitioner or from Mr [E]. There was no evidence directly suggesting that the practitioner himself dispatched the letter or caused it to be dispatched. The practitioner also pointed to the white circle on the top left-hand side of the page which pointed to the document having originated from a filing system different to his own. It is significant in this regard that when documents which had been received from Mr [E] were put to Mr [T] in cross-examination in the form in which they had been received from Mr [E] (exhibits B81 – B85), they in fact did have punched holes in the top left-hand corner of the page.

The most reasonable inference in the circumstances, particularly bearing in mind the practitioner's concession that the document may have come from Mr [E], is that the letterhead was in fact faxed by Mr [E] to Mr [S], probably for purposes of giving him the practitioner's contact details. This much I understood to be accepted by both the pro forma complainant and the practitioner's counsel.

Accordingly, the committee finds that the practitioner did not dispatch or cause to be dispatched the letterhead appearing at page 31 of bundle A.

Paragraph 6.1.2 of the charge also includes the alternative complaint that the practitioner permitted the letterhead to be dispatched and (read with paragraph 6.5) the further alternative complaint that he failed to take reasonable steps to prevent the dispatch of the letterhead. Again, this aspect is dealt with below.

The third component of the complaint under the first charge related to the brochure of the firm of attorneys. Once again, there is no evidence to suggest that the practitioner himself dispatched or circulated or caused the brochure to be dispatched or circulated.

Paragraph 6.1.3 includes the alternative complaints that the practitioner permitted the circular to be dispatched or circulated, alternatively (read with paragraph 6.5) that he failed to take reasonable steps to prevent the dispatch or circulation of the brochure.

In relation to the first of these alternative complaints, the unchallenged evidence of Mr [S] was that he picked up the brochure on the table in the reception area of the firm of attorneys.

The practitioner's version was that he was unaware of the brochure ever having lain in the reception area at the material times. He also testified to having informed all relevant persons that the impression was not to be given that he was a chartered accountant once he had been removed from the register of members.

The probabilities do not favour the practitioner's being unaware of brochures lying on the table in the reception area of the firm of attorneys. On his own version he saw clients at the offices of [MM]. He must have greeted them at the reception area, as was the case with Mr [S]. It is highly improbable that he would never in that process have noticed the old brochures lying on the table. It is also highly improbable that he would never have flipped through the brochures to ensure that they did not reflect his designation as chartered accountant if he was at pains to ensure that no misleading representations were made to the public in this regard.

The probability of the practitioner's version is also undermined by the evidence pertaining to the brochure appearing on the firm's website. He gave the committee the assurance that he had taken the necessary steps to ensure that similar representations were not to be found on the website. Yet evidence was adduced to show that a version of the website dated 16 January 2008 still referred to the practitioner as part of the firm and bore the designation CA(SA).

In the circumstances, the committee rejects the practitioner's version and finds, on a balance of probabilities that he permitted the brochure to be circulated (not dispatched) as alleged in paragraph 6.1.3 of the charge.

The fourth component of the first charge related to the complaint introduced by way of an amendment. The essence of the complaint is that in documentation forming part of a claim submitted to the DTI on behalf of Mr [S], the practitioner used the designation "chartered accountant" and the initials "CA(SA)".

In essence, the practitioner's defence to this charge was that:

- The claim documentation was prepared and collated by the consultant, Mr [E];
- The documentation was presented to him by Mr [E] at a meeting which the two of them held at the offices of attorneys [MM];
- During the meeting and after or in the course of signing the documentation, the practitioner realised that there were numerous references to the designation and initials;
- He then immediately, in the course of the meeting, went back and-
  - deleted each of the references to chartered accountant or CA(SA) or to his acting in the capacity of an auditor and,
  - where letterheads of his practice using the designation chartered accountant and the initials CA(SA) had been used, he caused fresh documents to be prepared on the correct letterheads, reflecting the correct designation as being that purely of

accountant and not chartered accountant;

- The corrected documentation was handed to Mr [E] who was then responsible for the process of lodging it with the DTI;
- The practitioner had nothing further to do with the documentation until copies of it were sent to him in a sealed envelope by Mr [E], arriving shortly before the commencement of this hearing;
- Those documents were put into a bundle, being bundle B which formed the basis of his evidence and his cross-examination of the witnesses in the proceedings;
- The documentation in bundle B is in the form in which Mr [E] received it and collected it at the meeting, after his signature of the corrected documentation and deletion of the offending references.

In weighing up the probabilities it must be borne in mind that the practitioner does not dispute the authenticity of the documentation which was produced by Mr [T] and accepts that original documentation bearing his signature on the documents reflecting the offending designation is indeed to be found in the records of the DTI. Apart from acknowledging that he was at a loss to explain the original documentation in the possession of the DTI, the only possible explanation which he was able to proffer was that Mr [E] had accidentally retained both the corrected and the uncorrected set of documents after their meeting and mistakenly lodged the uncorrected set of documents whilst, presumably, retaining as his copy the corrected set of documents which were then forwarded to the practitioner by Mr [E] shortly before the hearing.

There are however a number of difficulties with the version put forward by the practitioner in this regard:

- His evidence was that the correction of the documents took place at the same time as his placing his signature and initials on the various DTI claim documents i.e. at the meeting with Mr [E] at the offices of [MM].
- He was not able to recall whether he signed a single set or more than one set of corrected documents;
- If he had signed and corrected (with the relevant deletions) a single set of original documents to be used for lodgement with the DTI, then any photocopy made of that set of documents by Mr [E] for purposes of proof of lodgement, would have reflected both the practitioner's signatures and initials, on the one hand, and his deletions, on the other, as photocopy versions of the signatures, initials and the deletions;
- If, on the other hand, the practitioner had signed two sets of corrected documents, with one originally signed set retained for proof of lodgement, then the latter set would have reflected both original deletions and original signatures and initials, once again because all of this had been done simultaneously according to the practitioner;
- The documentation which was used for purposes of cross-examining Mr [T], being the actual documentation which was forwarded to the practitioner by Mr [E] as being the proof of claim lodgement copy, does not bear out the practitioner's version.
- Two of those pages, being exhibits B81 and B83, bear deletions testified to by the practitioner. The ink on the deletions displays a sheen which shows that the deletion is an original deletion in what is in all probability black ballpoint pen. The reverse side of the pages concerned reflect a distinct protrusion corresponding exactly with the indentations created by the deletions made by pen.
- By contrast, the acknowledged initial of the practitioner on exhibit B83 is manifestly a photocopy and not an original of his initials – this is impossible on the version contended for by the practitioner because for the reasons explained earlier, logically the deletions and the signatures and initials had to all be the same i.e. either photocopy versions of the original deletions and signatures or duplicate original deletions and signatures;
- The practitioner's signature and initial do not appear on exhibit B81 where an original deletion of the word "chartered" appears. However the document is signed by Mr [S] in a version of the signature which is again, clearly, a photocopy. The practitioner was not able to recall whether Mr [S] had signed the documentation by the time of his meeting with Mr [E]. Assuming that Mr [S] had signed the documentation beforehand, then the probabilities are that, if an originally signed set of documentation was being generated for proof of lodgement, the proof-of-lodgement copy would bear an original signature by Mr [S] along with an original deletion by the practitioner. Instead, exhibit B81 reflects a photocopy signature by Mr [S] and an original deletion by the practitioner.
- On the other hand, if Mr [S] signed only a single set of documents, the deletion on exhibit would have been effected by the practitioner on that original set and the proof-of-lodgement copy should reflect both the deletion by the practitioner and the signature of Mr [S], as photocopied. Yet this is not so;
- If Mr [S] signed the documentation after the practitioner, one would have expected that Mr [S] would have confined himself to signing only the corrected versions of those documents which had to be completely replaced i.e. which bore the practitioner's letterhead. It is improbable that Mr [E] would have presented to Mr [S] for

signature both the documents with the correct letterhead and the documents with the incorrect letterhead. Yet this is what appears in the respective bundles of documentation. Bundle B at pages 39 and 40 reflect the initials of Mr [S] on the corrected letterhead documents, but so do pages 6 and 7 in bundle C3, being the "uncorrected" versions of those documents;

- There is a further difficulty with the practitioner's version. His evidence was that where the documentation presented to him for signature by Mr [E] at their meeting did not take the form of a document on his letterhead, but did contain the word "chartered", or the initials "CA(SA)" or the words "external auditor", he simply went back and deleted these. He did not suggest that he generated a completely new set of these documents with fresh signatures on which the deletions were effected. On this basis, on the "non-letterhead" documents, there is no room for dual sets of correct and incorrect documentation (a theory put forward by the practitioner). The only potential for dual sets of documentation would be on those documents which had been prepared on the offending letterheads of his practice. Yet, despite this, we find dual versions of the "non-letterhead" documentation in the bundle presented by the practitioner, on the one hand, and the documentation produced by Mr [T] from the DTI, on the other;

- In fact, closer scrutiny of the "non-letterhead" documents reveals that they are photocopies of one and the same document with the only variations being that the versions of the photocopied document appearing in bundle B reflect the deletion and the versions of the photocopied documents appearing in bundle C3 from the DTI do not. That they are one and the same document is apparent from the position of the signatures on the pages in the "competing" bundles. By way of example, on page 48 of bundle B and page 15 of bundle C3, it can be seen that the signature of Mr [S] intersects the letter "e" in the word "die" above his signature and the letter "H" in his surname "[S]" below his signature, in precisely the same place. This too dispenses with the practitioner's theory that an uncorrected set of documentation may have mistakenly been retained by Mr [E]. It also shows that there can be no suggestion that the documents presented by Mr [T] are not authentic. And it points to the deletions having been effected on the document after lodgement with the DTI.

It was put to the practitioner by the committee that the impression which the committee was left with as a result of the above considerations was that the proof-of-lodgement copy of the claim documentation had in fact been altered after lodgement of the original documentation with the DTI. He was invited to provide an explanation which might dispel the impression thus created. He was unable to give any. Nor was any offered in argument.

Given that the repository of the relevant documentation, including the proof-of-lodgement copy of the documentation, from the time after the meeting between Mr [E] and the practitioner at the firm of attorneys' offices was Mr [E], he was the only person who might have been in some position to offer an innocent explanation which might show, contrary to the pointers identified above, that the documentation was corrected prior to lodgement. In the event, Mr [E] was not called to give evidence. Even if he had been called, he would have faced the same difficulties as those faced by the practitioner. If the deletions were made before lodgement, then, again, either the copy retained by him ought to have been a photocopy version in respect of both deletions, on the one hand, and signatures and initials on the other, or the copy retained by him ought to have reflected original deletions and original signatures and initials. Clearly it did not.

By far the most probable inference which can be drawn in the circumstances is that the deletions were made and altered letterheads added after lodgement of the documentation with the DTI. This was put to the practitioner's counsel in argument and he accepted that there did not appear to be any other inference which could reasonably be drawn in the circumstances.

Responsibility for and the implications of this conduct is not a subject matter of the charges in this inquiry, save to the extent necessary to make a decision in relation to paragraph 6.1.4. It is however the strong view of the committee that this aspect should form the subject matter of further investigation by the Board and, if necessary, the prosecutorial authorities. It is trusted that the practitioner will co-operate in this regard and make available all relevant documentation, including the full bundle of documentation forwarded by Mr [E].

The Board's finding is accordingly that the practitioner indeed intentionally signed the documentation referred to in paragraph 6.1.4 of the charge and contained in the bundle of documentation from the DTI, with the knowledge that it would be part of, and would be used in support of, a claim by Mr [S] for an incentive grant from the DTI and that the documents were in fact so used. Counsel correctly conceded that a finding of guilt was unavoidable in relation to this aspect of the first charge.

I indicated earlier that I would revert to the matter of the two letters which formed the

first two aspects of the first charge. The letterhead which forms the basis for the document at page A31 of the bundle must in all probability have been provided to Mr [E] by the practitioner. Given that, on the finding of the committee, the practitioner was willing to use the designation chartered accountant and the acronym CA(SA) in the documentation prepared collaboratively by him and Mr [E] for the DTI, it is impossible to accept the practitioner's evidence that he took the necessary steps to prevent Mr [E] from using and circulating his letterhead in the form which he in all probability faxed it to the practitioner. It also places significant doubt over the practitioner's protestations that he took active steps amongst his clients and persons interacting with him in his working life, to ensure that they did not disseminate information and documentation suggesting that he was a chartered accountant.

On this basis, the committee concludes in relation to paragraph 6.1.1 read with 6.5 of the first charge that the practitioner failed to take reasonable steps to prevent the dispatch of the letterhead appearing at p31 of bundle A.

In relation to the letter addressed to ABSA, the committee is of the view that, given the lack of evidence as to how the letterhead came into the hands of the persons engaged in the fraudulent scheme, there is insufficient evidence to show that the practitioner failed to take reasonable steps to prevent the despatch of the letter.

In assessing whether these findings give rise to improper conduct in terms of the disciplinary rules, it is relevant that the Chartered Accountant's Designation (Private) Act No. 67 of 1993 makes it an offence for any person to use the designation "chartered accountant" or the initials "CA(SA)" where they are not a member of SAICA.

Accordingly, the committee is satisfied that the practitioner's conduct in this regard gives rise to a breach of Disciplinary Rule 2.1.21 in that he, in the respects found by the committee, conducted himself in a manner that was improper or discreditable or unprofessional or unworthy on the part of a practitioner or which tended to bring the profession of accounting into disrepute.

Decision on the second charge

In relation to the second charge, the complaint in essence was that the practitioner had failed to prepare and audit the annual financial statements of the company and the close corporation for the year ended 28 February 2006 as he was instructed to do by Mr [S].

As appears from the summary of the evidence, the practitioner's defence to this was that he was faced with the dilemma that he was called upon to reflect the business as being conducted through the close corporation and the company in the financial statements in circumstances where the financial statements were being prepared, in part, for purposes of submission to the DTI for purposes of the next incentive grant claim and the practitioner was aware that the grant was only payable to Mr [S] as sole proprietor.

A secondary component of the complaint against him was his failure in relation to this instruction to keep appointments with the representative of the company and the close corporation, being Mr [S], or cancelled appointments without adequate notice and further that he failed to contact Mr [S] in this capacity to discuss issues relating to his engagement, despite having given undertakings to do so.

The documentation contained in both bundle B and in bundle C3 tends to bear out the practitioner's defence in relation to this charge. Those documents show quite clearly that the incentive grant was awarded to Mr [S] in his personal capacity as sole proprietor and not to either the close corporation or the company. The contract between Mr [S] and the DTI which forms part of that documentation makes it clear in clause 13.8 that -

> *"Cession of the approved incentives by the entity to third parties is not allowed. Any cession of incentives or part thereof invalidates this contract from the date such cession is effected."*

The committee also accepts the practitioner's evidence that the grant represented an important asset in Mr [S]'s business, particularly when viewed in terms of the potential totality of the grant over the entire period of it being payable. Moreover, Mr [S]'s own correspondence confirms that the financial statements were required specifically for purposes of the claim. Thus in his email dated 2 August 2006 addressed to the practitioner, Mr [S] said the following:

> *"On 24th April 2006 I delivered to the offices my financial records so that [the practitioner] could prepare the necessary accounts for [AKR] CC and for [LGH] (Pty) Ltd. I explained that I needed the [KR] accounts as soon as possible so that I could submit my 2nd DTI Grant Claim."*

A draft set of financial statements, exhibit C2, was prepared by the practitioner but reflected the dilemma he faced. He prepared the draft financial statements reflecting the business as being conducted through the company, knowing that this was problematic. In his email letter to Mr [S] dated 3 August 2006 he accordingly said the following:

> *"It is important to look at the financials before finalisation as you have a claim against DTI. I do not have a copy of the original contract and requirements for this years claim."*

What would add to the unfairness of making a finding adverse to the practitioner in respect of this main component of the charge is also that in relation to a crucial aspect of the practitioner's defence, Mr [S] simply refused to allow himself to be cross-examined. This was specifically in relation to the matter of the problems which Mr [S] had apparently subsequently experienced with the DTI. The purpose of the cross-examination was obviously to show that the very problem which the

practitioner had anticipated had in fact materialised.

Accordingly, the committee finds that the Board has not proven its case against the practitioner insofar as it pertains to paragraphs 8.4.1, 8.4.2 and 8.4.4 of the schedule of charges.

The question remains whether the Board has proven its case in relation to the secondary components of the second charge, being the failure to keep appointments and the failure to discuss issues relating to the engagement.

In relation to the failure to keep appointments, whilst the practitioner's explanations were in many respects not convincing, the committee is not satisfied that the Board has proven its case on a balance of probabilities in this regard.

In relation to the failure to discuss issues relating to his engagement, the committee needs to take into account that the Board withdrew the greater portion of the third charge pertaining to the practitioner's alleged failure to answer to, or deal promptly or within a reasonable time with, correspondence or other communications from Mr [S]. It is also so that some indirect allusions to the dilemma faced by him are to be found in the correspondence. In addition, Mr [S] conceded in cross-examination the possibility that the practitioner may have raised his dilemma with him despite him not having a recollection thereof.

On the other hand, a conspectus of the correspondence suggests that if the practitioner did raise the problem, he certainly did not do so in the direct and clear manner which he was professionally required to do. However, this component of his conduct does not seem to be directly covered by any of the averments in paragraphs 8.4.3 and 8.4.5 of the schedule of charges. Thus whilst he has not conducted himself in a proper manner in this regard, there is no complaint against him upon which he can be found guilty.

In all the circumstances, the committee finds the practitioner not guilty in respect of the second charge.

Decision on the third charge

The third charge may be dealt with briefly.

As pointed out above, the Board withdrew the charges insofar as there were complaints relating to his alleged failure to answer, or deal appropriately or within a reasonable time with, correspondence from Mr [S].

On the other hand, the practitioner conceded that he had not conducted himself in the appropriate professional manner in failing to respond to correspondence from the Board. In this regard he accepted that it was insufficient that he had simply instructed a firm of attorneys to respond on his behalf.

The committee accordingly finds the practitioner guilty of improper conduct within the meaning of Rule 2.1.14 of the Disciplinary Rules in that he failed to answer, or to deal appropriately within a reasonable time with, correspondence from the Board which required a response.

Decision on the fourth charge

The fourth charge pertained to the practitioner's sharing of offices with a firm of attorneys [MM].

Although there was a faint attempt by the practitioner to suggest that he merely visited the firm when dealing with his work for them and operated on the basis of a roving "gypsy", it is apparent on a conspectus of the evidence that he indeed shares offices with [MM]. This is borne out by, inter alia, his having an email address linked to the law firm, his having a permanent office at the law firm, on his own version seeing clients at the law firm and his having allowed himself to feature as part of the firm's brochure.

The difficulty for the Board, however, is that neither the Disciplinary Rules nor the Code of Conduct preclude the sharing of offices. It is no doubt for this reason that the charge was presented on the basis of his assisting or enabling a practitioner to act in breach of the Rules of the Law Society of the Northern Provinces.

There was no evidence to suggest that any of the attorneys in the firm had in fact been convicted under the Disciplinary Rules of the Law Society for a breach of the provisions concerned. Moreover, the practitioner gave evidence, which was not gainsaid, that he had raised his sharing of offices with a member of the Law Society and that member had indicated that as long as there was not a board advertising his name outside the building, this was permissible. An inspection of the offices by the Law Society had also not given rise to any complaint.

In these circumstances, the committee finds the practitioner not guilty in respect of the fourth charge.

The committee adds, however, that if ever there should be any matter in the future where it is shown that an auditor shared offices with an attorney knowing of the illegality under the Law Society rules, that may well give rise to a justifiable complaint of improper conduct.

That is the decision of the Committee.

SANCTION

The committee has considered the question of an appropriate sanction on the basis of the evidence that has been led in this regard and the arguments which have been ably and helpfully presented by the pro forma complainant and the practitioner's counsel

The committee traditionally considers the

appropriate sanction from the perspective of three aspects, the first being that of the practitioner and his personal considerations. The second being from the perspective of society and that includes both the auditing profession as well as the broader society, and then thirdly from the perspective of the particular offences of which he was convicted.

In relation to the question of the practitioner himself we have heard evidence from him as to the difficult personal circumstances in which he finds himself, both in relation to his own health and in relation to the health and circumstances of the members of his family, which appear to have had a very significant impact on his life and his circumstances over the last few years and we have carefully considered the curriculum vitae and related documentation which was handed up in the course of his evidence. The submission was made that the particular circumstances may have affected his professional judgment during the period in which these have been present and we have taken that into account in part although we do not consider them to be a completely satisfactory excuse for the conduct in respect of which he has been found guilty.

We have also taken into account in relation to the practitioner in person, the submission which was made by the pro forma complainant and in which there appears to be some substance and that might be put in terms of the words of "something of an attitude problem", the committee does indeed have a concern that the practitioner has not shown the ability to take responsibility in the manner in which a person of his seniority and his experience and his particular profession should be able to do. There was a tendency to look elsewhere when the time comes for blame and to attribute problems away from himself in circumstances where there is a need for a bit of introspection on his part.

We have also taken into account that whilst on the one hand he was certainly acquitted on two of the charges which he faced and also findings were made in his favour in respect of some of the components of the balance of the charges.

At the same time we have taken into account that in respect of the first charge misleading evidence was given as to what took place prior to and what was submitted to the Department of Trade and Industry. At the same time we have ignored for purposes of a sanction any consideration of what might have happened to the documentation after lodgement with the DTI and who may have been responsible in that regard, that clearly is not relevant to these proceedings and a decision is made purely on the basis of his having been found to be liable on the basis of the amended paragraph 6.1.4 of the first charge.

If we consider the profession and the broader society the pro forma complainant submitted, and if I remember correctly evidence was led to the effect that the designation 'chartered accountant' is something which is jealously guarded by the profession and all those participating in it and that transgressions of the statutory offence which has been created to protect that designation are not viewed lightly by the profession. Certainly the irresponsible misuse of the designation has the potential to undermine the trust of the public and the confidence of the public in the auditing and accounting professions.

Again if we consider the impact of these offences on the broader society, think for a moment of the perspective and the attitude towards the profession which might be generated by the experience of Mr [T] who came to testify before the committee and the views that he might walk away with in the light of what he learned had taken place in relation to that documentation.

So the committee takes into account that there has certainly been a negative impact both in terms of the auditing profession and in terms of the broader society.

In terms of the offences themselves, in the first place we take into account that the practitioner has been acquitted in respect of two of the charges and as I have indicated portions of the other charge and the committee is of the view that there is certainly some merit in his counsel's submission that the second charge, charge two, without understating the seriousness of the other two charges was in many respects the main charge which confronted or with which the respondent was confronted in these proceedings and it is in respect of that charge that he was successful in persuading the committee that he should be entirely acquitted.

At the same time as I have indicated both of the offences in respect of which there was a conviction are considered to be serious. I have already spoken about the importance of the designation of "chartered accountant" and it is obviously a serious matter where that is abused. At the same time we do take into account what counsel submitted in relation to this not being a case of a complete impostor but rather somebody who was formerly a chartered accountant but who had allowed his membership to lapse.

In relation to the third charge it certainly is a serious matter when a nonchalant or casual or even dismissive attitude is taken in relation to correspondence from the Board and as the pro forma complainant pointed out it was not a case of simply one letter, it was a whole sequence of letters which were ignored and not appropriately dealt with. At the same time we do take into account that some effort was made to deal with the matter insofar as the respondent referred the matter to his attorneys.

Before indicating the decision in relation to the appropriate sanction the committee also makes the following observation in relation to the question of costs. We have taken into account that as I have indicated what might be considered to have been the main charge, charge number two, was one of the charges in respect of which the respondent was acquitted. There was also one of the day's proceedings when the

matter had to be adjourned because the committee was not quorum'd and that certainly cannot be laid at the door of the respondent. We have also taken into account the submission of his counsel that was I think fairly made that a contribution to costs of somewhere between 20 and 30% might be appropriate.

Taking into account all of these considerations and without suggesting this is a complete summary and enumeration of the considerations which have been taken into account by the committee, the committee has decided to impose a sanction of a fine in respect of both charges taken together of R30,000 of which one-third or R10,000 is suspended for a period of five years on condition that the respondent is not convicted of a similar infringement.

In addition the committee has decided that publication of the facts, the findings and the sanction should be published in the publication which I believe is now called IRBA NEWS but that the name of the respondent should not be published and should be withheld. The decision in relation to costs is that the respondent should bear 25% of the costs of the proceedings. That is the decision of the committee."

On 10 November the committee heard another case. The matter is part heard and resumes again on 16 March 2009.

On 8 December the committee heard the case against Messrs A E Paruk and P S Gering. The matter arose out of a court referral. There were three charges against the practitioners, which appear from the finding.

The finding and sentence of the committee were delivered by the chairman, Adv WHG van der Linde, SC. They are reproduced in full.

"In this matter the respondents pleaded guilty at the outset of the proceedings and by virtue of Section 49(4) of the Auditing Profession Act 26 of 2005, they were considered to have been found guilty as charged. Thereafter counsel representing respectively the pro forma complainant and the respondents stated their respective cases and made submissions to us. We are grateful for those. We now give our award on the question of the sentencing concerned."

The respondents pleaded guilty to three counts. They are referred to in the respondents' plea and in the amended charge sheet as counts 1, 2 and 4. I will deal with those three counts consecutively.

Count 1, and this is shared with counts 2 and count 4, pleads guilty to breaches of Rules 2.1.1, 2.1.2 and 2.1.5 as well as to unprofessional conduct in terms of Rule 2.1.21 of the Disciplinary Rules. The respects in which they admit they have failed to comply with the standards required of those Rules are set out in paragraphs A to E of the respondents' plea. They are that:

'The respondents:

(a) failed to obtain all information, vouchers and other documents necessary for the proper performance of their duties;

(b) failed to satisfy themselves by such means as were reasonably appropriate having regard to the nature of the undertakings in question of the existence of all assets and liabilities shown on the financial statements;

(c) failed to satisfy themselves properly as far as was reasonably practicable having regard to the nature of the undertaking in question and of the audit carried out by them as to the fairness of such financial statements;

(d) failed to comply or ensure compliance with the provisions of Section 300 read with Section 286(3) of the Companies Act; and

(e) failed to perform their duties as auditors with the degree of care and skill that may reasonably have been expected of them and were negligent in the performance of their duties.'

The respects are then set out in all three of the counts, but in respect of count 1 it is that:

'In the audit of the 1999 financial statements of Kobifin they provided for the writing off of the loan accounts of Shaik, Clegton and Floryn as development charges in the accounts of Kobifin as referred to in count 1 without satisfying themselves as to the origins of the loan account, as to the items going up to make those loan accounts and whether they were legitimate expenditure of the business, whether any of those items properly constituted development expenditure, and in the knowledge that R170,000 of the loan account in the name of Shaik was constituted by the reversal of the bulk of his director's remuneration for the year in question, and in consequence neither the annual financial statements of Kobifin nor those of Nkobi Holdings fairly presented the state of affairs of those companies.'

Count 1 then goes on to contain charges relating to the audit process and its deficiencies in some five respects. In respect of those five respects too the respondents therefore pleaded guilty. These included that:

'The respondents failed to document any proper evaluation of the going concern assumption and the prospect of obtaining the necessary support from the company's bankers.'

The respondents filed a reply to the charges that were initially put to them and this reply is contained in divider B of file 1. An explanation for the conduct which founds count 1 is contained in that

reply at paragraphs 93 to 96, and those paragraphs read as follows:

'93. The draft annual financial statements reflected expenditure allocated to the loan accounts of Clegton, Floryn and himself.

94. One of the issues raised by Mr Shaik was that neither he nor those two companies (which were dormant) owed money to Kobifin and that the expenditure underlying those loan accounts was expenditure for the benefit of the company in securing contracts and tendering for other contracts and should be reallocated to reflect this.

95. Mr Paruk recalls Mr Shaik referring to the company incurring expenses in seeking out business opportunities. These expenses were in the nature of the cost of flights around South Africa and overseas pursuing business opportunities and included consulting fees and legal costs.

96. Both Mr Paruk and Mr Gering were aware of the considerable expenditure that had been incurred in seeking business opportunities and took the view that the amount involved was not inconsistent with their knowledge of the work in this regard that had been done and that it was appropriate to reallocate these expenses to development costs.'

The respondents went on to say that they believed that expenditure of this nature could appropriately be reallocated to development costs. In effect what has occurred was a mis-classification, which in the view that we take of the matter had no impact per se on the balance sheet of the company.

Mr Plewman SC in his submissions and statement of the pro forma complainant's case laid stress on the fact that this was a deficient audit process and said too that one was dealing with a company under financial stress and in that context this was a material example of professional misconduct.
Mr Wallis SC conceded fairly that one was dealing with shoddy, inadequate, negligent audit work for which there was no excuse. He said, and we believe rightly so, that the respondents blithely accepted Mr Shaik's explanation and that they were willing to accept what he said without adequate enquiry. In our view the respondents' remissness lies in losing their independence to Mr Shaik. This serves as an aggravating factor.

Second, this was a material requirement. We refer in this regard to the independence of registered auditors, of the practice of auditing; the fact that their independence was lost is also an aggravating circumstance.

Third, we agree with Mr Wallis that it has not been illustrated that this conduct has resulted in a loss to anyone and we consider that this is a mitigating circumstance.

Fourth, we believe that it is material though that the respondents have failed in the respects set out in (I) to (v) of the auditing process, and this materiality is in our view an aggravating circumstance.

Fifth, I will return below to what we regard as the appropriate sentence, but now already remark that we have decided that for the purposes of sentencing we ought to deal with count 1 together with count 2 and count 4 as one set of conduct which is deserving of appropriate sentence.

I should remark, and this will become clear when I refer to counts 2 and 4, that we considered the fact that some of the instances of misconduct occurred in one audit and was then repeated again in an audit a year later. We regarded that as an aggravating circumstance because the respondents had a second occasion on which to reflect on the appropriate professional conduct concerned.

Count 2, is again introduced by the concession to the same breaches of the same rules and the same unprofessional conduct as that to which count 1 is introduced.
The conduct concerned in count 2 relates to the treatment in the annual financial statements of Kobifin, Kobi IT and Nkobi Holdings for the years 1999 and 2000 of the sale of a work-share right.

The particulars of the conduct concerned are set out in paragraphs A through F of count 2, and essentially come down to the fact that the respondents permitted the transaction to be reflected as having occurred in the 1999 financial year when the possible investment by Symbols in Kobi IT, which gave rise to the sale in the work-share right by Kobifin to Kobi IT, was only the subject of negotiations between Shaik and Symbols from about July 1999, and no agreement had been concluded or contemplated in the 1999 financial year requiring that the work-share right be housed in a separate company within the Nkobi Holdings group.

Although this occurred in three companies it was in the course of one audit and one audit fee, certainly in each of those years concerned, but as I have already said earlier it occurred twice, once in the 1999 audit year and once in the 2000 audit year.

Mr Plewman submitted that the charge was particularly serious and he stressed the fact that the respondents have admitted that they knew that the backdating of this transaction was not permissible, and that they should have known that it was not excusable on the grounds that the Nkobi group of companies was in substance the alter ego for business purposes of Mr Shaik, and that Mr Shaik was fully aware of the true factual position. He referred us to Bundle A, page 1.5, to illustrate how the R3.5 million was reflected as capital surplus on disposal of work-share and that this suggested and conveyed that that R3.5 million had been realised. This was not true. He pointed out that this resulted in a positive equity of some R1.642 434m without which there would have been a deficit in Kobifin (Pty) Limited.

Mr Wallis stressed again that no-one was misled in that Mr Shaik who controlled the group was fully informed. He stressed that no-one suffered any loss as result of this treatment. He argued that one could not draw the inference that otherwise the company would have been insolvent, and he submitted that even a third party would have interrogated the accounts and therefore would not have been misled. He argued that in civil law auditors were generally not liable to third parties who used the financial statements and relied on them, and that if that proposition were sound, as he submitted it was, it meant too that the fact that third parties could be misled by the accounts could not found a basis for professional misconduct.

In our view there is a material difference in financial statements that fairly present a solvent company as opposed to financial statements that fairly present an insolvent company. The opinion which the respondents as auditors expressed read:

'Audit Opinion. In our opinion the financial statements fairly present in all material respects the financial position of the company at 28 February 1999, and the results of its operations and cash flows for the year then ended in accordance with generally accepted accounting practice and in the manner required by the Companies Act.'

This opinion has a value in itself and it is the duty of the profession to uphold the integrity of such opinions. Users of the accounts are entitled to rely on the fact that the opinion was expressed after an audit carried out in accordance with appropriate standards and that the accounts were drawn in accordance with appropriate accounting practices. The debate about actual or commercial insolvency therefore in our view is not in point. The fact that the professional misconduct was repeated a year later is an aggravating circumstance. We stress too finally on this count that we regard the backdating aspect as particularly serious.

In count 4, again the unprofessional conduct was introduced with reference to the concession of a breach of Rules 2.1.1, 2.1.2 and 2.1.5 and to a concession of unprofessional conduct in terms of Rule 2.1.21 relying on the same general set of facts contained in paragraphs A through E of the respondents' plea. The conduct complained of is that in relation to the investment in Prodiba as reflected in what is described as version 2 of the 1999 KobiTech financial statements, the Prodiba investment was reflected as having been revalued by some R8.5 million with the increase in value being reflected as a non-distributable reserve.

The revaluation, it is conceded, was inappropriate for the reasons set out in paragraph A(i) to A(iii) under count 4 of the respondents' plea. This revaluation occurred in KobiTech in the 1999 financial year as well as in the consolidated financial statements for Nkobi Holdings in both the 1999 and the 2000 financial year.

Again there was thus a year interregnum between the occasion on which it first occurred and when it was repeated. Mr Plewman again submitted that this was a very serious audit failing. Mr Wallis again submitted that no-one was misled and that no-one suffered any loss. These were, so he submitted in our view correctly, important mitigating circumstances.

In our view the fact that it was however a repeat occurrence is an aggravating factor.

Second, the entry is shown as a revaluation and the third party reader would have appreciated this. If one has regards to Bundle A, page 6.2.7, note 5 to the annual financial statements of KobiTech (Pty) Limited for 28th February 1999, reads:

'Directors' valuation of the unlisted shares is at valuation. The directors' valuation made in compliance with the Companies Act 1973 should not be taken as the open market value for credit, sale or fiscal purposes where different principles of valuation could result in significantly different valuations.'

The fact of this disclosure is in our view mitigating. The accounting treatment, aside from the question of the valuation has, so we believe, been essentially correct. The wording in note 1 on page 6.2.6 of file A might have been changed to fit with the disclosure on page 6.2.7 under note 5, but that we believe is neither here nor there from a point of view of a third party user of the accounts.

We come now to what we regard as an appropriate sentence. Traditionally this process is acknowledged to be the most difficult part of the procedure with which we are busy, and equally it is trite that one takes into account the interests of the individuals concerned, of the misconduct which is being complained of, and finally the interests of society, in this case and on these facts represented by the auditors' profession.

In considering the position of the individuals we have approached the matter on the basis that they should be treated on the same footing and that there should not be more lenient or more aggravated treatment of one above the other. This is so not only because we could not really discern a basis to do so, but it was not argued either that there should be discreet and separate treatment.

In respect of Mr Gering we were given and had regard to his curriculum vitae. We had regard to the leadership roles which he played in the professional sphere and also his professional publications, which I think is fair

to say is impressive. Mr Paruk's CV was also handed up and his personal circumstances are there reflected. We had regard to the fact that he serves as a chairman of the Audit Committee for the KZN region of the South African National ZARCA, a Muslim organisation which collects zarca from Muslims in South Africa, which are contributions based on a percentage of their earnings and which are used to carry out charitable work. He has held this position for 2 years. The point is that both Mr Gering and Mr Paruk are professional people of standing in the profession. We did not take lightly and in fact considered in their favour in a tangible way, as will appear later, the fact that they pleaded guilty.

Concerning the second leg of the triad which we take into consideration, that is to say the misconduct, we have already referred to the three counts above and we have indicated, we hope in respect of each of those counts, where we consider there are aggravating and mitigating circumstances.

Concerning the society that features here, that is to say the auditors' profession, its interests are served in upholding its standards and in being seen to be doing so.

We now discuss the four legs of appropriate sentencing which were debated before us.

The first is that of a fine. Mr Plewman argued for a substantial fine on each of the three counts. As we have indicated we intend treating the counts together on the basis of submissions made by Mr Wallis, which we accept, but we do take into account as an aggravating circumstance the fact that although conduct was perpetrated in one audit in the 1999 financial year, in many cases the same conduct was repeated a year later. Mr Wallis argued in the context of a fine that it would be appropriate to start off by looking at the audit fee which was earned in the 1999 financial year which comes to R23 000 and that that would serve as an appropriate marker from which one might reach R40 000.

In our view an appropriate fine is R70 000 in respect of each respondent, and we so direct.

In respect of the question of the right to practice, the parties have really made common cause in effect and we agree with it. In the result the order which we make in regard to each of the two respondents is:

(1) their right to practice as a registered auditor is suspended for 6 months;

(2) this order is in turn suspended for a period of 5 years on condition that the respondents are not found guilty during the period of suspension of improper conduct in respect of which a fine which is itself not suspended, is imposed.

On the question of publication, the real issue concerned was whether it should be ordered that the names of the respondents be published. In our view that is indeed appropriate, and we direct that publication of the charges and the respondents' names is to take place in IRBA News on the basis that this does not include the name of their firm.

I come to the question of costs. On this issue the divide was whether the matter ought to have been prosecuted as fully as it was from the outset including preferring the allegations of dishonesty. In our view the IRBA is obliged properly to investigate matters of improper conduct, and it would have a chilling effect on the IRBA's functioning if it were not at least partially compensated for costs incurred. It may be different where the pro forma complainant was demonstrably over-zealous, but this was not the case here, and we take into account that the concessions which were appropriately made, came only last week.

Ordinarily this committee might have directed that between 25% and 50% of the costs incurred ought to be paid by a respondent. However the fact that the respondents have pleaded guilty has weighed with us, and accordingly the order that we make is that each of Mr Gering and Mr Paruk pays 10% of the costs incurred by the IRBA. That then is our order."

Queries: *Jane O'Connor*
Director: *Legal*
Telephone: *087 940 8800*
Facsimile: *087 940 8873*
E-mail: *joconnor@irba.co.za*

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD II training and development plan form

The CPD II form has been redesigned to be more user-friendly, thanks to the feedback received from Registered Auditors(RAs). Those RAs who were not able to complete their minimum of 20 verifiable audit relevant hours in a CPD I form were required to complete a CPD II form on how they will make up these hours during the remaining period of the CPD cycle. The new design has fields that have already been completed for your convenience, together with an example of how to complete the required spaces. The new form is available on the IRBA website at: www.irba.co.za

Monitoring process

As mentioned in our August issue, we will soon be embarking on our monitoring process to ensure that the CPD activities undertaken by RAs are up to date and relevant to the work that they undertake. A sample of RAs will be selected for monitoring this year. RAs (non attest) will be requested to submit relevant supporting CPD documentation.

Please note the following:
If selected for Monitoring, you will be required to submit proof of your verifiable, audit relevant CPD hours in the form of invoices, copies of attendance certificates, a schedule of all self-certified reading specifying date, title of publication, title of the article, and/or any further documentation that may be required to verify your CPD activities.

CPD hours – the impact of the 3 year cycle

Please note below an example of what is required over the 3 year cycle:

The period within the 3 year cycle	Recommended CPD hours required per year	Compulsory hours to be completed per year	Break down in your 3 year cycle (i.e. 2007-2009)
01 Jan 2007 – 31 Dec 2007	30 hours	You are required to submit a minimum of 20 verifiable audit relevant hours	10 hours maximum of self certified reading
01 Jan 2008 – 31 Dec 2008	30 hours	You are required to submit a minimum of 20 verifiable hours	10 hours maximum of self certified reading
01 Jan 2009 – 31 Dec 2009	30 hours	You are required to submit a minimum of 20 verifiable hours	10 hours maximum of self certified reading

Although you have to complete **a minimum 20 verifiable, audit relevant CPD hours per year,** at the end of 2009, you must still ensure that you have **completed a minimum of 90 CPD hours (of which at least 45 hours must be in area of professional knowledge, 9 hours of professional skills and 9 hours of ethical skills)**

If an RA only submitted 20 verifiable, audit relevant CPD hours per year then the RA has complied with the CPD reporting requirements per year; however at the end of 2009, the IRBA will verify if the RA has completed a minimum of 90 CPD hours:

1. A minimum of 20 verifiable audit relevant CPD hours per year
2. A minimum of 90 CPD hours at the end of 2009 and with the required minimum hours in the respective categories

Example:

Should an RA complete the minimum of 20 hours in 2007 and then 20 hours in 2008, then that RA will be required to complete 50 hours in 2009 to make up the minimum of 90 CPD hours required. As we allow a maximum of 10 hours per year of self certified reading, an RA will be required to complete 40 hours **verifiable** hours to make up that 50 outstanding hours in 2009.

Frequently asked questions

There have been many queries relating to CPD as this was the first reporting date. Some frequently asked questions are summarised below:

Question	Answer
1. Does IRBA receive a CPD report from SAICA after a Registered Auditor has completed the forms on SAICA's website?	No. The SAICA website is not linked to the IRBA website. However the RA may send the same SAICA submission to IRBA
2. Can my studies form part of the CPD verifiable hours	Yes. Any audit related studies that you currently doing are admissible as verifiable hours for the required reporting year only.
3. My Summary report from SAICA states "OLD CPD" report and does not show the breakdown of my 2007 records.	SAICA changed the CPD reporting on 7 May 2008. Any CPD that was recorded prior to this date is on the old CPD report and any CPD reported after that date is on the summary report. The old CPD report did not allow members to allocate their CPD into the IRBA areas of learning Professional Skills, Professional Knowledge and Ethical Values. This option was only available on the new recording system which went live on 7 May 2008 to members who changed their status to RA members on the system **Members are able to download the OLD CPD report into excel to add in the IRBA learning areas for themselves for complete submission to the IRBA.**

Queries: *Shirley Ferndale*
Professional Manager: *Education, Training and Professional Development*
Telephone: *087 940 8800*
Facsimile: *087 940 8875*
E-mail: *edutrain@irba.co.za*

REGISTRY

INDIVIDUALS ADMITTED TO THE REGISTER OF THE BOARD From 01 JULY 2008 To 30 SEPTEMBER 2008

Banfield Gary Leonard
Black Kevin Donald
Black Orlando Nilton Fernandes
Blumfield Desmond Llewellyn
Boom Royden Arend
Bredenhann Tosca
Buchel Graeme Roger
Cheadle Terence Grant
Chetty Oveshan
Coetzee Marinus
Collett Llewellyn Jack
Criticos Vassos
Daley Richard Bruce
Dansie Jeffrey John
De Freitas Vasco Manual Ricardo
Dempsey Christian Theunis Bekker
Deysel Engelbrecht Marieta
Docke Jennifer Louise
Du Plessis Susanna Maria
Els Warren Gordon
Fourie Elsibie Elichia
Fubu Nosisa
Gericke Peter Willem
Goosen Enid
Haasbroek Carlien
Haripersad Asha
Harvey Lee Gunter
Hendrickse Lilia
Hiralall Pravesh
Holl Theunis
Jacobs Johanna Margaretha
Joseph Zoe
Kock Sone Jeanette
Kotze Barend Gerhardus
Liversage Daniel Jacobs
Madikazi Zoleka Elizabeth
Manson Warren
Martin Claire
Marx Karin Marika
Matthee Antoinette
Moller Johanna Theron
Moore Michael John
Mthimkhulu Mxolisi Wiseman
Munitich Alan Dudley
Myburgh Henriette
Newman Leon RIchard
Nhleko Vusimuzi Ronald
Olivier Franco
Peddle Graeme Christopher
Petersen Abraham Oswald
Pickford Nigel Lionel
Pienaar Herman
Pienaar Werner
Pillay Kumenderi
Pillay Yugendren
Rautenbach Merle
Rautenbach Rudolf Johannes Van Wyk
Reinach Leon David
Render Teresa Heidi
Roberts Leonard Barnard
Rossouw Christine Schoeman
Johan Barnard
Schoeman Willem Petrus
Schoultz Mahlie
Schunke Fritz
Schutte Brigitte
Smit Adele
Smit Heidi Helette
Smit Ian Hercules
Stansfield Craig Graham
Stewart Lee-Anne
Steyn Helena Madeleine
Swartz Gary Edward
Tladi Matome John
Tsoka Lepeke Elliot
Van Den Heever Roeleen
Van Der Ahee Pieter-Louw
Van Der Merwe Lynnette
Van Zyl Josua Pieter
Venter Julie Adele
Vincente Antonio Miguel Gomes
Dealmeida
Visser Daniel Roux
Vittone Sergio Domenico
Volschenk Riana
Wajoodeen Imraan
Welgemoed Russell Keith
Zwiegers Johannes Jakobus

INDIVIDUALS REMOVED FROM THE REGISTER OF THE BOARD From 01 JULY 2008 To 30 SEPTEMBER 2008

Badsha Ebrahim (Resigned)
Barnard Francois Johannes
(REsigned)
Brand Jan Hendrik (Resigned)
Brown Desmond Stanley (Resigned)
Cloete Patrick Hendrik (Resigned)
Els Jan Ernst Albertus (Emigrated)
Ferreira Bryan Richard (Resigned)
Gomes Mario Celestino (Resigned)
Hull Anthony Grove Horton
(Resigned)
Jager Berend (Resigned)
Kaplan Richard Charles (Resigned)
Knox Thomas Oswald (Resigned)
Leib Pincus (Resigned)
Luke James Thomas Carlyon
(Resigned)
Mentz Hendrik (Resigned)
Michael Michalakis (Resigned)
Robinson Brendan Eric (Resigned)
Rothman Barry-JoHn (Resigned)
Sharwood Clive Arthur (Resigned)
Stubbs Trevor Frank (Resigned)
Van Breda Dirk Gysbert (Resigned)
Van Dyk Jacobus Cornelius (Resigned)
Van Niekerk Marianne (Resigned)

INDIVIDUALS RE-ADMITTED TO THE REGISTER OF THE BOARD From 01 JULY 2008 To 30 SEPTEMBER 2008

Abrie Willem
Betts Michael John
Buchner Susanna-Marie
Budd Shane
Bukhosini Bhekumuzi Andreas
Chaplog Bryan Shaun
Chetty Jenny Faith
Coetzee Wilna
Correia Andriana Christalla
Dalton Trevor John
De Kock Martin Christo
De Leeuw DAniel Bartholomeus
Dell Lorna
Dhlamini Lindani Lorna
Du Plessis Petrus Gerhardus
Du Toit Barend Jacobus
Forbes Donald Murray
Fourie Blenda
Garach Viren Bhagwandas
Gazi Khanyisa Bongolethu
Gerber Maria Cornelia Margrietha
Goldner Sonja
Govender Loganathan
Grobbelaar Cornelius Frederik
Jenkinson Christian Peter
Kana Pradeep
Katz Leon Desmond
Liebenberg Schalk Willem
Linde Andries Jacobus
Lindeque Susanna Wilhelmina
Lubisi Mashangu Ronny
Maistry Egashnee
Malele Jabu Adolph
Manase Zodwa Penelope
Mazhindu Charles
Meaker Allister Brian
Moon Olaf Benjamin
Moore Renn Gordon
Morathi Frank
Mutsharini Ratshibvumo Rodney
Patel Muneshkumar Vashantlal
Pillay Sivananda
Randall Alan
Rautenbach Gottfried Jacob
Sherwood Walter Rex
Sommerville David Alan Sage
Swana Nkululeko
Van Der Merwe Henry Hermanus
Van Der Merwe Nicolaas Johannes
Stephanus
Van Der Walt Sandy
Van Niekerk Roedolf Johannes
Veltkamp Jan Willem
Wandrag Jan Lodewyk
Xaba Rosetta Ntambose

INDIVIDUALS ADMITTED TO THE REGISTER OF THE BOARD From 01 OCTOBER 2008 To 31 DECEMBER 2008

Badat Abdur Rehmaan
Bragg Rosalyn Eleanor
Burger Izak Daniel Petrus
Burger Peet
De Rosnay Hugo Louis Brian Burne
Du Raan Leonie Trudie
Fourie Sonette
Galal Parimal
Harman Kurt Theo
Harvey Traci Dorothy
Henery Craig Duncan
Houston Cindy Jean
Johaar Llewellyn Winston
Knowles Ashleigh Margaret
Kotze Ingrid
Kujenga Cheryl-Jane
Lombard Marisca
Mabusela Mmakhumo Rebone
Madikane Nolubabalo Asanda
Makaye Ntombifuthi Precious
Maluleke Dumisani Owen
Manana Nqabenhle Sibusiso
Matsila Litshani Sydney
Mosupye Lesego Francis Vincent
Salickram Ajith
Sennelo Lesego Judith
Sass Joseph
Smith Willie Frederika
Van Den Heever Anton
Van Dijk Cornelis Tertius
Van Tubbergh Jean Carl
Waligora Roy Arthur
Xulu Sandile Mduduzi
Zackey Muriel Margaret

INDIVIDUALS RE-ADMITTED TO THE REGISTER OF THE BOARD From 01 OCTOBER 2008 To 31 DECEMBER 2008

Albertyn Trevor Faure
Arendse Mark David
Bailie Daniel Hermanus
Botha Anna Maria Susanna
Burger Norman Steytler
Du Toit Frederick Daniel
Jackson Jonathan Mansfield
Joubert Knud Ejnar
Kemp Bronwyn Gudrun
Kitshoff Phillip Mynhardt
Labuschagne Johanna Regina
Lufhugu Eugene Hangwani
Maharaj Poonapersadh
Mare Marius Ignatius
Mashishi Pudula Collins
Neveling Enrico
Ngubane Wilfred Bhekabantu
Nobrega John Paul
Parker Anthony Craig
Patel Sunil Dinesh
Sathekge Samuel Mathaba
Schoombie Sonja
Snyman Carl RAennier
Sondiyazi Mpumela James
Toker Martin Keith
Truter Michael Cyril
Uys Johannes Segismundus
Venter Dennis Mark
Vuso Matsotso Johanna

INDIVIDUALS REMOVED FROM THE REGISTER OF THE BOARD From 01 OCTOBER 2008 To 31 DECEMBER 2008

Blumfield Desmond Llewellyn (Resigned)
Ebrahim Fatima Abdul Samid (Resigned)
Hill Colleen Joy (Resigned)
Joubert Albertus Christoffel (Resigned)
Kramer Ian (Resigned)
Lambert Richard Keith (Resigned)
Naidoo Mahendran Letchmiah (Resigned)
Van Der Westhuizen Phillipus Johannes Geyser (Resigned)

GENERAL NEWS

The IRBA relocated to its new premises from 1 December 2008. The new address is:

Building 2, Greenstone Hill Office Park, Emerald Boulevard, Modderfontein
Tel: (087) 940 8800





IFIAR MEETING - CAPE TOWN - SEPTEMBER 20

(See page 9 for story.)



















2008 PUBLIC PRACTICE EXAMINATION RESULTS

The 2008 PPE results were released countrywide on Friday 27 February 2008. Several candidates came to the IRBA's new premises to check their results. For more information and the full results, please refer to the loose insert in this newsletter.

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: http//www.irba.co.za

irba
INDEPENDENT REGULATORY BOARD FOR AUDITORS