

INDEPENDENT REGULATORY BOARD FOR AUDITORS (IRBA)

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 IRBA is mandated in the Auditing Profession Act, No.26 of 2005 as amended [Act] to take steps it considers necessary to protect the public in their dealings with registered auditors [RA]. This includes, *inter alia*, as required by section 4(1), taking steps to promote the integrity of the auditing profession through investigating allegations of improper conduct by RAs and registered candidate auditors¹ [RCA], conducting disciplinary hearings, and imposing sanctions for improper conduct. Appropriate sanctioning enforces compliance with the legislative framework, promotes public trust in the profession and in the regulation of the profession, and deters other RAs/RCAs from committing similar improper conduct.
- 1.2 It is important to note that the monetary fines as Gazetted by the Minister of Finance are the maximum fine limits. The independent and non-executive Enforcement/Disciplinary Committee [ENCOM/DISCOM] continue to have the sole discretionary power in terms of the Act to scale the monetary fine in line, *inter alia*, with the nature and gravity of the improper conduct in respect of which an RA is found guilty, therefore not every charge of improper conduct will attract the set maximum fine level.
- 1.3 While section 51(1) and section 51B(3) of the Act sets out a range of sanctions that the ENCOM/DISCOM may impose, this guideline applies to instances where ENCOM/DISCOM has determined that monetary fines should be imposed for improper conduct. It provides the framework and considerations to be taken into account by the ENCOM/DISCOM in determining an appropriate monetary fine for charge/s of improper conduct in respect of which an RA has been found guilty. The considerations listed are not exhaustive and not all considerations will be applicable to each matter. The ENCOM/DISCOM has the sole discretion to determine the relative weight to ascribe to the considerations on a matter-by-matter basis to ensure that the sanction is fair and reasonable under the circumstances.
- 1.4 Registered auditor as per the Act means an individual or firm registered with the IRBA.
- 1.5 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 Refer to section 51A of the Act.

- 1.6 A transgression is an act or omission by an RA/RCA [Respondent] which results in improper conduct. The date of the transgression is linked to the nature of the transgression. For example, on an audit engagement transgression, the date of transgression would be the date of the audit opinion.
- 1.7 In principle, individual RAs may be sanctioned for improper conduct relating to non-compliance with professional standards, and/or the code of professional conduct, and/or the rules regarding improper conduct. RCAs may be sanctioned for improper conduct relating to non-compliance with the code of professional conduct, and/or the rules regarding improper conduct; and Firms may be sanctioned for non-compliance with the quality control management standards, and/or the code of professional conduct, and/or the rules regarding improper conduct.
- 1.8 When applying this guideline for transgressions occurring on or after 15 June 2023, a charge of improper conduct will relate to:
- Individual RAs – where the RA is found non-compliant with professional standards and/or the code of professional conduct and/or the rules regarding improper conduct pertaining to engagements performed for a client i.e. one charge per client.
 - RCAs – where the RCA is found non-compliant with the code of professional conduct and/or the rules regarding improper conduct pertaining to the matter investigated.
 - Firms – where the firm is found non-compliant with the quality management standards and/or the code of conduct and/or the rules regarding improper conduct pertaining to the matter investigated.
 - Specific non-compliance by Respondents with the code of professional conduct and/or the rules regarding improper conduct [RRIC] that does not fall within paragraphs a) and b) and c) as set out above e.g. RRIC 2.9 -2.15.
- 1.9 The maximum monetary fine for RCAs will remain at R200 000 per charge irrespective of the date of the transgression.
- 1.10 This guideline is aimed at ensuring transparency, consistency, and proportionality in determining monetary fines.
- 1.11 This guideline addresses monetary fines for improper conduct by RAs 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
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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 regarding 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 will remain 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 first transgression was perpetrated.
- 2.4 The ENCOM/DISCOM will for transgressions occurring prior to 15 June 2023 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 provide submissions in mitigation of the fine, supported by evidence to the ENCOM/DISCOM. If the ENCOM/DISCOM find the submissions persuasive, they may, suspend a portion of the fine in their sole discretion.

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 provides in section 51(1)(b) (relating to admission of guilt sanctions), as well as in section 51B(3)(a)(ii) (relating to disciplinary hearing sanctions), that the IRBA may impose a fine on the registered auditor not exceeding the amount determined by the Minister of Finance 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 ENCOM/DISCOM 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 RA – admission of guilt	R5 million
Audit firm – admission of guilt	R15 million
Individual RA – 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 RA – admission of guilt	R100 000 – R5 million	R50 000 – R2.5 million
Audit firm – admission of guilt	R200 000 – R15 million	R100 000 – R7.5 million
Individual RA – disciplinary hearing	R200 000 – R10 million	R100 000 – R5 million
Audit firm – disciplinary hearing	R400 000 – R25 million	R200 000 – R12.5 million

- 3.4 The factors considered by the ENCOM/DISCOM 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 first transgression was perpetrated.
- 3.6 RAs found guilty of improper conduct may provide submissions in mitigation of the fine, supported by evidence, to the ENCOM/DISCOM taking into account *inter alia*, the considerations set out in **Annexure B** attached hereto. If the ENCOM/DISCOM find the submissions persuasive, they may, suspend a portion of the fine in their sole discretion.

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 ENCOM/DISCOM 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 ENCOM/DISCOM in determining whether a matter is high priority or priority are set out in **Annexure D**.
- 4.5 The factors considered by the ENCOM/DISCOM in determining the severity of transgressions are set out in **Annexure G**.
- 4.6 RAs found guilty of improper conduct may provide submissions in mitigation of the fine, supported by evidence to the ENCOM/DISCOM taking into account *inter alia*, the considerations set out in **Annexure B** attached hereto. If the ENCOM/DISCOM find the submissions persuasive, they may, suspend a portion of the fine in their sole discretion.

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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, *INTER ALIA*:

1.	High level of co-operation by the Respondent during the investigation/disciplinary processes.
2.	Respondent has no history of previous improper conduct. ²
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 verified and certified statement of financial interests, assets and liabilities, and monthly income and expenditure.

² 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.	Does the transgression have a significant financial impact on third parties?
3.	Does the transgression cause significant harm to public confidence in the profession?

On firms, the underlying client engagement file/s which resulted in the transgression will be used to assess the above responses.

If any one of the three 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. Should a matter not fall into the high priority category, it automatically falls into the priority category for purposes of this guideline.

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

ANNEXURE F

FINES MATRIX

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

Examples of the severity of transgressions are set out in Annexure G

ADMISSION OF GUILT - FIRM

	High priority matter Fine Range	Priority matter Fine Range
Minor transgression	R200 000 – R4.5 million	R100 000 – R2.25 million
Moderate transgression	R1.3 million – R9 million	R650 000 – R4.5 million
Severe transgression	R3 million – R15 million	R1.5 million – R7.5 million

ADMISSION OF GUILT – INDIVIDUAL RA

	High priority matter Fine Range	Priority matter Fine Range
Minor transgression	R100 000 – R1.5 million	R50 000 – R750 000
Moderate transgression	R450 000 – R3 million	R225 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	R400 000 – R7.5 million	R200 000 – R3.75 million
Moderate transgression	R2.2 million – R15 million	R1.1 million – R7.5 million
Severe transgression	R5 million – R25 million	R2.5 million – R12.5 million

DISCIPLINARY HEARING – INDIVIDUAL RA

	High priority matter Fine Range	Priority matter Fine Range
Minor transgression	R200 000 – R3 million	R100 000 – R1.5 million
Moderate transgression	R900 000 – R6 million	R450 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	Severe
2. Gravity of the transgression ⁴	Minor	Moderate	Severe
3. Duration of the transgression	Once off	Repeated	Extended period
4. Benefit to the RA from the transgression	Minor	Moderate	Severe
5. Whether the transgression involved dishonesty	No	No	Yes
6. Whether the transgression indicates systemic issues in an audit firm	Minor	Moderate	Severe
7. Whether there has been tacit approval of the transgression by the audit firm management	No	No	Yes

While all 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**.

Examples of the severity of transgressions are:

- a) **Minor** – isolated instances of non-compliance with the professional standards, code of conduct, and/or rules regarding improper conduct.
- b) **Moderate** – pervasive instances of non-compliance with the professional standards, code of conduct, and/or rules regarding improper conduct.
- c) **Severe** – significant instances of non-compliance with the professional standards, code of professional conduct, and/or rules regarding improper conduct arising from gross negligence, dishonesty, bad faith, or other forms of wilful improper conduct.

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.