

INDEPENDENT REGULATORY BOARD FOR AUDITORS (IRBA)

DRAFT GUIDELINE FOR THE IRBA'S ENFORCEMENT/DISCIPLINARY COMMITTEE IN DETERMINING MONETARY FINES FOR REGISTERED AUDITORS/REGISTERED CANDIDATE AUDITORS FOUND GUILTY OF IMPROPER CONDUCT

1. Introduction

- 1.1 The primary purpose of sanctions is to hold registered auditors [RA] and registered candidate auditors [RCA] accountable for improper conduct that they committed while registered with the IRBA. Appropriate sanctioning enforces compliance with the legislative framework, promotes public trust in the profession and in the regulation of the profession, and deters other RA/RCA's from committing similar improper conduct.
- 1.2 Registered auditor as per the Auditing Profession Act, No. 26 of 2005, as amended [Act], means an individual or firm registered with the IRBA.
- 1.3 Improper conduct means any non-compliance with the Act, or any rules prescribed pursuant to the Act, or any conduct prescribed as constituting improper conduct.
- 1.4 A transgression is an act or omission by an RA/RCA [Respondent] which results in improper conduct.
- 1.5 Section 4(1)(a) of the Act states that the Regulatory Board must, in addition to its other functions provided for in this Act take steps to promote the integrity of the auditing profession, including:
 - (i) investigating alleged improper conduct;
 - (ii) conducting disciplinary hearings; and
 - (iii) imposing sanctions for improper conduct.
- 1.6 It is important to note that the monetary fines as Gazetted by the Minister of Finance are the maximum fine limits. The Enforcement/Disciplinary Committee continue to have the power in terms of the Act to scale the monetary fine in line with the nature and gravity of the improper conduct in respect of which a Respondent is found guilty, therefore not every charge of improper conduct will attract the set maximum fine level.
- 1.7 This guideline applies to monetary fines for improper conduct. It provides the framework and considerations to be taken into account by the Enforcement/Disciplinary Committee in determining an appropriate monetary fine for charge/s of improper conduct in respect of which a Respondent has been found guilty. The considerations listed are not exhaustive and not all considerations will be applicable to each matter. The Enforcement/Disciplinary Committee reserves the sole discretion to decide the relative weight to ascribe to the considerations on a matter-by-matter basis.
- 1.8 This guideline will ensure transparency, consistency, and proportionality in determining monetary fines.

1.9 This guideline addresses monetary fines for improper conduct in the following three periods:

Transgressions occurring	Relevance of Transgression Date
Prior to 15 June 2023	R200 000 maximum monetary fine per charge remains in place
On or after 15 June 2023 up until 5 June 2024	Gazette notice with monetary fines applicable issued on 15 June 2023
On or after 6 June 2024	Gazette notice with monetary fines applicable issued on 6 June 2024

2. Transgressions Occurring Prior to 15 June 2023

- 2.1 The Act prior to its amendment in April 2021, stated in section 51(3)(a)(ii) that if the registered auditor is found guilty of improper conduct or the registered auditor admits to the charge, the IRBA may impose on the registered auditor a fine not exceeding the amount calculated according to the ratio for five year's imprisonment prescribed in terms of the Adjustment of Fines Act, 1991. The amount of the maximum fine per charge was therefore R200 000 as from 1 February 2013 for both admission of guilt matters and disciplinary matters. In addition, there was no distinction between an individual or an audit firm in regard to this maximum fine per charge.
- 2.2 As confirmed by the National Treasury explanatory note on applicable monetary sanctions issued on 6 June 2024 (refer to **Annexure A** points 2.1 to 2.3), **the R200 000 maximum fine per charge remains in place for transgressions occurring prior to 15 June 2023.**
- 2.3 In matters where transgressions span across the period including 15 June 2023, the monetary fine that will apply to the improper conduct will be the amount applicable on the date on which the transgression was first perpetrated.
- 2.4 The Enforcement/Disciplinary Committee will continue to determine and impose appropriate monetary fines for improper conduct on a matter-by-matter basis including by taking into account the nature, gravity, and other relevant factors of the transgressions, and alignment, as far as is possible, to similar instances of improper conduct in other matters.
- 2.5 Respondents who are found guilty of improper conduct may submit explanations/evidence in mitigation of the fine to the Enforcement/Disciplinary Committee.

Transgressions Occurring on or after 15 June 2023 up until 5 June 2024

- 3.1 The Act was amended on 26 April 2021 and the link of monetary sanctions to the Adjustment of Fines Act was removed. The Act now states in section 51(1)(b) on admission of guilt sanctions, as well as in section 51B(3)(a)(ii) on disciplinary hearing sanctions, that a fine may be imposed by the IRBA on the registered auditor not exceeding the amount determined by the Minister in the Gazette.

3.2 On 15 June 2023, Government Notice No. 3549 (refer to **Annexure C**) was published by the Minister of Finance. The maximum monetary fines were determined as follows:

- (a) admission of guilt matters:
 - (i) individual registered auditors – a maximum of R5 million per charge
 - (ii) firm of registered auditors – a maximum of R15 million per charge
- (b) disciplinary hearing matters:
 - (i) individual registered auditors – a maximum of R10 million
 - (ii) firm of registered auditors – a maximum of R25 million

3.3 The following practice will be adopted by the Enforcement/Disciplinary Committee when determining and imposing appropriate monetary fines for transgressions occurring on or after 15 June 2023 up until 5 June 2024:

The maximum cumulative fine for all charges in the matter will be capped as follows:

Individual – admission of guilt	R5 million
Audit firm – admission of guilt	R15 million
Individual – disciplinary hearing	R10 million
Audit firm – disciplinary hearing	R25 million

In addition, **the fine per charge**, which will be subject to the above cumulative cap, will be:

	Fine Range per Charge for High Priority Matters	Fine Range per Charge for Priority Matters
Individual – admission of guilt	R300 000 – R5 million	R50 000 – R2.5 million
Audit firm – admission of guilt	R900 000 – R15 million	R200 000 – R7.5 million
Individual – disciplinary hearing	R600 000 – R10 million	R100 000 – R5 million
Audit firm – disciplinary hearing	R1.5 million – R25 million	R300 000 – R12.5 million

3.4 The factors considered by the Enforcement/Disciplinary Committee in determining whether a matter is high priority or priority are set out in **Annexure D**.

3.5 Where transgressions span across the period including 6 June 2024, the monetary fine that will apply to the improper conduct will be the amount applicable on the date on which the transgression was first perpetrated.

3.6 Respondents found guilty of improper conduct may submit explanations/evidence in mitigation of the fine to the Enforcement/Disciplinary Committee taking into account inter alia, the considerations set out in **Annexure B** attached hereto.

4. Transgressions Occurring on or after 6 June 2024

- 4.1 The practice of determining the maximum fine for all charges in the matter as set out above for the period on or after 15 June 2023 up until 5 June 2024 will no longer be in force for transgressions occurring on or after 6 June 2024.
- 4.2 On 6 June 2024, Government Notice No. 4933 (refer to **Annexure E**) was published by the Minister of Finance. The maximum monetary fines were determined as follows:
- (a) admission of guilt matters:
 - (i) individual registered auditors – a maximum of R5 million per charge
 - (ii) firm of registered auditors – a maximum of R15 million per charge
 - (b) disciplinary hearing matters:
 - (i) individual registered auditors – a maximum of R10 million per charge
 - (ii) firm of registered auditors – a maximum of R25 million per charge
- 4.3 The Enforcement/Disciplinary Committee will consider the fine matrix range as set out in **Annexure F** attached hereto as a guide when determining monetary fines for transgressions occurring on or after 6 June 2024.
- 4.4 The factors considered by the Enforcement/Disciplinary Committee in determining whether a matter is high priority or priority are set out in **Annexure D**.
- 4.5 The factors considered by the Enforcement/Disciplinary Committee in determining the severity of transgressions are set out in **Annexure G**.
- 4.6 Respondents found guilty of improper conduct may submit explanations/evidence in mitigation of the fine to the Enforcement/Disciplinary Committee taking into account inter alia, the considerations set out in **Annexure B** attached hereto.

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EXPLANATORY NOTE ON APPLICABLE MONETARY SANCTIONS

Purpose of Government Notice Nr 4933 of 6 June 2024

1. The purpose of Government Notice No. 4933 of 6 June 2024, withdrawing Government Notice No. 3549 of 15 June 2023 and determining new maximum amounts, is to provide for the maximum amounts for both sections 51(2) and 51B(3)(b) of the Auditing Profession Act, 2005,¹ as amended, to apply per charge.

Applicable monetary sanctions

- 2.1 If an auditor was charged before 26 April 2021² but the matter was not finalised before that date, it must be dealt with as if the Auditing Profession Act, 2005, was not amended by the Auditing Profession Amendment Act, 2021, and the monetary sanction is regulated by the Adjustment of Fines Act, 1991³.
- 2.2 If the improper conduct occurred before 26 April 2021, but the auditor was not charged before 26 April 2021, the monetary sanction is regulated by the Adjustment of Fines Act.
- 2.3 If the act of improper conduct occurred after 26 April 2021 but before 15 June 2023⁴, the monetary sanction is regulated by the Adjustment of Fines Act.
- 2.4 If the improper conduct occurred on or after 15 June 2023 (regardless of when the auditor is charged) but before 6 June 2024⁵, the monetary sanctions in Government Notice No. 3549 of 15 June 2023 apply.
- 2.5 If the improper conduct occurred on or after 6 June 2024, the monetary sanctions in Government Notice Nr 4933 of 6 June 2024 apply.

¹ Act No. 26 of 2005.

² The effective date of the Auditing Profession Amendment Act, 2021 (Act No. 5 of 2021).

³ Act No. 101 of 1991.

⁴ The date of the Government Notice No. 3549 of 15 June 2023.

⁵ The date of Government Notice No. 4933 of 6 June 2024.

ANNEXURE B

MITIGATION SUBMISSIONS BY RESPONDENT ON MONETARY FINES MAY INCLUDE:

1.	High level of co-operation by the Respondent during the investigation/disciplinary processes.
2.	Respondent has no history of previous improper conduct. ¹
3.	Pro-active self-reporting by the Respondent of alleged improper conduct to the IRBA prior to an investigation being opened by the IRBA and providing supporting documentation.
4.	Evidence of accountability taken by the Respondent for the transgression.
5.	Remedial steps taken by the Respondent to address the transgression, including supporting documentary evidence thereof.
6.	Personal and/or financial circumstances of the Respondent, including certified statement of financial interests, assets and liabilities and monthly income and expenditure.

¹ All Respondents have their own, stand-alone profile at the IRBA where their history of improper conduct is recorded.

NATIONAL TREASURY

NO. 3549

15 June 2023

MAXIMUM MONETARY FINES IN TERMS OF AUDITING PROFESSION ACT,
2005

In terms of sections 51(2) and 51B(3)(b) of the Auditing Profession Act, 2005 (Act No. 26 of 2005 - "the Act"), and on the recommendation of the Independent Regulatory Board for Auditors, and after considering comments on the proposed amounts published in Government Notice No. 2504 of 16 September 2022, I, Enoch Godongwana, the Minister of Finance, hereby determine—

- (a) a maximum amount of—
- (i) R5 million per charge, as the amount envisaged in section 51(2) of the Act, which may be imposed on an individual registered auditor who admits guilt as contemplated in section 49(4)(a) of the Act; and
 - (ii) R15 million per charge, as the amount envisaged in section 51(2) of the Act, which may be imposed on a firm of auditors that admits guilt as contemplated in section 49(4)(a) of the Act; and
- (b) a maximum amount of—
- (i) R10 million, as the amount envisaged in section 51B(3)(b) of the Act, which may be imposed on an individual registered auditor who is charged and found guilty or if the registered auditor admits guilt to the charges; and
 - (ii) R25 million, as the amount envisaged in section 51B(3)(b) of the Act, which may be imposed on a firm of auditors that is charged and found guilty or if the firm admits guilt to the charges.



ENOCH GODONGWANA
MINISTER OF FINANCE

ANNEXURE D

ENFORCEMENT/DISCIPLINARY COMMITTEE CONSIDERATIONS RELATING TO WHETHER A MATTER IS HIGH PRIORITY OR PRIORITY ARE:

1.	Is the entity a Public Interest Entity [PIE] as defined in the IRBA Code of Professional Conduct?
2.	If the entity is not a PIE, does it have elevated risks? ²
3.	Does the transgression have a material financial impact on third parties?
4.	Does the transgression cause harm to public confidence in the profession?

On firms, the underlying engagement file/s which resulted in the transgression will be used to determine whether it is a high priority or priority matter.

If any one of the four considerations set out above is an affirmative response, the matter will fall into the high priority category which will attract a higher monetary fine than a priority matter.

² Elevated risk entities include entities that have a high public interest score in terms of the Companies Act and/or entities that act in a fiduciary capacity.

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

NATIONAL TREASURY

NO. 4933

6 June 2024

AUDITING PROFESSION ACT, 2005: WITHDRAWAL OF NOTICE AND
DETERMINATION OF MAXIMUM FINES

In terms of sections 51(2) and 51B(3)(b) of the Auditing Profession Act, 2005 (Act No. 26 of 2005 - "the Act"), and on the recommendation of the Independent Regulatory Board for Auditors ("the Board"), and after considering comments on the proposed withdrawal of Government Notice No. 3549 of 15 June 2023, and the proposed amounts, published in Government Notice No. 4234 of 5 January 2024, I, Enoch Godongwana, Minister of Finance, hereby—

- (a) withdraw Government Notice No. 3549 of 15 June 2023; and
- (b) determine—
 - (i) a maximum amount of—
 - (aa) R5 million per charge, as the amount envisaged in section 51(2) of the Act, which may be imposed on an individual registered auditor who admits guilt as contemplated in section 49(4)(a) of the Act; and
 - (bb) R15 million per charge, as the amount envisaged in section 51(2) of the Act, which may be imposed on a firm of auditors that admits guilt as contemplated in section 49(4)(a) of the Act; and
 - (ii) a maximum amount of—
 - (aa) R10 million per charge, as the amount envisaged in section 51B(3)(b) of the Act, which may be imposed on an individual registered auditor who is charged and found guilty or if the registered auditor admits guilt to the charge; and
 - (bb) R25 million per charge, as the amount envisaged in section 51B(3)(b) of the Act, which may be imposed on a firm of auditors that is charged and found guilty or if the firm admits guilt to the charge.



ENOCH GODONGWANA
MINISTER OF FINANCE

FINES MATRIX

Monetary fine guideline per charge for transgressions occurring on or after 6 June 2024.

ADMISSION OF GUILT - FIRM

	High priority matter Fine Range	Priority matter Fine Range
Minor transgression	R900 000 – R4.5 million	R200 000 – R2.25 million
Moderate transgression	R1.8 million – R9 million	R900 000 – R4.5 million
Severe transgression	R3 million – R15 million	R1.5 million – R7.5 million

ADMISSION OF GUILT - INDIVIDUAL

	High priority matter Fine Range	Priority matter Fine Range
Minor transgression	R300 000 – R1.5 million	R50 000 – R750 000
Moderate transgression	R600 000 – R3 million	R300 000 – R1.5 million
Severe transgression	R1 million – R5 million	R500 000 – R2.5 million

DISCIPLINARY HEARING - FIRM

	High priority matter Fine Range	Priority matter Fine Range
Minor transgression	R1.5 million – R7.5 million	R300 000 – R3.75 million
Moderate transgression	R3 million – R15 million	R1.5 million – R7.5 million
Severe transgression	R5 million – R25 million	R2.5 million – R12.5 million

DISCIPLINARY HEARING – INDIVIDUAL

	High priority matter Fine Range	Priority matter Fine Range
Minor transgression	R600 000 – R3 million	R100 000 – R1.5 million
Moderate transgression	R1.2 million – R6 million	R600 000 – R3 million
Severe transgression	R2 million – R10 million	R1 million – R5 million

ENFORCEMENT/DISCIPLINARY COMMITTEE CONSIDERATIONS RELATING TO DETERMINING THE SEVERITY OF TRANSGRESSIONS INCLUDE:

Consideration	Minor transgression	Moderate transgression	Severe transgression
1. Nature of the transgression ³	Minor	Moderate	Significant
2. Gravity of the transgression ⁴	Minor	Moderate	Significant
3. Duration of the transgression	Once off	Repeated	Extended period
4. Benefit to the Respondent from the transgression	Minor	Moderate	Significant
5. Whether the transgression involved dishonesty	No	No	Yes
6. Whether the transgression indicates systemic issues in an audit firm	No	No	Yes
7. Whether there has been tacit approval of the transgression by the audit firm management	No	No	Yes

While all of the above considerations may not be applicable to a charge of improper conduct, should any one of the considerations fall for example under the severe transgression classification, then the charge of improper conduct will be regarded as a severe transgression for purposes of determining the related monetary fine as per **Annexure F**.

³ Nature of the transgression refers to the specific details of the act or omission.

⁴ Gravity of the transgression refers to the seriousness of the act or omission.