

March 2019

Comments requested by 15 April 2019



**Proposed Amendments to IRBA Rules Regarding Improper
Conduct**

REQUEST FOR COMMENTS

The Independent Regulatory Board for Auditors' (IRBA) Committee for Auditor Ethics (CFAE) approved these proposed amendments to *The IRBA Rules Regarding Improper Conduct* (the Rules) in February 2019 for exposure for a period of 30 days, following the publication of a Board Notice to be included in the Government Gazette for comment. The proposed amendments to the Rules may be modified in light of comments received, before being issued in a final form.

The Rules have been updated by a CFAE Task Group (Task Group) that comprised users of audits, a legal practitioner, technical staff representatives from auditing firms, the South African Institute of Chartered Accountants (SAICA) and the IRBA.

The proposed amendments to the Rules may be downloaded free of charge from the IRBA website at: <https://www.irba.co.za/guidance-to-ras/technical-guidance-for-auditors/exposure-drafts-and-comment-letters>.

Respondents are requested to submit their comments electronically in Word and PDF formats to standards@irba.co.za. All comments will be considered a matter of public record and will be posted on the IRBA website (www.irba.co.za).

Comments should be submitted by **15 April 2019**.

Should you have any queries, please e-mail the Standards Department at standards@irba.co.za.

The mission of the IRBA is to endeavour to protect the financial interests of the South African public and international investors in South Africa through the effective and appropriate regulation of assurance conducted by registered assurance providers, in accordance with internationally recognised standards and processes.

In line with the IRBA's legislative mandate, the IRBA's objectives are to create the framework and principles to contribute to the protection of the public who rely on the services of registered auditors, and to support registered auditors who carry out their duties competently, fearlessly and in good faith. The goal is to help create an ethical, value-driven financial sector that encourages investment and confidence, and also promote sound practices by *developing and maintaining ethical standards which are internationally comparable*. The statutory responsibility of the CFAE is to assist the IRBA to:

- Determine what constitutes improper conduct by registered auditors and registered candidate auditors by developing requirements and guidelines for professional ethics, including a code of professional conduct;
- Interact on any matter relating to its functions and powers with professional bodies and any other body or organ of state with an interest in the auditing profession; and
- Provide advice to registered auditors on matters of professional ethics and conduct.

REQUEST FOR COMMENTS

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EXPLANATORY MEMORANDUM

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EXPLANATORY MEMORANDUM

Introduction

This memorandum provides background to and an explanation of these proposed amendments to the *IRBA Rules Regarding Improper Conduct* (the Rules). The Committee for Auditor Ethics (CFAE) approved these proposed amendments in February 2019 for issue on exposure for a period of 30 days for public comment.

The IRBA welcomes comments on these proposed amendments, as well as comments on the specific question posed at the end of this memorandum.

Background

The IRBA mission is as follows: “To endeavour to protect the financial interest of the South African public and international investors in South Africa through the effective and appropriate regulation of assurance conducted by registered assurance providers in accordance with internationally recognised standards and processes.”

The development and maintenance of the *Code of Professional Conduct for Registered Auditors*, and the Rules prescribed for auditors, is the responsibility of the Committee for Auditor Ethics (CFAE). The Rules were approved by the Board, published by the IRBA and gazetted as Board Notice 89 of 2010 in Government Gazette No. 33305 on 18 June 2010. The IRBA adopted the IESBA Code of Ethics for Professional Accountants (2009) under copyright permission from the IFAC and published it as the *IRBA Code of Professional Conduct for Registered Auditors* with additional requirements for auditors in South Africa, and these are underlined and in *italics*. Subsequent amendments to the IESBA Code of Ethics for Professional Accountants are then considered by the CFAE prior to adoption by the IRBA.

Several South African amendments to the IRBA Code of Professional Conduct for Registered Auditors were also considered necessary, and were issued on exposure for public comment in South Africa, before being recommended by the CFAE to the Board for adoption and issue. The latest amendments included revisions and a restructure of the Code. The IRBA Code of Professional Conduct for Registered Auditors (Revised November 2018) was released on 12 November 2018. Where considered necessary, subsequent amendments to the IESBA Code (2018) may be re-issued on exposure for public comment in South Africa before being recommended by the CFAE to the IRBA Board for adoption and issue.

These proposed amendments to the Rules are the first amendments proposed since 2010.

Significant Matters

The extant Rules repealed and replaced the “Old” Disciplinary Rules referred to in Section 59(8)(c) of the Auditing Profession Act, 2005 (Act No. 26 of 2005) (the APA) and were issued in June 2010¹.

¹ In 2007, the IRBA issued the IRBA Disciplinary Rules that deal with procedural issues. These rules do not fall under the mandate of the CFAE. The Rules can be accessed on the IRBA website by clicking on the following link: <https://www.irba.co.za/upload/New%20Disciplinary%20Rules%20-%20English.pdf>.

EXPLANATORY MEMORANDUM

The Rules regulate the conduct of an investigation and the disciplinary process.

The need for revisions to the Rules is due to the following reasons:

- Recent IRBA disciplinary hearings have brought to light the need for potential improvements in the wording of certain Rules.
- Certain Rules are outdated or no longer required. For example, reference to training contracts can be removed as this is no longer the mandate of the IRBA, as this now falls under SAICA.
- The Rules required certain alignment amendments in light of the release of the IRBA Code of Professional Conduct (Revised November 2018).
- The APA amendments in 2015 included the regulation of registered candidate auditors. An update to the Rules was required to consider potential investigations of these individuals.

Proposed additions are underlined and in *italics* and deletions are denoted by a strike-through.

Project Timetable

Subject to comments received during the comment period, the CFAE plans to finalise the amendments during May 2019 for approval by the IRBA Board and for issue in August 2019. The expectation is that the amendments to the Rules will be effective from **1 January 2020**.

The effective date refers to the date of the unprofessional conduct, i.e. unprofessional conduct that took place from 1 January 2020.

Guide for Respondents

The CFAE welcomes comments on all matters addressed in the exposure draft. Comments are most helpful when they refer to a specific Rule, include the reason/s for the comments and, where appropriate, make specific suggestions for any proposed changes to the wording.

When a respondent agrees with the proposals in this exposure draft, it will be helpful for the CFAE to be made aware of this view.

Request for Specific Comments

The IRBA welcomes views on the following specific question:

- Do you agree with the proposed amendments to the Rules? If not, please indicate what additional amendments are required.

PROPOSED AMENDMENTS TO THE IRBA RULES REGARDING IMPROPER CONDUCT

Background

On 1 April 2006, the Auditing Profession Act, 2005 (Act 26 of 2005, as amended) (the Act^{PA}) came into effect. Section 21 of the Act^{PA} provides for the establishment of a Committee for Auditor Ethics (CFAE). The IRBA's Standards Department performs^{provides} the Secretariat function for the CFAE. In turn, the CFAE assists the IRBA to determine what constitutes improper conduct by registered auditors by developing **Rules** and guidelines for professional ethics, including a **Code** of Professional Conduct.

~~Adoption of the IESBA Code of Ethics for Professional Accountants~~

~~The development and maintenance of the Code of Professional Conduct for Registered Auditors ("the Code"), and Rules Regarding Improper Conduct ("the Rules") prescribed for auditors, is the responsibility of the Committee of Auditor Ethics (CFAE). The Code and Rules were approved by the Board and published by the IRBA, and gazetted as Board Notice 89 of 2010 in Government Gazette No 33305 on 18 June 2010. The IRBA adopted the IESBA Code of Ethics for Professional Accountants (2009) under copyright permission from the IFAC² and published it as the IRBA Code of Professional Conduct for Registered Auditors³ with additional requirements for auditors in South Africa underlined and in *italics*.~~

~~Subsequent amendments to the IESBA Code of Ethics for Professional Accountants are considered by the CFAE prior to adoption by the IRBA. Where considered necessary, subsequent amendments to the IESBA Code (2009), may be re-issued on exposure for public comment in South Africa, before being recommended by the CFAE to the Board for adoption and issue.~~

Rules Regarding Improper Conduct

The Rules Regarding Improper Conduct, 2019 (the Rules) repeal and replace the Rules Regarding Improper Conduct issued in June 2010, "~~Old~~" ~~Disciplinary Rules 2.1~~ referred to in Section 10(1) read with Section 2159(28)(c) of the Act. The Rules are prescribed by the Board under Section 4(1)(c) with effect from 1 January 2020.

² Copyright © "This Code is based on Parts A and B of the Code of Ethics for Professional Accountants of the International Ethics Standards Board of Accountants (IESBA), published by the International Federation of Accountants (IFAC) and is used with permission of IFAC. Adaptations to Parts A and B are underlined and in italics in this Code." The SAICA Auditing Handbook includes the IRBA Code of Professional Conduct for Registered Auditors ("the Code"), and Rules Regarding Improper Conduct ("the Rules").

³ The IRBA Code and Rules are available for download from the IRBA website (www.irba.co.za).

Until the effective date of the Rules of 1 January 2020 as specified above, the Rules issued in June 2010 and effective from 1 January 2011 will remain in force.

1. Definitions

In these Rules, the terms below have the meanings assigned to them and any reference to any section in these Rules is a reference to the corresponding section in the Act –

- 1.1. **“The Act”** means the Auditing Profession Act, No. 26 of 2005, as amended and any expression used in these Rules which is defined in the Act bears, unless the context indicates the contrary, the meaning assigned to it in the Act.
- 1.2. **“Regulatory Board”** means the Independent Regulatory Board for Auditors established by Section 3⁴.
- 1.3. **“The Code”** means the Code of Professional Conduct prescribed by the Regulatory Board in terms of Section 4(1)(c).
- 1.4. **“Firm”**, in the context of these Rules, means:
 - (a) A partnership, company or sole proprietor referred to in Section 38⁵;
 - (b) An entity that controls the parties in (a) through ownership, management or other means; and
 - (c) An entity controlled by the parties in (a) through ownership, management or other means.
- 1.5. **“Professional services”**, in the context of these Rules, means services requiring accountancy or related skills performed by a registered auditor, including accounting, auditing, review, other assurance and related services, taxation, management consulting and financial management services. These include, but are not limited to, the following:
 - (a) Audit, review, other assurance and related services:
 - (i) Financial statement audits and reviews, other assurance and related services, such as regulatory reporting, sustainability, compliance and performance reporting; and
 - (ii) Preparation of financial statements in accordance with recognised financial reporting standards and applicable statutes.
 - (b) Accounting services:
 - (i) Preparation of accounting records.
 - (c) Company statutory services.
 - (d) Taxation services:
 - (i) Tax return preparation and submission;

⁴ Section 1 v. *“Regulatory Board”*

⁵ Section 1 v. *“firm”*

- (ii) Tax calculations for the purpose of preparing accounting entries;
- (iii) Tax planning and other tax advisory services; and
- (iv) Assistance in the resolution of tax disputes.
- (e) Management consulting and advisory services:
 - (i) Accounting advisory and financial management advisory services – accounting support, conversion services for new and revised accounting standards, financial modelling and project management;
 - (ii) Business performance services – business effectiveness, people and change management, operational and business finance;
 - (iii) Internal audit – risk and compliance services, review and monitoring of internal controls, risk management, compliance services, corporate governance and audit committee advisory services;
 - (iv) Corporate finance service – mergers and acquisitions, valuations, infrastructure financing, debt and capital markets, due diligence reviews, transaction services and designated advisor services;
 - (v) Corporate recovery services – liquidation and insolvency administration, curator bonis, administration of deceased estates, judicial management and trusteeships;
 - (vi) Financial risk management services – actuarial services, banking and risk advisory, regulatory and compliance services, and technical accounting;
 - (vii) Information technology (IT) advisory – security, privacy and continuity, enterprise resource planning, information system audit services, IT project advisory, governance and performance; and
 - (viii) Forensic services – dispute advisory and resolution, ethics and integrity monitoring, fraud risk management, intellectual property and other investigations and regulatory compliance.

These include but are not limited to:

~~(a) Audit, review, other assurance and related services:~~

- ~~(i) Financial statement audits, reviews, other assurance services and related services such as regulatory reporting, sustainability, compliance and performance reporting;~~
- ~~(ii) Company accounting advisory services such as preparation of accounting records and financial statements in accordance with recognised financial reporting standards and applicable statutes; and~~
- ~~(iii) Company statutory services;~~

~~(b) Taxation services:~~

- ~~(i) Tax return preparation and submission;~~
- ~~(ii) Tax calculation for the purpose of preparing accounting entries;~~
- ~~(iii) Tax planning and other tax advisory services; and~~

~~(iv) Assistance in the resolution of tax disputes;~~

~~(c) Advisory services:~~

~~(i) Accounting advisory and financial management advisory services: accounting support, conversion services for new and revised accounting standards, financial modelling and project management;~~

~~(ii) Business performance services: business effectiveness, people and change management, operational and business finance;~~

~~(iii) Internal audit: risk and compliance services, review and monitoring of internal controls, risk management, compliance services, corporate governance and audit committee advisory services;~~

~~(iv) Corporate finance services: mergers and acquisitions, valuations, infrastructure financing, debt and capital markets due diligence reviews, transaction services and designated advisor services to listed companies;~~

~~(v) Corporate recovery services: liquidation and insolvency administration, curator bonis, administration of deceased estates, judicial management and trusteeships;~~

~~(vi) Financial risk management services: actuarial services, banking and risk advisory, regulatory and compliance services, technical accounting;~~

~~(vii) Information technology (IT) Advisory: security, privacy and continuity, enterprise resource planning; information system audit services, IT project advisory, governance and performance;~~

~~(viii) Forensic services: dispute advisory and resolution, ethics and integrity monitoring, fraud risk management, intellectual property and other investigations and regulatory compliance.~~

~~1.25.1.6.~~ **“Public practice”** means the practice of a registered auditor who places professional services at the disposal of the public for reward, and “practice” has a similar meaning⁶.

~~1.26.1.7.~~ **“Registered auditor”** means an individual or firm registered as an auditor with the Regulatory Board⁷.

~~1.27.1.8.~~ **“Registered auditor in public practice”**, in the context of these Rules, means a registered auditor that provides professional services.

~~1.28.1.9.~~ **“Registered candidate auditor”** means an individual who has obtained a professional accountant designation from an accredited professional body, who is registered as a candidate auditor with the Regulatory Board and who is serving under the supervision of a registered auditor⁸.

⁶ Section 1 v. “public practice”.

⁷ Section 1 v. “registered auditor”.

⁸ Section 1 v. “registered candidate auditor”.

~~1.29. “training contract” means a written training contract entered into in the prescribed form and registered with the Regulatory Board whereby a prospective registered auditor is duly bound to serve a registered auditor for a specified period and is entitled to receive training in the practice and profession of a registered auditor⁹.~~

These Rules shall, wherever possible, be construed in conformity with the Act; and any footnote in these Rules shall be taken into account in the interpretation of these Rules.

3.2. Improper Conduct

The Regulatory Board is obliged by Section 48 to consider and, where it appears justified, investigate and deal with any complaint, charge or allegation of improper conduct against a registered auditor or a registered candidate auditor which may be laid before it; and is empowered to impose any of the prescribed sanctions set out in Section 51(3) and Disciplinary Rules 8.1 and 8.2, in respect of any improper conduct. While the acts or omissions specified in the following paragraphs are not intended to be a complete list of acts or omissions that might constitute improper conduct on the part of a registered auditor or a registered candidate auditor, and which are punishable in accordance with the provisions of the Act and Disciplinary Rules, a registered auditor or a registered candidate auditor shall be guilty of improper conduct if such registered auditor or registered candidate auditor, without reasonable cause or excuse:

- 2.1. Contravenes or fails to comply with any provision of the Act with which it is the registered auditor's or registered candidate auditor's duty to comply.
- 2.2. Contravenes or fails to comply with any provision of any other Act with which it is the registered auditor's or registered candidate auditor's duty to comply in providing professional services.
- 2.3. Has been found guilty in some other forum, including a court, of any offence involving dishonesty and, in particular (but without prejudice to the generality of the foregoing), theft, fraud, forgery or uttering a forged document, ~~perjury, bribery or perjury~~ or corruption.
- 2.4. Is dishonest in the performance of any work or duties devolving upon the registered auditor or registered candidate auditor in relation to –
 - 2.4.1 Any professional services performed by a registered auditor or a registered candidate auditor; or
 - 2.4.2 Any office of trust which the registered auditor or registered candidate auditor has undertaken or accepted.
- 2.5. Contravenes or fails to comply with any requirements in Auditing Pronouncements prescribed by the Regulatory Board.
- 2.6. Contravenes or fails to comply with any requirements in the Code.
- 2.7. Fails to perform any professional services or duties with such a degree of professional competence, due care and skill as in the opinion of the Regulatory Board may reasonably

⁹Section 1 v. “training contract”

- be expected, or fails to perform the professional services or duties at all.
- 2.8. With intent to evade or to assist any other person to evade any tax, duty, levy or rate whatsoever –
- 2.8.1 knowingly or recklessly prepares or makes, or assists any other person to prepare or make, any false statement (whether such statement be oral or in writing); or
 - 2.8.2 signs any false statement in relation thereto recklessly or knowing it to be false; or
 - 2.8.3 knowingly or recklessly prepares or maintains any false books of accounts or other records.
- ~~2.9. permits the registered auditor's name to be used in connection with any estimate of earnings contingent upon future transactions in a manner which may lead to the belief that the registered auditor vouches for the accuracy of the estimate; or in circumstances in which the registered auditor knew, or ought reasonably to have known, that the registered auditor's name was being or would be used in connection with any such estimate of earnings, or failed, within a reasonable time from acquiring such knowledge or from the time when the registered auditor ought reasonably have known of those facts, to take reasonable steps to distance the registered auditor from such estimate and/or to dispel the belief that the registered auditor vouched for the accuracy of the estimate;~~
- ~~2.10. seeks, either before or during the period of a training contract of a prospective registered auditor, to impose any restraint whatever on the prospective registered auditor concerned which will apply after the date of termination of the training contract period, or threatens or attempts to enforce any such restraints after such date. The provisions of this rule will not, however, apply so as to prohibit a registered auditor from seeking to restrain a prospective registered auditor, for a period of not longer than one year from the date of the prospective registered auditor's ceasing to be employed by the registered auditor, from soliciting for professional services from an existing client of that registered auditor or from accepting an engagement of any kind from an existing client of that registered auditor;~~
- ~~2.11. directly or indirectly stipulates or receives from a prospective registered auditor who is or has been serving under a training contract, or from any other person, any payment, reward, compensation or consideration for agreeing to the cancellation of such training contract – provided that it shall not be deemed a breach of this rule if a registered auditor requires to be or is reimbursed in respect of disbursements actually made by them to the Regulatory Board in connection with a training contract which is subsequently cancelled, and of which disbursements they are able to produce proof to the satisfaction of the Regulatory Board;~~
- 2.912. Fails to answer to or deal with, appropriately and within a reasonable time, any correspondence or other communication from the Regulatory Board or any other person which reasonably requires a reply or other response.
- 2.103. Fails to comply within a reasonable time with an order, requirement or request of the Regulatory Board.

2.1~~14~~. Fails to resign from a professional appointment when requested by the client to do so and/or fails to transfer all books and papers that are the property of the client and which are or which may come into the registered auditor's or registered candidate auditor's possession to the client or to a newly appointed accountant or auditor when requested by the client to do so.

2.1~~25~~. Fails after demand to pay any subscription or any fee, levy, fine or other charge payable or due to the Regulatory Board.

2.1~~36~~. Abandons the registered auditor's public practice without previous notice to the registered auditor's clients and without arranging with the clients for the dispatch of the clients' business or the care of the clients' property in the registered auditor's possession or under the registered auditor's control.

2.14 Knowingly or recklessly makes any false declaration or submission.

2.15 Makes any declaration or submission which the registered auditor or registered candidate auditor ought reasonably to have known is false.

2.1~~67~~. Behaves in a manner which ~~tends to~~ brings or may bring the auditing profession into disrepute.