

irba

INDEPENDENT REGULATORY BOARD FOR AUDITORS

NEWS

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The IRBA Board was appointed by the Minister of Finance for the period April 2015 - March 2017. From Left to right: Ms Phumzo Noxaka, Mr Abel Dlamini, Adv Lise Keech, Mr Michael Sass, Ms Rene Kenosi, Thiru Pillay and Amanda Mazibuko. Not in the picture: Mr Zola Fihlani and Prof Alex van der Watt.



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FROM THE CEO'S DESK

The year is moving at an alarming speed and with that the objectives that we have set for ourselves. The IRBA strategic plan for 2016 - 2021 was approved by our board and submitted to parliament at the end of March and we are now hard at work implementing the strategy.

Our strategy is made up of four key pillars namely:

1. **Comprehensive regulator:** To provide for a more comprehensive regulatory model that includes the regulation of Professional Accountancy Organisations (PAO) subject to final approval by the Minister of Finance.
2. **Independence:** Strengthening both the independence of the IRBA and the independence of registered auditors.
3. **Leadership in Africa:** Implement initiatives which will contribute to enhancing and improving overall reporting, governance and regulatory practices on the African continent.
4. **Transformed profession:** Influencing the advancement of transformation in the profession.

Some of the key strategic pillars are our response to the recommendations made in the World Bank Report on the Observance of Standards and Codes (ROSC) which have been adopted by the Minister of Finance.

We recently met with the Deputy Minister of Finance, Mr Mcebisi Jonas, to discuss our strategy and other issues relevant to the IRBA and the profession. The Deputy Minister gave his support to the IRBA strategy and the four pillars. He also committed to have the National Treasury fast track the process of implementing the recommendations from ROSC and setting up the necessary structures required to implement these recommendations.

The Minister's office, through cabinet, announced the appointment of the new IRBA Board for the next term of office. The eight member board (together with a ministerial representative) was appointed in terms of section 12(1) of the Auditing Profession Act (act 26 of 2005) for a two year period, renewable for another two year term. For more on our new board members refer to page 18.

We welcome the new board members and we look forward to working very closely with them to implement our new strategy.

I would also like to express my sincere gratitude to our previous Board members for the leadership that they have shown in guiding the IRBA in the last four years. They presided over some of the most difficult decisions of the Board and the most challenging periods for state owned entities, and continued to lead without fear or favour. I wish them all the best in their future roles.

While attending some meetings abroad, South Africa was in turmoil over the recent violence against foreign nationals. These xenophobic attacks come at a time when South Africa and the profession as a whole has been making great strides and contributing to positive changes on the rest of the continent. The violence perpetrated by a few will tarnish the name and global position of our country which we have all contributed to in building its good reputation.

We must all denounce violence and take a stand and say "Not in our name".

This month, we officially launched the Audit Development Programme (ADP). We already have Candidate Registered Auditors who have registered on the programme and we are very excited about the implementation of the programme.

The ADP is a specialisation period undertaken by professional accountants who want to become Registered Auditors (RAs). The purpose of the ADP is to consolidate and refine the capabilities that are developed during a candidate's training programme. This takes place in a more complex learning environment and aspiring auditors are required to perform roles more senior to those undertaken in the training contract (articles of clerkship). This will position the RA as a specialist in the field of accountancy.

The reputation, relevance, value and confidence in the auditing profession depend on the ability of its members to continually meet the expectations, and respond to the needs of stakeholders. Auditors must provide a service appropriate to the requirements of the South African economy within the global context and in a dynamic environment.

The ADP promotes public protection by ensuring that all RAs have demonstrated professional competence and that they have operated at managerial levels within an audit firm.

As we continue to push the limits and borders to achieve our common objectives, while working with our stakeholders, we should take comfort that this might be the best time to be in the profession and to be in the country that we all worked hard to build.



Bernard Peter Agulhas
Chief Executive Officer

STANDARDS

New and Revised Auditor Reporting Standards

The IRBA is rolling out an Awareness Programme on the new and revised Auditor Reporting Standards, issued by the International Auditing and Assurance Standards Board (IAASB) in January 2015:

- ISA 700 (Revised), *Forming an Opinion and Reporting on Financial Statements*;
- ISA 701, *Communicating Key Audit Matters in the Independent Auditor's Report*;
- ISA 260 (Revised), *Communication with Those Charged with Governance*;
- ISA 570 (Revised), *Going Concern*;
- ISA 705 (Revised), *Modifications to the Opinion in the Independent Auditor's Report*; and
- ISA 706 (Revised), *Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report*.

Initiatives include articles in the South African Institute of Chartered Accountants' (SAICA) *Accountancy SA* magazine:

Analysis: Focus on Key Audit Matters
<http://www.accountancysa.org.za/analysis-focus-on-key-audit-matters/>

Further articles to follow in the July edition of *Accountancy SA*.

Events are also being held with various stakeholders such as the Institute of Directors, the JSE Limited, SAICA and the IAASB. Some events will also be recorded and the webinars or recordings will be advertised.

For further information on the IRBA's roll-out on the new and revised Auditor Reporting Standards, please visit <http://www.irba.co.za/index.php/auditing-standards-functions-55/252-international-clarity-pronouncements-adopted-and-i/882-the-new-and-revised-auditor-reporting-standards>

Documents of particular interest on this site may be the following non-authoritative publications:

• Auditor Reporting – Key Audit Matters

<http://www2.ifac.org/publications-resources/auditor-reporting-key-audit-matters>

• Auditor Reporting – Illustrative Key Audit Matters

<http://www2.ifac.org/publications-resources/auditor-reporting-illustrative-key-audit-matters>

• Auditor Reporting on Going Concern

<http://www2.ifac.org/publications-resources/auditor-reporting-going-concern>

As required by its *Due Process Policy*, the Committee for Auditing Standards (CFAS) recommended the new and revised standards to the IRBA Board for approval to adopt for use by registered auditors at its March 2015 meeting. Once adopted by the IRBA Board, the new and revised ISAs will be effective for audits of financial statements for periods ending on or after 15 December 2016.

Committee for Auditing Standards (CFAS)

Guide for Registered Auditors: Assurance Engagements on the Annual Financial Statements and Annual Statutory Returns of a Medical Scheme, including prescribed Auditor Reports for Medical Schemes

The CFAS issued the *Guide for Registered Auditors: Assurance Engagements on the Annual Financial Statements and Annual Statutory Returns of a Medical Scheme* (this Guide) on 11 March 2015. This Guide is a new guide for auditors and is effective for engagements on accounting periods ending on or after **31 December 2015**. Early adoption is encouraged.

The purpose of this Guide is to provide guidance to a registered auditor on conducting an assurance engagement on the annual financial statements and annual statutory returns of a medical scheme.

The Council for Medical Schemes (CMS) published the **prescribed auditor report templates** on 27 November 2014. The auditor reports are included in this Guide. These auditor report templates are effective for year-ends of medical schemes ending on and after **31 December 2014**.

This Guide and the prescribed auditor report template may be downloaded from the IRBA website at <http://www.irba.co.za/index.php/regulated-industries-functions-74/98?task=view>

JSE Section 13, Property Entities IRBA Guide

The CFAS has approved a project for the development of an IRBA Guide to be used by reporting accountants when required to report in terms of Section 13, *Property Entities* of the JSE Listings Requirements. It is anticipated that the Guide will be issued on exposure for comment later this year.

STANDARDS cont.

IFRS 9: Financial Instruments – Alert to auditors

The International Accounting Standards Board (IASB) published the final version of the *International Financial Reporting Standard (IFRS) 9: Financial Instruments* (IFRS 9), as part of Phase II: Impairment Methodology of the IASB project to replace International Accounting Standard (IAS) 39, *Financial Instruments: Recognition and Measurement* (IAS 39), in July 2014. IFRS 9 will be effective from 1 January 2018. The main objective of the new impairment requirements contained in IFRS 9 is to provide users of financial statements with more useful information about an entity's expected credit losses on financial instruments. The model requires an entity to recognise expected credit losses at all times and to update the amount of expected credit losses recognised at each reporting date to reflect changes in the credit risk of the financial instruments.

IFRS 9 requires the recognition of expected losses whereas under IAS 39, only incurred losses were recognised. The requirement for entities to recognise 12-month expected losses from the outset will mean that from 1 January 2018 (should the entities not choose to early adopt the standard), there could be significant changes in portfolio impairments. The change from IAS 39 to the new IFRS 9 requirements will have a significant impact on financial institutions. This is owing to the fact that the process followed to assess credit impairment will be amended to be more forward-looking and also require significant assumptions and judgement, together with statistical impairment models to be constructed and will also necessitate consideration of the design of the entity's systems and processes.

The Bank Supervision Department (BSD) of the South African Reserve Bank (SARB) is taking a proactive approach to ensure that both financial institutions and auditors of financial institutions are ready for all the new requirements imposed to ensure that the requirements are implemented consistently across the local financial institutions. In this regard, the BSD issued *Guidance Note 2 of 2015* on 2 February 2015 (issued under the Banks Act 94 of 1990), which will require the boards of financial institutions to provide a detailed update on their implementation-readiness of IFRS 9 through on-site discussions during 2015. The BSD will also, through its interaction at the SAICA Banking Project Group, monitor the implementation and readiness of the various role-players in the industry (financial institutions and auditors) around the adoption of IFRS 9 and the guidance released by

Basel Committee on Banking Supervision (BCBS), of which South Africa is a member.

The auditors of financial institutions and other entities that will be affected by these amendments to IFRS 9, the issue of the BCBS guidance and the guidance note issued by the BSD are alerted to these fundamental changes and the effect thereof on their audit of financial institutions and other entities.

CFAS Regulated Industries and Reports Standing Committee (RIRSC)

Revision of the South African Auditing Practice Statement (SAAPS) 3, *Illustrative Reports*

In response to the proposed new and revised Auditor Reporting Standards issued by the IAASB in January 2015 – and in anticipation of the IRBA adopting these standards – the CFAS approved a project to revise SAAPS 3, *Illustrative Reports*. It is anticipated that the revised SAAPS 3 will be issued on exposure for comment later this year.

CFAS Public Sector Standing Committee (PSSC)

The Auditor-General South Africa (AGSA) is in the process of developing a new audit methodology. The PSSC is providing a platform for consultation with registered auditors on methodology issues related to the planned changes.

CFAS Sustainability Standing Committee (SSC)

Illustrative engagement letter and assurance report – GRI G4

The CFAS has approved a project for a task group of the SSC to develop illustrative report(s), engagement letter(s) and any necessary guidance to be used by registered auditors when required to issue an ISAE 3000 (Revised) sustainability assurance report on a Sustainability Report prepared in terms of GRI G4. It is anticipated that the illustrative engagement letter(s), assurance reports(s) and related guidance will be issued on exposure later this year.

CFAS B-BBEE Advisory Committee (BAC)

South African Standard on Assurance Engagements (SASAE) 3502 not to be aligned with the amended 2013

STANDARDS cont.

Codes of Good Practice

The IRBA will not be revising SASAE 3502, *Assurance Engagements on Broad-Based Black Economic Empowerment Verification Certificates* as the SASAE is a principles-based assurance standard and therefore amendments to the 2013 Codes of Good Practice will not affect the audit principles to be complied with.

All auditors are encouraged to be familiar with the effect of the new Codes on their certificates and reports, as well as communications in connection with the new Codes issued by the DTI and the IRBA.

CFAS Integrated Reporting Standing Committee (<IR>SC)

The CFAS approved the terms of reference of its new standing committee, the <IR>SC, at its August 2014 meeting. The Chairman of the committee, Linda de Beer, former Chairman of the international Consultative Advisory Group (CAG) to the IAASB and member of CFAS representing the JSE Limited, was nominated at the March 2015 CFAS meeting. The members of the <IR>SC are to be nominated shortly. The purpose of the standing committee is to be a thought leadership committee, contributing to and influencing international developments in the domain of assurance on integrated reporting.

The International Audit and Assurance Standards Board (IAASB)

The IAASB Issues a Framework for Audit Quality: Key Elements that Create an Environment for Audit Quality

The IAASB released its publication, *A Framework for Audit Quality: Key Elements that Create an Environment for Audit Quality (the Framework for Audit Quality)* in 2014. Through the *Framework for Audit Quality*, the IAASB aims to raise awareness of the key elements of audit quality, encourage key stakeholders (such as audit firms, regulators, audit committees, investors, universities and other stakeholders who have an interest in continuously improving audit quality) to challenge themselves to do more to improve audit quality in their particular environments and facilitate greater dialogue between key stakeholders on the topic.

While the primary responsibility for performing quality audits rests with auditors, audit quality is best achieved in an environment where there is support from other participants in

the financial reporting supply-chain. All stakeholders are encouraged to consider how they might use the *Framework for Audit Quality* in reflecting on how they could influence improvement in audit quality.

The *Framework for Audit Quality* is a non-authoritative document. It is not a substitute for auditing standards, standards of quality control, ethics and other regulatory requirements, nor does it establish additional standards or provide requirements for the performance of audit engagements.

The *Framework for Audit Quality* may be downloaded from the IRBA website at <http://www.irba.co.za/index.php/auditing-standards-functions-55/252-international-clarity-pronouncements-adopted-and-i/831-2014-auditing-standards>.

Proposed International Standards on Auditing (ISAs), ISA 800 (Revised) and ISA 805 (Revised)

The IRBA submitted comments on 22 April 2015 on the IAASB's exposure draft on proposed changes to ISA 800 (Revised), *Special Considerations – Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks* and ISA 805 (Revised), *Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement* issued in January 2015. A CFAS task group assisted with the preparation of the IRBA comment letter, which was generally supportive of the proposals in the exposure draft.

ETHICS

Committee for Auditor Ethics (CFAE)

CFAE issues exposure draft with proposed amendments to the *IRBA Code of Professional Conduct for Registered Auditors* relating to the Definition of Public Interest Entities

On 16 March 2015, the IRBA released an exposure draft with proposed amendments to the *IRBA Code of Professional Conduct for Registered Auditors* relating to the Definition of Public Interest Entities for public comment.

The rationale for the proposed amendments to the IRBA Code is as follows:

- In terms of Section 4(1)(b) of the Auditing Profession Act 2005, (Act 26 of 2005) the Regulatory Board must “take steps it considers necessary to protect the public in their

dealings with registered auditors”;

- Providing a definition of Public Interest Entity that can be more consistently applied among registered auditors in South Africa;
- In terms of Section 2(c) of the Auditing Profession Act 2005, one of the objectives of the Act is to “approve the developments and maintenance of internationally comparable ethical standards”; and
- Clearing the confusion between Public Interest Entity and Public Interest Score.

Comments are due by **15 May 2015**.

The exposure draft is available on the IRBA website at http://www.irba.co.za/dmdocuments/Proposed%20Amendments%20to%20the%20IRBA%20Code_Definition%20of%20Public%20Interest%20Entity.pdf

REPORTABLE IRREGULARITIES

Below are statistics related to Reportable Irregularities (RIs) processed by the IRBA.

REPORTABLE IRREGULARITIES RECEIVED

	Year ended 31 March 2015		Year ended 31 March 2014	
Number of reports (1st and 2nd) received and files closed within 40 days	946	98%	570	97%
Number of second reports received late (after due date)	15	2%	19	3%
Total number of RIs received	961	100%	589	100%

The number of Reportable Irregularities received has increased by 63% compared to the year ended 31 March 2014.

Registered auditors are commended on the improvement of their timely submission of the second reports.

CONTINUING/NOT CONTINUING RIs - OF THE TOTAL NUMBER OF RIs RECEIVED:

	Year ended 31 March 2015		Year ended 31 March 2014	
Continuing	487	50%	345	59%
Not continuing	468	49%	235	40%
Did not exist	6	1%	9	1%
Total number of RIs received	961	100%	589	100%

REPORTABLE IRREGULARITIES cont.

TYPE OF ENTITY: OF TOTAL NUMBER OF RIs RECEIVED:		
	Year ended 31 March 2015	
(Proprietary) Limited	706	73%
Body corporate	58	6%
Close corporation	52	5%
Non-profit organisation/Section 21 company	42	4%
Limited	38	4%
Attorney's trust account	10	1%
Trust	6	1%
School	5	1%
Estate agent	5	1%
Retirement fund	4	0.5%
Political party	4	0.5%
Other entities	31	3%
Total number of RIs received	961	100%

NUMBER OF RIs REPORTED TO THE TOP FIVE REGULATORS*	
	Number of contra- ventions reported 2015
South African Revenue Service (SARS)	346
Companies Intellectual Property Commission (CIPC)	269
Estate Agencies Affairs Board (EAAB)	61
Department of Labour	30
Financial Services Board (FSB)	17

* Top five regulators to which reportable irregularities were reported, of all regulators, for the year ended 31 March 2015.

Committees and task groups

Registered auditors with an interest in participating in IRBA structures on technical aspects are welcome to contact us. We have a range of committees, task groups and projects and would value the opportunity to welcome new participants. We are particularly keen for the perspectives of practitioners from small and medium practices, and other specialists.



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LEGAL

QUARTERLY REPORT FROM THE DIRECTOR: LEGAL FOR THE PERIOD 1 JANUARY 2015 TO 31 MARCH 2015

Investigating Committee

The Investigating Committee met twice during this period (12 February and 26 March 2015) and referred 20 individual matters to the Disciplinary Advisory Committee with recommendations.

Disciplinary Advisory Committee

The Disciplinary Advisory Committee met once during this period (27 February 2015) and disposed of 17 matters, as follows.

Decisions not to charge

- **One** matter in terms of Disciplinary Rule 3.5.1.1 (the respondent is not guilty of unprofessional conduct; this includes the situation where the conduct in question might be proved but even if proved does not constitute unprofessional conduct);
- **Four** matters in terms of Disciplinary Rule 3.5.1.2 (the respondent having given a reasonable explanation for the conduct);
- **Five** matters in terms of Disciplinary Rule 3.5.1.4 (being that there are no reasonable prospects of succeeding with a charge of improper conduct against the respondent);
- **One** matter in terms of Disciplinary Rule 3.5.1.5 (being that in all the circumstances, it is not appropriate to charge the respondent with improper conduct).

Decision to charge and matter finalised by consent order

Five matters were finalised with fines. **Four** of these matters were referred from the Inspections Department and their particulars are as follows

- **In one** matter, the inspection revealed that the respondent had issued an unqualified audit opinion in relation to the annual financial statements of his client, notwithstanding that those annual financial statements departed from the IFRS for SMEs (which was the financial reporting framework applied in preparing the said annual financial statements) in two material respects. Firstly, the annual financial

statements included an intangible asset that had not been amortised. Secondly, the client had not prepared consolidated annual financial statements although this was compulsory in the circumstances. The respondent was sentenced to a fine of R40 000, of which R20 000 suspended on conditions, and publication in general terms only.

- **One** matter related to the audit of an attorney's trust account. The inspection revealed instances of insufficient audit evidence having been documented in the respondent's audit documentation, to support his report, in a number of material areas. Subsequent to the on-site portion of the inspection, the respondent provided audit documentation to address the inspections findings and explained that these had not been properly filed and were therefore not provided during the on-site inspection. The conduct of the respondent amounted to a contravention of file assembly and firm level quality control requirements with which registered auditors are required to comply. The respondent was sentenced to a fine of R80 000, of which R40 000 was suspended on conditions, and publication in general terms only.
- **In one** matter, the inspection revealed that the respondent had insufficient documentation of audit evidence on file to support the opinion expressed in that he had failed to document his considerations and conclusions regarding whether his client was acting as an agent or a principal and what the impact of the election was on the revenue recognition in the annual financial statements of the client. The respondent was sentenced to a fine of R20 000, of which R10 000 was suspended on conditions, and publication in general terms only.
- **In one** matter, the inspection revealed that the respondent had not detected the following: that his client had recognised an asset flowing from straight-lining of lease revenue but had not adjusted the valuation of the leased property accordingly, which resulted in a double counting of assets. The respondent had not modified his auditor's report in relation to the material overstatement of assets. The respondent was sentenced to a fine of R50 000, of which R25 000 was suspended on conditions, and publication in general terms only.
- **One** matter involved a respondent preparing annual financial statements for a number of pre-schools for the purpose of obtaining funding from the National Lotteries

LEGAL cont.

Board, largely on a pro-bono basis. The respondent prepared the underlying accounting records and the subsequent annual financial statements, purportedly in accordance with IFRS for SMEs. The respondent also issued auditors' reports in relation to the annual financial statements that he had prepared, without carrying out all the audit procedures required in terms of International Standards on Auditing. The combination of services provided to the same client constituted a breach of auditor independence rules. In addition, the annual financial statements and auditor's reports contained multiple errors and departures from IFRS for SMEs. The respondent was sentenced to a fine of R80 000, of which was R50 000 was suspended on conditions, and publication in general terms only.

Decision to charge and matter referred to the Disciplinary Committee

One matter was referred to the Disciplinary Committee for a disciplinary hearing.

Disciplinary Committee

On 30 March 2015 the Disciplinary Committee sat to consider the matter of Ms A-M Grebe (First Respondent) and Mr H du Preez (Second Respondent) of the firm HDP Audit. The First Respondent was absent but represented, while the Second Respondent was both present and represented. The Respondents jointly faced three charges, in addition to which the First Respondent separately faced four charges, and the Second Respondent separately faced one charge. The Respondents pleaded guilty to all of the charges levelled against them.

The plea and sanction appear from the summary below.

BRIEF BACKGROUND

The First Respondent was an employee and subsequently a co-member of a close corporation ("the CC") owned by the managing director of Avante Fishing Enterprises (Pty) Ltd ("Avante"), a major squid exporter. The First Respondent's practice was operated through the CC, and was located at the premises of Avante, from which she received a salary and

substantial loans.

The First Respondent was subsequently appointed as the auditor of Avante, together with the Second Respondent (who had no prior relationship with Avante), on the understanding that the First Respondent would factually perform all audit work on Avante, and the Second Respondent would only sign off formally on such audit work.

JOINT CHARGES

Charges One and Two

The Respondents issued an unqualified audit in respect of Avante, but proper application of the International Standards on Auditing ("ISA") and the International Financial Reporting Standards ("IFRS") would show that the financial statements were materially misstated to such an extent that the audit should not have been unqualified. The Respondents thus failed to demonstrate a reasonable degree of professional competence and care.

The Respondents were guilty of contravening Old Disciplinary Rules 2.1.1, 2.1.5 and 2.1.20.

Charge Three

The Respondents failed to report several reportable irregularities in Avante's financial affairs at any time during or after the audit, including illegal loans and misappropriation of funds owed to Avante's suppliers. Moreover, the Respondents issued letters stating that Avante was solvent when it was not – and they acted with reckless disregard for the falsity of their statements.

The Respondents were guilty of contravening Old Disciplinary Rules 2.1.1, 2.1.2, 2.1.4, 2.1.5 and 2.1.20.

SEPARATE CHARGES AGAINST THE FIRST RESPONDENT

Charge Four

The First Respondent functioned as Avante's auditor, and had the Second Respondent "front" for her as the formal auditor, while she knew that her various relationships with Avante and its directors disqualified her from appointment as its auditor.

LEGAL cont.

While acting as Avante's auditor, the First Respondent was appointed as the sole auditor of ten companies that supplied squid to Avante for export on consignment ("the suppliers"). The First Respondent should not have accepted such engagement, which carried foreseeable conflicts of interest, and should not have continued with it after a legal dispute developed between Avante and the suppliers over non-payment. The First Respondent assisted Avante in this dispute, and furnished Avante with certain of the suppliers' confidential information.

By operating her practice through the CC, the First Respondent breached several safeguards of corporate transparency and accountability, as well as the prohibition on sharing profits with a person who is not a registered auditor.

In these respects, the First Respondent dishonestly failed to observe the required standards of independence, integrity, objectivity and confidentiality.

The First Respondent was guilty of contravening Old Disciplinary Rules 2.1.1, 2.1.2, 2.1.8 and 2.1.20.

Charges Five and Six

In auditing Avante's suppliers, the First Respondent's work was deficient in material respects, in comparison with ISA and IFRS. She failed to demonstrate a reasonable degree of professional competence and care.

The First Respondent was guilty of contravening Old Disciplinary Rules 2.1.5 and 2.1.20.

Charge Seven

In the events surrounding the eventual liquidation of Avante, the First Respondent was complicit in concealing information and property from the liquidators and was untruthful in her testimony at a subsequent inquiry in terms of section 417 of the Companies Act, 1973. Finally, the First Respondent was untruthful in her response to the Regulatory Board about the facts giving rise to the charges. In each case, the First Respondent's conduct was dishonest and disreputable.

The First Respondent was guilty of contravening Rules Regarding Improper Conduct 2.1.1, 2.1.2, 2.1.4 and 2.1.17.

SEPARATE CHARGE AGAINST THE SECOND RESPONDENT

Charge Eight

By "fronting" for the First Respondent, the Second Respondent dishonestly held himself out to be Avante's auditor and to have audited Avante, when in fact he had not done so. Moreover, the Second Respondent failed to supervise the First Respondent's work, recklessly disregarding the risk that she lacked sufficient independence and competence to audit Avante properly.

The Second Respondent was guilty of contravening Old Disciplinary Rules 2.1.1, 2.1.4, 2.1.20 and 2.1.21.

SENTENCE

Pursuant to the pleas of guilty, joint representations regarding sentence were recommended by the *pro forma* complainant, which were accepted by the Committee, as follows:

- **Charges One and Two (combined):** Each Respondent was fined R100 000, of which R50 000 was suspended for three years on conditions.
- **Charge Three:** Each Respondent was fined R100 000, of which R50 000 was suspended for three years on conditions.
- **Charge Four:** The First Respondent was fined R100 000.
- **Charges Five and Six (combined):** The First Respondent was fined R100 000, of which R50 000 was suspended for three years on conditions.
- **Charge Seven:** The First Respondent was fined R100 000.
- **Charge Eight:** Removal of the Second Respondent's name from the register was suspended for five years on conditions.

The Committee ordered the First Respondent to pay R285 000 and the Second Respondent to pay R140 000 towards the reasonable costs of the Regulatory Board.

At the time of the hearing, the First Respondent was no longer registered as an auditor with the Regulatory Board, having requested removal of her name from the register on 11 March 2013. The First Respondent unconditionally undertook not to apply for re-registration for five years.

LEGAL cont.

Accordingly, the Committee ordered that implementation of the sanction and costs order against the First Respondent be postponed until such time as she is re-registered with the Regulatory Board, and that the payment of the fines and costs be a condition of such re-registration.

Finally, the Committee ordered that the Respondents' names, the firm name of the Second Respondent be published in IRBA News with a fair summary of the charges, convictions and sanctions, as well as the facts giving rise thereto.

HOLDING OUTS

The IRBA was informed of the successful prosecution of one E.S. Mzileni by the CCU in Durban, for contravening section 41 of the APA. He is a member of the (accounting) firm Corporate Advantage, and a member of the Institute of Accounting and Commerce. The matter was referred to us by the Bargaining Council for the Contract Cleaning Services

Industry who was under the impression that he (or his firm) was a registered auditor. He pleaded guilty to the charges and was fined R3 000 or one year's imprisonment. (Maximum competent sentence is a fine (quantum not stipulated) or five years' imprisonment, or both). The IRBA has not had sight of the charge sheet.

SUBPOENAS

The IRBA is often approached by RAs who have been served with subpoenas, for guidance as to what exactly they are obliged to supply, and how to respond.

In order to assist RAs, we briefed a law firm to provide a memorandum to assist RAs in this regard. Their memorandum follows. We hope this will be of general assistance to RAs but it does not exonerate RAs from applying their own minds to each and every such request. Nor does it bind the IRBA. It is provided in an attempt to be of assistance to our RAs.

Brief

We have been instructed to provide a concise memorandum regarding an auditor's obligations upon receipt of a subpoena in civil proceedings. In giving effect to the aforementioned, we have been asked to specifically address the following questions:

- (a) What is a subpoena?
- (b) What is the impact of a subpoena?
- (c) What are the consequences of failing to respond to a subpoena?
- (d) Are there any exceptions to the obligations to comply with a subpoena?

What is a subpoena?

A subpoena is a written order of court that compels testimony by a witness or production of evidence under a penalty for failure. A subpoena informs a witness when and where to appear and/or what documents to present to the court.

A subpoena gives a party that desires the attendance of a witness, to give evidence or to produce a document or thing at a trial, the power to sue out from the office of the registrar subpoenas in accordance with the rules of court.

There are two types of subpoenas, namely:

- (a) A *subpoena ad testificandum* - an order compelling a person to testify before the court or face punishment; and

- (b) A *subpoena duces tecum* - an order compelling a person to bring physical evidence before the court or face punishment.

The power to permit the issue of a subpoena is derived from section 51 of the Magistrates' Court Act 32 of 1994, as amended (the "Magistrates Court Act") read with rule 26 and form 24 of the Rules Regulating The Conduct of the Proceedings of the Magistrates' Courts of South Africa (the "Magistrates Court Rules") and section 35 of the Superior Courts Act 10 of 2013 (the "Superior Courts Act") read with rule 38 and form 16 of the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the Supreme Court of South Africa (the "Uniform Rules").

What is the impact of a subpoena?

If a person is timeously served with a valid subpoena that has been correctly issued, they are obliged to comply with the provisions set out therein. Compliance may entail presenting oneself in court to provide *viva voce* (oral) evidence or handing over a document or thing to the registrar as soon as possible after service – unless lawful objection can be raised.

As more fully detailed below, the effect of a subpoena is similar to that of an order of court in so far as non-compliance with a subpoena may result in a fine or imprisonment.

LEGAL cont.

What are the consequences of failing to respond to a subpoena?

In the absence of a lawful excuse, it is a criminal offence to disobey a subpoena and penalties may apply.

Magistrates Court

In the event that a witness has been duly subpoenaed and without lawful excuse, fails to act in accordance with the subpoena, the court may impose on the said person a fine not exceeding R300 and in the event of a default of payment of such fine then imprisonment for a period not exceeding three months. (See section 51(2)(a) of the Magistrates Court Act)

The court has discretion to hold liable any witness in default for the costs of any postponement or adjournment occasioned by same. (See section 51(2)(d) of the Magistrates Court Act)

Superior Courts

In the event that a witness has been duly subpoenaed to attend any proceedings as a witness or to produce any document or thing and without lawful excuse fails to act in accordance with the subpoena, the court concerned may issue a warrant directing that he or she be arrested and brought before the court at a time and place stated in the warrant or as soon thereafter as possible. (See section 35(2) of the Superior Courts Act)

Such a witness is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months. It is interesting to note that no threshold is provided for the aforementioned fine. (See section 35(4) of the Superior Courts Act)

Are there any exceptions to the obligation to comply with a subpoena?

Privilege

Privileged documents are expressly excluded from being subpoenaed. If a witness alleges privilege the court must first decide on the validity of the claim before requiring the furnishing of documents. (See rule 38(1)(b) of the Uniform Rules and LexisNexis Commentary on rule 38(1))

Privilege applies to communications between client and a legal advisor who is consulted in a professional capacity and in

confidence for the purpose of obtaining legal advice and not with the intention of furthering a crime.

The concept of privilege is distinguished from the concept of confidentiality in so far as privileged documents are confidential. However, confidential documents are not necessarily privileged.

Despite the fact that documents in the possession of an auditor may be confidential, no privilege exists in communications between an auditor and client. In this regard, an auditor is unable to refuse compliance with a subpoena predicated on an assertion of privilege.

Reasonable expenses

Prior to levelling any penalty for non-compliance with a subpoena, the court must first be satisfied that a subpoenaed witness has been paid or offered payment for reasonable expenses concomitant with obeying the provisions of the subpoena. Such expenses must be calculated in terms of the tariff.

The courts have held that a witness is entitled to the prepayment of his reasonable expenses and may refuse to comply with the subpoena if that is not done.

In **Laskarides and Another v German Tyre Centre (Pty) Ltd (In Liquidation) and Others NO 2010 (1) SA 390 (W) 2010 (1) SA** the court considered the setting aside of a warrant of arrest for failing to attend proceedings, where a subpoenaed witness was neither paid nor offered reasonable expenses for the production of a large amount of documents. The court held that as no such prepayment had been tendered in the notice, the witness was not obliged to attend interrogation and set aside the warrant of arrest.

Reasonable notice

A court may set aside service of any subpoena if it appears that the witness was not given reasonable time to enable him or her to appear in court. (See rule 26(5) of the Magistrates Court Rules).

Vaguely described or not included in subpoena

A subpoena is required to specify a document or thing that is desired to be produced in evidence. No person is bound to produce any document or thing not specified or otherwise

LEGAL cont.

sufficiently described in the subpoena unless he or she actually has it in court. (See rule 26(3) of the Magistrates Court Rules and section 36(4) of the Superior Courts Act)

Regard must be had for the specificity in the identification of documents required to be produced by a witness. In this regard, a subpoena must be utilised in a *bona fide* manner and not for the purposes of pursuing ends extraneous to the real objectives sought. In **Beinash v Wixley** (457/95) [1997] ZA SCA 32; 1997 (3) SA 721 (SCA); [1997] 2 All SA 241 (A); (27 March 1997) 2004 (5) SA 3 15 (C) ("Beinash"), as more fully described below, the court held that certain circumstances exist where the terms of a subpoena are so wide and unspecific that same can constitute a form of harassment and oppression.

Abuse of process

If it appears that:

- (i) A witness is unable to give any evidence or to produce any document or thing which will be relevant to any issue in such proceedings;
- (ii) Such document or thing could properly be produced by some other person; or
- (iii) To compel him or her to attend proceedings will be an abuse of the process of the court,

a judge is entitled to, after reasonable notice by the Registrar to the party who sued out the subpoena, make an order cancelling such subpoena. (See section 36(5) of the Superior Courts Act and section 51(3) of the Magistrates Court Act)

An abuse of the process of the court occurs whenever an attempt has been made to use the court process for ulterior purposes. Notwithstanding the aforementioned, a court will not lightly exercise its power to set aside a subpoena and the onus of proof placed on an applicant is not an easy one to discharge.

In Beinash, the court dealt with the question of whether a person in receipt of a subpoena can challenge same independently of the main action or if such a witness should offer that objection during the trial when he or she is called upon to comply with its demands. The court reasoned that the hearing of the application to set aside a subpoena by another court, other than the trial court, did not prejudice the applicant seeking the subpoena, as there can be no doubt that every court is entitled to protect itself and others against an abuse of process. On this basis, the court held that the setting aside of a subpoena can take place at any stage after the issue thereof

and need not be decided by the trial court.

In **Meyers v Marcus and Another** 2004 (5) SA 315 (C) an application was brought to set aside a subpoena on the basis that documents sought were said to be irrelevant to the issue in the main action. The Court made reference to Beinash, wherein it was stated that the establishment of an abuse of process must be determined by the circumstances of each case, the court held that when a subpoena is designed to embarrass, intimidate and inconvenience a person, the only inference to be drawn is one of an abuse of the process of court. Predicated on this inference, the court ordered the subpoena to be set aside.

Issue prior to trial date

In an application for leave to appeal, the court in **PFE International Inc (BVI) and Others v Industrial Development Corporation of South Africa Ltd'** (CCT 129/11) [2012] ZACC 21; 2013 (1) SA 1(CC); 2013 (1) BCLR 55 (CC) (27 September 2012) held that a subpoena may only be issued after a trial date has been fixed.

The aforementioned court, in contrasting rule 38 of the Uniform Rules with section 7(1)(c) of the Promotion of Access to Information Act 2 of 2000 ("PAIA"), reasoned that when procuring relevant documents, PAIA would apply before the trial date is set, and rule 38 afterwards.

Conclusion

In circumstances where an auditor is served with a valid subpoena, such an auditor will be obliged to furnish the requested documents. If there are grounds to set aside the subpoena for any of the reasons set out above, in those circumstances, the auditor in receipt of the subpoena must take steps to set aside the subpoena and not simply ignore it. The subpoena remains a valid order of Court until set aside by the Court or pursuant to an agreement being reached with the issuer of the subpoena that the recipient has been excused from complying with the subpoena.

If documents belonging or relating to a third party are subpoenaed, that third party should be notified as soon as possible in order to empower same to intervene if necessary. A party whose documents have been subpoenaed may be in a better position to raise an exception or an abuse of process than an auditor.

LEGAL cont.

Where highly confidential information is being subpoenaed, the High Court has the discretion to order that proceedings be confidential. This discretion is based on the proper administration of justice, which is determined by weighing public interest considerations against the interests of preserving privacy and protecting confidential information. This, however, only happens in limited circumstances and

legal advice from an attorney should be sought by any party wishing apply for proceedings to be confidential.

An auditor should seek urgent legal advice from an attorney if ever in doubt as to the validity of a subpoena or if of the view that there may be a legitimate basis to refuse compliance with same.



Jane O'Connor

Director: Legal

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Fax: 087 940 8873

E-mail: legal@irba.co.za

REGISTRY

Individuals admitted to the register of the Board from 1 January to 31 March 2015

FULL NAMES

Abrams Zulpha
An Geng
Bardopoulos Marcus Emmanuel
Bhebhe Mbongeni
Crauwcamp Jolandi
Galliver Bryan Craig
Gouws Anri
Gumede Hendry Themba
Hawkridge Mark Donald
Hefer Johan
Henderson Leonie
Huma Busisiwe
Issirinarain Sadhir
Jina Ahmed Ismail
Kawelenga Constance

FULL NAMES

Libert Michelle
Louw Danielle
Masondo Jabulani Steven
Mathelemusa Mavhungo Oswald
Motshwane Keitumetse Nomfundo Gcebile
Mulla Ebrahim Ahmed Saeed
Mzamane Ntsikelelo
Nelson Konrad
Packery Suhayl
Pretorius Crystal Ann
Ramasike Ayisha
Sibindi Tinashe Mathew
Veldtman Marion
Wessels Jean
Xulu Sakhe

Individuals re-admitted to the register of the Board from 1 January to 31 March 2015

FULL NAMES

Rosin Hilard

Individuals removed from the register of the Board from 1 January to 31 March 2015

FULL NAMES

Abdool-Samad Tasneem
Alcock Richard Charles
Allen Liezel Janice
Balde Erwin Robert
Booyesen Christopher Johan
Brink Peter John
Cavanagh John Martin
Clark Geoffrey Lloyd
Crosby Richard
Daneman Maurice
De Nysschen Eugene Vincent
Puran Dhangee
Du Preez Maritza
Edmunds Vanessa Evelyn
Fuller Barry Edwin
Haribhai Kiran Amratlal
Hern Jeanette
Heydenrych Lisa Anne

REASON

Resigned
Resigned
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FULL NAMES

Hlophe Sandile Emmanuel
Isaacs Mogamat Kasief
Kamalesh Naran
Keersemaaker Everardus Frederik Henricus
Lubbe Dirk Leonardus
Maharaj Ushadevi
Manie Fardiel
Meredith Peter Graham
Moodley Leeandran
Naidoo Dashinia
Nyajeka Bernard Tawanda
Owen-Crompton Lynn
Phitidis Constantinos
Purcell Michael Willem
Ralfe Carmen-Jo
Rama Shalini
Reed David Keith
Reid Michael Edward Jenner

REASON

Resigned
Resigned
Resigned
Resigned
Resigned
Resigned
Resigned
Deceased
Resigned
Resigned
Resigned
Emigrated
Resigned
Resigned
Resigned
Resigned
Resigned
Resigned

REGISTRY cont.

Individuals removed from the register of the Board from 1 January to 31 March 2015 cont.

FULL NAMES

Robertson Struan Ian
Rogers Trevor Allan
Smal Christiaan Lambert
Smith George Alexander
Smith Peter Malcolm
Spavins Derek Arthur

REASON

Resigned
Resigned
Resigned
Resigned
Resigned
Resigned

FULL NAMES

Starkey Richard Bradley Tom
Taylor Duncan Charles
Theron Willem
Thunstrom Anthony Edward
Turner Edward Arthur
Wilder Jeremy Robert

REASON

Resigned
Resigned
Resigned
Resigned
Emigrated
Resigned

Caroline Garbutt

Manager: Registrations

Telephone: 087 940 8800

Fax: 087 940 8873

E-mail: registry@irba.co.za

COMMUNICATIONS

In the interest of improved communication with Registered Auditors and other stakeholders, a list of communiqués sent by bulk e-mail during the reporting period for this issue is set

out below. These communiqués may be downloaded from the IRBA website at www.irba.co.za under the News section.

1 April 2015	IRBA Fees effective from 1 April 2015
31 March 2015	Confusion created by Business Report article
17 March 2015	Updated Guidance on the provision of the non-audit services by the auditor of a company (Section 90 of the Companies Act, 2008)
17 March 2015	Proposed Amendments to the IRBA Code of Professional Conduct for Registered Auditors relating to the Definition of Public Interest Entities
17 March 2015	Inspections Findings Newsflash 2 of 2015
11 March 2015	Guide for Registered Auditors: Assurance Engagements on the Annual Financial Statements and Annual Statutory Returns of a Medical Scheme
6 February 2015	Renumbering to Certain Paragraphs of the IRBA Code of Professional Conduct for Registered Auditors (Revised 2014)
23 January 2015	Clarification on B-BBEE Verification Engagements performed in terms of the 2013 Codes of Good Practice

GENERAL NEWS

Cabinet announces new IRBA board

Cabinet announced the new board for the Independent Regulatory Board for Auditors (IRBA) on 17 April 2015. The eight member board was appointed in terms of section 12(1) of the Auditing Profession Act (act 26 of 2005) for a two year period, renewable for another two year term.

The appointed members come from various backgrounds

including law, academia and accountancy and bring with them a wealth of experience that will help the IRBA continue to serve as the protector of public interest and to grow the confidence of investors, thereby stimulating economic growth and investment.

The new board members are:



Adv Lise Keech

Ms. Lise Keech is admitted as an Advocate of the High Court of South Africa. She is a state prosecutor with over 15 years' experience. She is currently based at the Fraud Investigating Task Team (FITT) a project between the Road Accident Fund (RAF) and the National Prosecuting Authority (NPA) in Durban. Her responsibilities include compiling fraud charge sheets, prosecuting and investigating all fraud and corruption cases and liaising with all stakeholders fighting corruption and fraud in SA.

Prior to her current position, Ms. Keech was a prosecutor at the Office of the Deputy Director of Public Prosecutions in Port Elizabeth and was responsible for conducting trials, preparing review of opinions, indictments, bail appeals and appeals in the High Court of South Africa. She holds a B.IURIS degree and a LLB degree from the University of Port Elizabeth and has completed several courses at the Justice College.



Phumzo Noxaka CA (SA)

Ms. Phumzo Noxaka, CA (SA), is an Entrepreneur with various business interests. She is also Managing Director of Alatha Consulting, providing business management and advisory services. Ms Noxaka has twenty one years' experience in Operational, Financial, Executive and Strategic roles within the private and public sectors.

For the past ten years, she has served as an Independent Non-executive Director on a number of Boards and Independent Committees, which include, a JSE listed company, Private Companies, State Owned Companies, Public Entities and Municipality Audit Committees. Ms. Noxaka has also served on the board of AWCA (African Women Chartered Accountants) Forum, an organization that advocates the development of qualified and aspiring African woman CAs.

She holds a B Admin, B Compt (ndp), B Com Acc (Hon), CA (SA), MBA, HDip Computer Auditing, and NDip in Financial Markets & Instruments.



Thiru Pillay CA (SA)

Mr. Thiru Pillay is a Group Executive of Liberty Holdings Ltd, where he heads up the Professional Shared Services business unit for the Group. He holds a BCompt (Hons), CA (SA) and CIA. Prior to joining Liberty 8 years ago, he was the Senior Executive Partner responsible for the Business Risk Services division at Ernst & Young for their African practice (including South Africa).

Mr Pillay has also previously held senior executive positions in South African Airways and Transnet. He also chaired the audit committee and served as a Non-executive Director on the Board of the Central Energy Fund (CEF) and was a Trustee of the Libcare Medical Aid for 5 years until his resignation at the last AGM.

GENERAL NEWS cont.



Abel Dlamini CA (SA)

Mr Abel Dlamini is the co-founder and Executive Chairman of SekelaXabiso, an accounting firm specialising in Risk Management, Internal Audit and Forensic Investigations. Mr Dlamini was a founding member of Sekela Consulting and played a key role in the establishment of Sekela Consulting as a market leader in the internal audit, IT audit, forensic audit and consulting services sector prior to its merger with Xabiso Chartered Accountants. Prior to establishing Sekela Consulting he was a partner at both KPMG and Arthur Andersen and served as the chief executive officer at Dlamini Inc. He is a member the South African Institute of Chartered Accountants and the Institute of Internal Auditors (SA). Mr Dlamini is a member of the Institute of Internal Auditors and a member of the Institute of Directors. Mr Dlamini's qualifications include Bachelor of Accountancy, Honours B Compt and Chartered Accountant (SA).



René Kenosi (CA) SA

René Kenosi is a director of Bridging Concepts Financial Services (Pty) Ltd providing internal audit, risk management, corporate training, and management consulting services. She has served on various Audit and Risk Committees including ICASA, LGSETA, Metrobus, Dr Kenneth Kaunda District Municipality, City of Matlosana, South African Micro Apex Fund (SAMAF), Metropolitan Trading Company (Pty) Ltd, Services Seta, CIPC and Department of Home Affairs.

René has also served on the boards of PUSH (Persevere Until Something Happens) a non-profit organisation and Small Enterprise Development Agency. Her career spans over a number of years and across banking, breweries, motor vehicle and professional services consulting industries.



Amanda Lethukuthula Mazibuko (CIA) SA

Ms Amanda Lethukuthula Mazibuko is a Certified Internal Auditor with 19 years of experience. She is the Chief Internal Auditor at Sebenza Forwarding & Shipping (Pty) Limited. Prior to that, she served as Chief Internal Auditor at SA Shell & BP Petroleum Refineries. Ms Mazibuko is serving her final term as a member of the Audit Committee at the Office of the Public Service Commission. She has also been a member of the Audit Committee at Sisonke District Municipality. Ms Mazibuko holds a Bachelor of Accounting Science (Honours) from the University of South Africa and completed her articles with Deloitte.



Michael Sass CA (SA)

Michael is the Accountant -General of South Africa. He holds various qualifications, including a Master's degree in Commerce as well as being a chartered accountant and certified internal auditor. Michael has over 27 years' experience in both the private and public sector. He previously held senior positions with Morvest, Business Innovations Group, Grant Thornton, Gauteng Provincial Government, Johannesburg Consolidated Investments (JCI) and the South African Revenue Services (SARS). He serves as the National Treasury representatives on various boards, including the Independent Regulatory Board for Auditors (IRBA) and the Accounting Standards Board (ASB). He is also the Chairman of ESAAG (Eastern and Southern African Association of Accountants-General).

GENERAL NEWS cont.

Zola Luxolo Fihlani

Mr Zola Fihlani is the founding member, Chief Executive Officer at EVI Capital Partners. He is a former senior member of the Global Loans team at Absa Capital and has over ten years' investment banking experience and 13 years banking experience. Formerly a senior member within the Leveraged and Acquisition Finance team at Barclays Bank, South African Branch; Mr Fihlani joined Absa Capital in January 2006, following the \$3.5 billion majority acquisition of Absa Bank Limited by Barclays Bank Plc. In Global Loans at Absa Capital, he was responsible for structuring and execution for Leveraged Finance deals.

Mr Fihlani is a former Marker for the qualifying examinations of the South African Institute of Chartered Accountants (SAICA). He qualified as a CA (SA) and is currently reading for his Doctorate Degree in Business Administration from the University of Manchester Business School. He holds a B.Compt (Honours) degree in Accounting from the University of South Africa, a Masters of Commerce degree in International Taxation from Wits University, a Higher Diploma in Tax Law and a Higher Diploma in International Tax Law both from the University of Johannesburg.



Prof Alex van der Watt

Alex van der Watt is an associate professor and Head of the Department of Accountancy at the University of Johannesburg. He is a chartered accountant and holds a Masters degree in Financial Management.

Alex previously served as a member of the main Board of the South African Institute of Chartered Accountants (SAICA) and is currently a ministerial appointee to the Board of the Independent Regulatory Board for Auditors (IRBA).

He also serves on the Initial Professional Development Committee of SAICA and the Educational Committee of IRBA. He is passionate about the transformation of the accounting and auditing profession and serves as a trustee of the Thuthuka Bursary Fund and also as a director of the Thuthuka Education Upliftment Fund.

Alex has presented at various conferences and has also published in accredited and non-accredited publications. He has also published three books co-authored with his colleagues titled: Dynamic Auditing (B Marx, A van der Watt, and P Bourne); Applied questions on Auditing (B Marx, A van der Watt, M van Staden) and Fundamentals of auditing (B Marx, A van der Watt, N Schonfeldt).