

**Revised Guide**

**June 2018**



*Revised Guide for Registered Auditors*

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**Access to Working Papers**

Independent Regulatory Board for Auditors

PO Box 8237, Greenstone, 1616

Johannesburg

This *Revised Guide for Registered Auditors: Access to Working Papers* (Revised Guide) was prepared by a Task Group of the Committee for Auditing Standards (CFAS) of the Independent Regulatory Board for Auditors (IRBA), which comprised technical staff representatives from auditing firms, the South African Institute of Chartered Accountants (SAICA), the Auditor-General South Africa (AGSA) and the IRBA, in addition to a legal specialist. This Revised Guide was approved for issue in May 2018 and replaces the previous IRBA Guide – “*Guide for Registered Auditors: Access to Audit Working Papers*” that has been withdrawn.

This Revised Guide deals with the circumstances in which registered auditors (auditors) or firms are requested or required to grant access to working papers that support an auditor’s opinion, conclusion and/or report on financial statements or other financial or non-financial information, where such engagements are governed by auditing pronouncements, as prescribed or issued by the IRBA and which include the Standards of the International Auditing and Assurance Standards Board (IAASB).

This guidance applies when auditors are requested or required to provide access to their working papers to the client, to another auditor or to a third party.

Guidance is provided in respect of access requested or required in the following circumstances:

1. Access required by Law;
2. Access required in compliance with *International Standards on Auditing* (ISAs) and *International Standards on Assurance Engagements* (ISAEs), or the *IRBA Code of Professional Conduct for Registered Auditors* (the Code) and any other auditing pronouncements prescribed or issued by the IRBA, by the group engagement partner or component auditor in a group audit engagement; and by a successor auditor/s where there is a change from the predecessor auditor/s; and
3. Access requested in terms of a contractual agreement.

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This *Revised Guide for Registered Auditors: Access to Working Papers* (Revised Guide) deals with the circumstances in which registered auditors (auditors) or firms are requested or required to grant access to working papers that support an auditor's opinion, conclusion and/or report on financial statements or other financial or non-financial information.

Guides are developed and issued by the IRBA to provide guidance to auditors in meeting specific legislative requirements imposed by a Regulator. Guides do not impose requirements on auditors beyond those included in the international or South African Standard/s or South African regulatory requirements; and do not change an auditor's responsibility to comply, in all material respects, with the requirements of the international or South African Standards or with South African regulatory requirements relevant to the audit, review, other assurance services or related services engagements.

An auditor is required to have an understanding of the entire text of every Guide to enable the auditor to assess whether or not any particular Guide is relevant to an engagement; and if so, to enable the auditor to apply the requirements of the particular international or South African Standard(s) to which the Guide relates, properly.

In terms of Section 1 of the Auditing Profession Act, 26 of 2005 (the APA), a Guide is included in the definition of "auditing pronouncements" in the APA, and in terms of the APA, the auditor must, in the performance of an audit, comply with those standards, practice statements, guidelines and circulars developed, adopted, issued or prescribed by the Regulatory Board.

***ALERT TO READERS***

***The IRBA Code of Professional Conduct for Registered Auditors (the Code) is currently being revised and restructured. It is envisaged to be issued in South Africa during the latter part of 2018. Once the revised and restructured IRBA Code is issued, registered auditors are requested to refer to Appendix 8 of this Revised Guide that provides a list of the sections and paragraphs in the extant Code that are referred to in this Revised Guide and maps these to the corresponding sections and paragraphs in the revised and restructured IRBA Code.***

## Introduction

1. Working papers are prepared by registered auditors (auditors) for purposes of planning and performing an engagement governed by auditing pronouncements, as prescribed or issued by the IRBA and which include the Standards of the International Auditing and Assurance Standards Board (IAASB)<sup>1</sup>, the supervision and review of work performed and recording evidence to support the auditor's opinion, conclusion and/or report. It may therefore not be appropriate for third parties, whose objectives and requirements might be different from those of the auditor, to rely on working papers to obtain information that they might require. A third party who wishes to obtain information about an auditor's client should obtain the information directly from the client. Circumstances may, however, arise where the information that is sought cannot be obtained from the client and therefore may be sought from the auditor. This Revised Guide is intended to provide guidance to auditors in these circumstances. Furthermore, when in doubt, auditors are encouraged to engage in consultations and seek legal advice to ensure that appropriate action is taken.
2. For matters relating to reportable irregularities, reference should be made to the *Revised Guide for Registered Auditors: Reportable Irregularities in terms of the Auditing Profession Act* issued by the IRBA.

## Purpose of this Revised Guide

3. This Revised Guide deals with the circumstances in which auditors or firms are requested or required to grant access to working papers that support an auditor's opinion, conclusion and/or report on the financial statements or other financial or non-financial information. This guidance applies when auditors are requested to provide access, in particular circumstances, to their working papers to the client, another auditor or a third party. The Revised Guide is also applicable to joint engagements and no distinction is drawn between requests for access to working papers in respect of a standalone engagement and a joint engagement (refer to paragraph 29).
4. Guidance is provided where auditors are required by law, or by auditing pronouncements prescribed or issued by the IRBA, or on request, or where the auditor may agree to be contractually bound to provide access to working papers in the following circumstances:
  - 4.1 *Access required by law*, including, but not limited to, circumstances where this is required by the IRBA; and access required in terms of requests for relevant material from the South African Revenue Service (SARS) in terms of Section 46 of the Tax Administration Act, 28 of 2011 (TAA), and in terms of Sections 101 and 101(A) read with Section 4 of the Customs and Excise Act, 91 of 1964 (Customs Act).

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<sup>1</sup> Engagements governed by the Standards of the IAASB are outlined in Appendix 1 of the *International Framework for Assurance Engagements in the Supplement to the Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements 2016-2017 Volume III* (as updated).

- 4.2 *Access required in compliance with International Standards on Auditing (ISAs) and the International Standards on Assurance Engagements (ISAEs)<sup>2</sup>, or the IRBA Code of Professional Conduct for Registered Auditors (the Code) and any other auditing pronouncements prescribed or issued by the IRBA, by the group engagement partner or component auditor in a group audit engagement; and by a successor auditor/s where there is a change from the predecessor auditor/s.*
- 4.3 *Access requested by a joint auditor or third parties where an auditor agrees to be contractually bound to grant access, for example, when investigators are conducting a due diligence or similar engagement.*

## Definitions

5. For purposes of this Revised Guide, the terms below have the following meanings attributed to them:
- 5.1 *Access to working papers* – granting the client, another auditor, or other third party the right to inspect the working papers that are retained by the auditor in support of the auditor’s opinion, conclusion and/or report of a particular engagement governed by auditing pronouncements, as prescribed and issued by the IRBA and which include the Standards of the IAASB, in their entirety or in part.
- 5.2 *Audit<sup>3</sup>* – the examination of, in accordance with prescribed or applicable auditing standards –
- Financial statements with the objective of expressing an opinion as to their fairness of or compliance with an identified financial reporting framework and any applicable statutory requirements; or
  - Financial and other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on the financial and other information.
- 5.3 *Auditee* – an institution or accounting entity referred to in Section 4 of the Public Audit Act, and this includes any group of such institutions or accounting entities whose financial statements are or are to be consolidated in terms of legislation referred to in Section (4)(2) of the same Act.
- 5.4 *Authorised auditor* – a person authorised in terms of Section 12 of the Public Audit Act to perform or to assist in the performance of an audit referred to in Section 11 of the same Act.
- 5.5 *Auditor-General (AG)* – the individual appointed as Auditor-General in terms of Section 193 of the Constitution and Section 6 of the Public Audit Act.
- 5.6 *Auditor-General of South Africa (AGSA)* – the institution contemplated in Section 181(1)(e) of the Constitution.

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<sup>2</sup> References to ISAs and ISAEs in this Revised Guide are to the *Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements 2016-2017 Edition Volumes I and II* (as updated).

<sup>3</sup> As defined in the APA.

- 5.7 *Audit documentation* – the record of audit procedures performed, relevant audit evidence obtained and conclusions the auditor reached.
- 5.8 *Audit file*<sup>4</sup> – one or more folders or other storage media, in physical or electronic form, containing the records that comprise the audit documentation for a specific engagement.
- 5.9 *Auditing pronouncements*<sup>5</sup> – those standards, practice statements, guidelines and circulars developed, adopted, issued or prescribed by the Regulatory Board which a registered auditor must comply with in the performance of an audit.
- 5.10 *Client* – the person (or entity) for whom a registered auditor (or registered firm) is performing or has performed an engagement governed by auditing pronouncements, as prescribed or issued by the IRBA and which include the Standards of the IAASB.
- 5.11 *Component auditor*<sup>6</sup> – an auditor who, at the request of the group engagement team, performs work on financial information related to a component of the group audit.
- 5.12 *Engagement partner*<sup>7</sup> – the partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is to be issued on behalf of the firm; and who, where required, has the appropriate authority from a professional, legal or regulatory body. “Engagement partner” should be read as referring to its public sector equivalents where relevant.
- 5.13 *Firm*<sup>8</sup> – a partnership, company or sole proprietor referred to in Section 40 of the APA.
- 5.14 *Group engagement partner*<sup>9</sup> (or *principal auditor*<sup>10</sup>) – the partner or other person in the firm who is responsible for the group audit engagement and its performance, and for the auditor’s report on the group financial statements that is issued on behalf of the firm. Where joint auditors conduct the group audit, the

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<sup>4</sup> *Audit file* is defined in the *Glossary of Terms in the Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements 2016-2017 Edition Volume Part I* (as updated) (the *Glossary*).

<sup>5</sup> As defined in the APA. It should be noted that the definition of auditing pronouncements includes the Standards of the IAASB. The Auditing and Assurance Standards Board of the PAAB, the predecessor to the CFAS, adopted the original text of the IAASB’s handbooks on *International Standards on Quality Control, Auditing, Assurance and Related Services* as the standards to be applied by all auditors in South Africa from 1 January 2005. Following the promulgation of the APA, effective from 1 April 2006, the IRBA confirmed the adoption by the PAAB of the International Engagement Standards issued by the IAASB, as published in the successive IAASB *Handbooks of International Quality Control, Auditing, Assurance, and Ethics Pronouncements*, under copyright from the International Federation of Accountants (IFAC).

<sup>6</sup> *Component auditor* is defined in the *Glossary*. Component auditor includes affiliated firms whether using the same name or not, as well as other unrelated auditors.

<sup>7</sup> *Engagement partner* is defined in the *Glossary*.

<sup>8</sup> As defined in the APA.

<sup>9</sup> *Group engagement partner* is defined in the *Glossary*.

<sup>10</sup> The term *group engagement partner* or *principal auditor* is used interchangeably throughout the document and denotes the individual registered auditor responsible for the group audit engagement.



joint engagement partners and their engagement teams collectively constitute the group engagement partner and the group engagement team respectively.

- 5.15 *Group engagement team*<sup>11</sup> – partners, including the group engagement partner, and staff who establish the overall group audit strategy, communicate with component auditors, perform work on the consolidation process and evaluate the conclusions drawn from the audit evidence as the basis for forming an opinion on the group financial statements.
- 5.16 *Predecessor auditor* – the auditor who was previously the auditor of an entity and who has been replaced by the successor auditor.
- 5.17 *Principal auditor* – see the definition of *group engagement partner*.
- 5.18 *Public Audit Act* – the Public Audit Act, 25 of 2004.
- 5.19 *Registered auditor*<sup>12</sup> – an individual or firm registered as an auditor with the Regulatory Board.
- 5.20 *Regulatory Board*<sup>13</sup> – the Independent Regulatory Board for Auditors established by Section 3 of the APA.
- 5.21 *Successor auditor* – an auditor replacing an existing auditor.
- 5.22 *Third party* – any person (or entity) who is not a client as defined.
- 5.23 *Working papers* – the material prepared by and for, or obtained and retained by, the auditor as required to support the auditor's opinion, conclusion and/or report of a particular engagement governed by auditing pronouncements, as prescribed and issued by the IRBA and which include the Standards of the IAASB. Working papers are the primary records kept by an auditor of the procedures applied, the tests performed, the information obtained, discussions held and documented, and the pertinent conclusions reached. Working papers may be in the form of data stored on paper, film, electronic media or other media, and include information relating thereto.

### Ownership of working papers

6. Working papers are the property solely of the firm.

### Confidentiality of client information

7. Working papers contain client information obtained by the auditor from the client in the ordinary course of performing the auditor's professional functions.
8. The auditor is allowed only to disclose confidential information where the disclosure is compelled or allowed by law. In enforcing this statutory obligation of confidentiality, Section 140<sup>14</sup> of the Code provides that the auditor shall not disclose confidential information without proper and specific authority, unless there is a legal or professional

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<sup>11</sup> *Group engagement partner* is defined in the *Glossary*.

<sup>12</sup> As defined in the APA.

<sup>13</sup> As defined in the APA.

<sup>14</sup> Refer to Appendix 7: Extract of Section 213 of the Companies Act, 71 of 2008, and Section 140 and paragraph 225.31 of the IRBA Code of Professional Conduct for Registered Auditors for an extract of Section 140.

right or duty to disclose. For example, Section 213<sup>15</sup> of the Companies Act, 71 of 2008 (Companies Act) prohibits the auditor from disclosing the client's confidential information.

9. Departures from the strict rules against disclosing clients' confidential information are rare and the auditor needs to regard any disclosure (or potential disclosure) of clients' information as a high-risk activity.

### **Responsibility for granting access to working papers**

10. In most instances the auditor responsible and accountable for the specific engagement accepts responsibility for attending to requests for access to the working papers.
11. However, policies and procedures put in place by a firm regarding the granting of access to working papers usually assign responsibility to grant access to working papers of the firm to specified individuals within the firm. For example, a firm may have appointed a "Risk Management Partner" to attend to such requests.
12. Where audits are performed on behalf of the AGSA access to working papers can be granted only by the AGSA in terms of Section 50 of the PAA, and not by its clients or by authorised auditors performing functions on behalf of the AGSA.

### **Ethical requirements**

13. An auditor is required to respect the confidentiality of information obtained while performing an engagement governed by auditing pronouncements, as prescribed or issued by the IRBA and which include the Standards of the IAASB. The auditor may not disclose such information to third parties without proper and specific authority, unless there is a legal or professional obligation, right or duty to do so.<sup>16</sup> The duty of confidentiality extends to access granted to working papers and other related documentation, as well as information in the possession of the auditor.
14. When a client changes auditors, a successor auditor is required to ascertain whether there are any professional or other reasons not to accept the engagement.<sup>17</sup> The extent to which the predecessor auditor can discuss the affairs of the client with the successor auditor depends on the client's permission and legal or ethical requirements. Without specific instructions from the client, the predecessor auditor should not volunteer information about the client's affairs to the successor auditor or to any other third party.
15. In circumstances where there is an identified or suspected non-compliance with laws and regulations (NOCLAR), as set out in paragraph 225.31<sup>18</sup> of the Code, the predecessor auditor shall, on request, disclose facts relating to the NOCLAR to the proposed successor auditor, even if the client refuses, or fails, to grant permission for

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<sup>15</sup> Refer to Appendix 7: Extract of Section 213 of the Companies Act, 71 of 2008, and Section 140 and paragraph 225.31 of the IRBA Code of Professional Conduct for Registered Auditors for an extract of Section 213.

<sup>16</sup> Sections 140 and 210 of the Code (effective from 1 April 2014).

<sup>17</sup> Section 210 of the Code.

<sup>18</sup> Refer to Appendix 7: Extract of Section 213 of the Companies Act, 71 of 2008, and Section 140 and paragraph 225.31 of the IRBA Code of Professional Conduct for Registered Auditors for an extract of Section 225.31.

the predecessor auditor to discuss the client's affairs with the proposed successor auditor, unless prohibited by law or regulation.<sup>19</sup>

16. In order to promote cooperation and good relations between auditors and within the profession, and to protect the public interest, a proposed successor auditor is advised to:
  - 16.1 Inquire from the prospective client whether the predecessor auditor has permission to provide information relating to the client to the successor auditor.
  - 16.2 Obtain written permission from the client to communicate with the predecessor auditor.
  - 16.3 Where the proposed client refuses, or fails, to grant permission for the proposed successor auditor to communicate with the existing auditor, the proposed successor auditor should decline the appointment, unless there are exceptional circumstances of which the proposed successor auditor has full knowledge and the proposed successor auditor is satisfied regarding all relevant facts by some other means.<sup>20</sup>
17. The existing auditor shall maintain confidentiality even after the end of a relationship with a client.<sup>21</sup>
18. The existing auditor ascertains from the proposed successor auditor whether the client granted permission to communicate with the existing auditor and further considers the following when deciding whether to disclose confidential information.<sup>22</sup>
  - 18.1 Whether the interests of any parties, including third parties whose interests might be affected, could be harmed;
  - 18.2 Whether relevant information to which access is sought is known and substantiated, to the extent that that is reasonably possible. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement should be used in determining the type of disclosure to be made, if any; and
  - 18.3 The type of communication that is expected of the auditor and to whom it is to be addressed, i.e. whether the parties to whom the communication is addressed are appropriate recipients.
19. The existing or predecessor auditor, when providing access to working papers, is required to take care that no more information than is strictly necessary is made available, and undertakes to provide that information "honestly and unambiguously".<sup>23</sup>

#### **Circumstances where access to working papers is required by law**

20. Legal or regulatory authorities have the power to request access to working papers in certain circumstances. Examples include tax authorities (such as SARS or the

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<sup>19</sup> Some of the laws that prohibit such disclosure are the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (PRECCA) and the Financial Intelligence Centre Act, 38 of 2001 (FICA).

<sup>20</sup> Paragraph 210.15 of the Code.

<sup>21</sup> Paragraphs 140.2 and 140.6 of the Code.

<sup>22</sup> Paragraph 140.8 of the Code.

<sup>23</sup> Paragraph 210.14 of the Code.

competent authority under a relevant treaty), regulatory authorities, the police and other government institutions. Guidance regarding situations where access is required by law is provided in Appendix 1: Examples of typical situations where access is required by law.

21. The legal requirements to be met by persons requesting access to working papers in such circumstances will vary, depending on the type of request and by whom it is made. Before granting access, auditors who are unsure about the legal requirements to be met by the other party are advised to seek legal advice.
22. The auditor should inform the client, as soon as possible,<sup>24</sup> when access is requested to the working papers, unless prohibited by law from doing so.
23. Access is required by the IRBA for purposes of inspections, investigations and disciplinary hearings. In terms of the IRBA Rules Regarding Improper Conduct, auditors shall be guilty of improper conduct if they contravene or fail to comply with any provision of the APA with which they have a duty to comply, including where they fail to comply within a reasonable time with an order, requirement or request of the Regulatory Board. Guidance in these circumstances is provided in Appendix 2: Examples where access is required by the IRBA.
24. The AGSA and authorised auditors have a statutory obligation to guard the AGSA (and its auditees) against the disclosure of certain information. The Public Audit Act also provides in subsections 18(3) and (4) for protection of the AGSA and authorised auditors against proceedings instituted in this regard. Guidance in these circumstances is provided in Appendix 3: Access to working papers of the Auditor-General of South Africa.

#### **Circumstances where access to working papers might be requested in terms of International Standards on Auditing (ISAs)**

25. When an auditor is appointed as the group engagement partner, the requirements of ISA 600, *Special Considerations — Audits of Group Financial Statements (Including the Work of Component Auditors)* (ISA 600), are applied. ISA 600 contains requirements for the group engagement partner, when considered necessary, to have access to relevant working papers of component auditors of significant components in order to obtain sufficient appropriate audit evidence regarding identified and assessed risks of material misstatement affecting the group financial statements.
26. Where access is requested by a group engagement partner in complying with the requirements of ISA 600<sup>25</sup> and group audit instructions have been issued<sup>26</sup> setting out the relevant working papers and information to which access is required and for which inter-office reports are required, it is inappropriate to request a “*hold harmless*”<sup>27</sup> letter as the component auditor is aware that the group engagement partner intends to use the information in connection with the audit of the group financial statements. A refusal to provide access or respond to group audit instructions may result in non-compliance

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<sup>24</sup> Section 140 of the Code.

<sup>25</sup> ISA 600, paragraphs 13, 19-20, 24-25, 26, 30 and 31 are relevant.

<sup>26</sup> ISA 600, paragraphs 40, 41, 42, 49 and 50 are relevant.

<sup>27</sup> Refer to Appendix 5.

with requirements in ISA 600 for the group engagement partner and component auditor.

27. When an auditor accepts an initial engagement, the auditor is required in terms of ISA 510, *Initial Engagements – Opening Balances*, to develop an overall audit strategy and audit plan to obtain sufficient appropriate audit evidence regarding opening balances and the appropriateness and consistency of accounting policies<sup>28</sup> applied. It is for this purpose especially that access to the predecessor auditor's working papers might be requested, subject to the requirements of the Code.<sup>29</sup>

### **Circumstances where access to working papers might be requested in terms of International Standards on Assurance Engagements (ISAEs)**

28. ISAE 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, contains requirements for the engagement partner, when considered necessary, to request access to the working papers of another auditor in order to determine whether the work performed is adequate for the auditor's purposes.<sup>30</sup>

### **Circumstances where an auditor agrees to be contractually bound to provide access to working papers**

29. Where the auditor has contracted to give access to working papers, such as in the case of a joint engagement, access is granted in terms of the contract between the firms. The contract should allow each joint auditor sufficient access to the working papers to ensure that they are able to comply with the responsibilities and requirements in terms of auditing pronouncements, as prescribed or issued by the IRBA and which include the Standards of the IAASB and the Code.

### **Considerations where access is at the discretion of the auditor**

30. In the course of business, auditors are sometimes requested to grant access to their working papers other than for legal, regulatory or contractual reasons.
31. In such circumstances, the auditor should consider the following:
  - 31.1 The confidentiality of client information;
  - 31.2 The duty of care to third parties; and
  - 31.3 Limitation on reliance by third parties.
32. The ways in which each aspect may be addressed with the respective parties are set out in paragraphs 33 and 34 below:

#### *Confidentiality of client information*

33. Auditors should obtain the written consent of the client prior to granting access to working papers.

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<sup>28</sup> ISA 510, paragraphs 6 and 7; ISA 300, *Planning an Audit of Financial Statements*, paragraph 13; and ISA 710, *Comparative Information-Corresponding Figures and Comparative Financial Statements*, paragraphs 17 and 18.

<sup>29</sup> Section 210 of the Code.

<sup>30</sup> ISAE 3000 (Revised), paragraph 53.

34. Consideration should be given to having the following matters included in the authorisation letter<sup>31</sup> from the client:
- 34.1 Name/s of the party/parties requesting access to the working papers.
  - 34.2 The purpose for which the access to the working papers has been requested.
  - 34.3 Any specific terms relating to the granting of access, such as:
    - Any working papers to which the auditor may decide not to provide access; and
    - Conditions under which the access will be granted, for example, under supervision at the auditor's offices.
  - 34.4 Reference to the acknowledgement letter which the auditor will request from the third party, in which the third party agrees to the terms imposed by the auditor.
  - 34.5 Confirmation of the client's authorisation to grant access, and the client's understanding of the terms.
  - 34.6 A clear statement that the auditor is indemnified, and by whom, against any claims that may arise from granting access to that auditor's working papers.
  - 34.7 The signatures of all relevant parties, who must be duly authorised.

*Duty of care to third parties*

- 34.8 The granting of access to working papers might give rise to a duty of care to third parties that may not otherwise have existed. When working papers are prepared, the auditor applies professional judgement, considers issues of materiality and examines amounts and disclosures in the financial statements (or other financial or non-financial information) on a test basis for specific purposes. Third parties, however, might interpret the working papers differently because of their varying objectives and requirements. The auditor should make it clear to third parties that it would be inappropriate for them to place reliance on working papers for purposes other than those for which they were created.

*Limitation on reliance by third parties*

- 34.9 Other than in circumstances of a component auditor in response to a request by a group engagement partner, an auditor can manage the risk of creating a duty of care to third parties when granting access to working papers by (among other measures):
- Obtaining a signed *acknowledgement letter* (also referred to as a "*hold harmless*"<sup>32</sup> or "*release*" letter) from the third party. The acknowledgement letter documents the terms under which access is granted and the third party's acceptance of those terms; and
  - Obtaining a *disclaimer letter* from the third party before access is granted to the working papers to explain the purpose for which they were prepared

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<sup>31</sup> Refer to Appendix 4: Specimen Client Authorisation Letters for illustrative examples.

<sup>32</sup> Refer to Appendix 5: Specimen Acknowledgement (Hold Harmless) Letters for illustrative examples.

and stating that no reliance should be placed on them for any other purpose.

- 34.10 Consideration should be given to including the following matters in the acknowledgement letter, depending on the circumstances of the request:
- The purpose for which access to the working papers is requested.
  - An acknowledgement that the third party understands the purpose for which the working papers were prepared, that they were not prepared for use by third parties and that they may therefore not be suitable for the purposes for which the third party intends to use them.
- 34.11 Agreement on any terms regarding the granting of access may include, for example:
- Any working papers to which the auditor may decide not to provide access;
  - Conditions under which access will be granted, e.g. under supervision at the auditor's offices; and
  - An acknowledgement that the working papers will not be made available by the third party to other parties without the auditor's written permission.
- 34.12 An acknowledgement by the third party that the auditor does not owe a duty of care to persons who use the working papers and to third parties merely by reason of granting access to the working papers, and a clear statement that the auditor is indemnified by the persons requiring access to the working papers against any claims that may result from the granting of access. Claims arising from causes other than the granting of access are not covered by this indemnity.
- 34.13 Confirmation of the third party's understanding and acceptance of the terms.
- 34.14 The signatures of all relevant parties, who must be duly authorised.

### **Potential risks when granting access to working papers to third parties**

35. The auditor should carefully consider the request for access to working papers since, in certain instances, the request might be limited to a specific area of work performed and might not relate to all working papers. The auditor should establish the reason for a request for access to working papers and should consider the risks associated with such a request before granting access.
36. The auditor is advised to engage in consultations and seek legal advice, if necessary, before granting access to working papers to third parties.
37. The following are examples of circumstances and associated risks that might arise from litigation or losses when an auditor grants access to working papers to third parties, other than to a group engagement partner where access is granted to relevant working papers in accordance with ISA 600:

#### *Access granted to the client*

- 37.1 A client may request access to working papers to obtain evidence to support a claim against the auditor for damages allegedly suffered by the client.

*Access granted to a successor auditor*

- 37.2 A successor auditor might claim compensation from the predecessor auditor for expressing an incorrect auditor's opinion on the financial statements, in circumstances where the successor auditor relied on the working papers of the predecessor auditor for purposes of planning the initial audit engagement.

*Access granted to prospective purchasers, investors or lenders*

- 37.3 A client might claim compensation from the auditor for losses incurred due to the cancellation of a transaction, in circumstances where third parties relied on the working papers to reach conclusions regarding the intended transaction.
- 37.4 Prospective purchasers, investors or lenders and their representatives might claim compensation from the auditor for losses incurred due to the implementation of a transaction, in circumstances where they relied on the working papers to reach conclusions regarding the intended transaction.

**Policies and procedures regarding access to working papers**

38. In terms of International Standard on Quality Control (ISQC) 1, *Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*, a firm shall establish policies and procedures designed to maintain the confidentiality, safe custody, integrity, accessibility and reliability of documentation.<sup>33</sup>
39. Many firms also establish policies and procedures to assist them in managing the risks associated with granting access to their working papers. In Appendix 6: Establishing policies and procedures regarding access to working papers, guidance is included to assist auditors wishing to establish such policies and procedures. This guidance is illustrative only and is not exhaustive.

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<sup>33</sup> ISQC1, paragraph 46.



## **APPENDIX 1: EXAMPLES OF TYPICAL SITUATIONS WHERE ACCESS IS REQUIRED BY LAW**

The information provided below serves as general guidance and a summary of requirements when the specific circumstances referred to arise. The guidance is not intended to replace the advice of legal counsel nor does the guidance intend to spell out the exact legal requirements. Auditors are encouraged engage in consultations and to seek legal advice and/or review the appropriate legislation to ensure that appropriate action is taken in any given circumstances.

Auditors should always consider the following general principles before divulging any information:

- Is disclosure legally permissible?
- Is disclosure prohibited by law or contract?
- Is the information subject to legal privilege?

### **1. Subpoena**

Auditors should not provide access to working papers unless they are legally required to do so. However, auditors should not provide access to working papers merely because they are presented with a subpoena. They should follow certain procedures to ensure that the subpoena is valid. The subpoena must be issued by a court or an authority entitled to issue subpoenas, such as the IRBA. The auditor must ensure that a stamp indicating the name of the issuing authority and the date of issue appear on the subpoena. The auditor should also ensure that the subpoena is addressed to the correct person.

#### **1.1 *In civil proceedings***

In civil proceedings, a third party (or, indeed, the client of an auditor) may issue a subpoena requiring an auditor to attend court rather than merely to seek disclosure of documents. The subpoena could take one of two forms: either requiring the auditor to attend in person a hearing before a court or tribunal and give oral evidence, or requiring the auditor to attend a hearing and to bring certain specified documents to the hearing. An auditor will be in contempt of court if, without good reason, the auditor fails to attend the hearing at the time specified.

The subpoena must be specific regarding the documents required. The auditor should seek legal advice as to whether the categories of documents included in the subpoena can be challenged on the grounds of relevance or admissibility. Any challenge to the terms of a subpoena should be made before the trial date of the hearing. In complying with the terms of a subpoena to produce documents, the auditor should take the documents to the hearing, although the power to order their production ultimately rests with the court or tribunal alone.

If an auditor is served with a subpoena by a third party, the auditor should inform the client immediately. The auditor should inform the client of his or her (the auditor's) intention to comply with the subpoena and inform the client that the client may apply for the subpoena to be set aside. Where the person serving the subpoena is seeking documents and is not requiring oral evidence to be given, the client may consider it appropriate to authorise the auditor to make the documents available in advance of the

hearing date, if to do so would reduce the inconvenience to the auditor and would not otherwise prejudice the client's interests.

When an auditor is served with a subpoena, it is not the duty of the auditor to investigate whether or not the subpoena is capable of being set aside. Where the subpoena is received in respect of client documents, as opposed to working papers, the auditor must inform the client and the client must therefore decide whether or not to apply to have the subpoena set aside.

### **1.2 *In public sector civil proceedings***

Where the audit is performed on behalf of the AGSA, the position in respect of a subpoena for access to working papers is significantly different. Access to these working papers is regulated by the Public Audit Act, 25 of 2004 (Public Audit Act). Subsection 18(3) of the Public Audit Act protects authorised auditors against proceedings instituted for the purpose of gaining access to working papers. If an auditor is served with a subpoena where the audit is performed on behalf of the AGSA, the auditor should refrain from granting access to working papers and inform the engagement manager at the AGSA immediately. Refer to Appendix 3 for the complete AG position on access to working papers.

### **1.3 *In criminal proceedings***

In criminal proceedings, an auditor may be served with a subpoena requiring court attendance to give oral evidence and/or to produce specified documents. The considerations that apply in such circumstances are similar to those relating to subpoenas in civil proceedings. An auditor will be held in contempt of court if the auditor fails to comply with the subpoena. Similarly, the ultimate right to require the documents to be produced in court rests with the court, although a client may authorise the auditor to produce documents that are confidential to the client in advance of compliance with the subpoena. If an auditor is in any doubt, legal advice should be sought as to the auditor's obligations.

### **1.4 *In public sector criminal proceedings***

The protection provided by subsection 18(4) of the Public Audit Act against proceedings to gain access to working papers does not apply to proceedings before a court in a criminal matter. The authorised auditor is obliged to comply with a valid subpoena, failing which the auditor may be held in contempt of court. The authorised auditor should inform the engagement manager at the AGSA immediately upon receipt of a subpoena in a criminal matter.

### **1.5 *Subpoena, instruction or request by a legislature or an internal committee of a legislature***

The protection provided by subsection 18(4) of the Public Audit Act against proceedings instituted to gain access to working papers does not apply to proceedings before a legislature or an internal committee of a legislature. The authorised auditor is obliged to comply with a valid subpoena, instruction or request. The authorised auditor should inform the engagement manager at the AGSA immediately upon receipt of such a subpoena, instruction or request.

## 2. South African Revenue Service (SARS)

SARS processes and its right to access are discussed below.

### 2.1 *The SARS Revised External Guide Access to Audit Files (the SARS Guide)*

On 13 December 2016 SARS issued the SARS Guide<sup>34</sup>, which includes guidance on SARS access to audit working papers.

It is important to note that while the SARS Guide provides an overview of the SARS policy, namely, that a request for access to audit working papers forms part of its right in terms of the Tax Administration Act, 28 of 2011 (TAA) to request relevant material, the auditor must nevertheless recognise that the Guide is not legally binding; and if in doubt, auditors are encouraged to seek legal advice to ensure that appropriate action is taken. SARS does not have an unfettered discretion to request relevant material (including access to working papers). It must be noted that requests for relevant material to an auditor are made in terms of Section 46(3) of the TAA, and an auditor who receives such a request must therefore ensure that SARS observes the limited scope and application of that section. In terms of the Code, auditors are reminded of their responsibility to act in a professional manner and exercise due care. Thus, the period for obtaining legal advice should not be unreasonably long as that could result in a delay in the SARS audit. The risk with a delay is that it could lead to an extension of the prescription period of the tax period, and could be seen as obstructing the process.

Due consideration must be given, for example, to ISA 230, *Audit Documentation*, and a clear distinction must be made between working papers and other files that may be maintained in relation to a client. (For example, tax advice files and compliance files are not included in the definition of audit working papers within the meaning of ISA 230).

Where there is a difference in opinion between the auditor and SARS as to whether working papers fall within the scope and ambit of the definition of relevant material, as contemplated in the TAA, the auditor is advised to seek legal advice to clarify the position.

SARS states in the Guide that access to the audit file of the statutory auditor would only be requested where it is considered necessary for purposes of administration of a tax Act. Furthermore, the SARS Guide states that while there is no general restriction on SARS requiring information contained in an audit file, SARS respects the unique relationship between the taxpayer and the statutory auditors and therefore undertakes not to call for audit files as a matter of routine or without obtaining approval from a senior official at SARS.

SARS also indicates in the Guide that it has issued internal policies and procedures to govern requests for access to audit files. As such, any concerns with such a request should be referred to senior management at SARS.

The auditor is advised to seek legal advice, on a case by case basis, when granting SARS access to working papers.

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<sup>34</sup> The SARS Guide can be accessed from the SARS website ([www.sars.gov.za](http://www.sars.gov.za)).

It must also be noted that the TAA does not apply to Customs and/or Excise Duties. Where a request for access to audit files is received in relation to a Customs and/or Excise audit, the Customs and Excise Act, 91 of 1964 (Customs Act) must be consulted.

## **2.2 Request for relevant material**

Relevant material may be required by representatives of SARS to administer a tax Act in terms of Chapter 5 of the TAA. The most common reasons for requesting information include:

- Verifying whether a tax return, declaration or document is correct;
- Auditing a person's tax affairs;
- Establishing a person's correct liability or refund;
- Collecting a tax debt; and
- Investigating and collecting evidence on whether a person has committed a tax offence.

Relevant material is defined in Section 1 of the TAA to mean any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act, as referred to in Section 3 of the TAA.

In terms of Section 46 of the TAA, SARS may, in relation to a taxpayer, require the taxpayer or another person to submit relevant material that SARS requires. The relevant material may be required orally or in writing.

It is only when a field audit or criminal investigation is conducted by a SARS official that a written authorisation letter referred to in Section 41 of the TAA will be presented. SARS officials are issued with a general authorisation letter to conduct a field audit or criminal investigation.

Auditors who are presented with a request for information should, before granting access to the information and within the period indicated by SARS that the information must be provided:

- Inform the client of the request;
- Put the necessary safeguards in place to limit access solely to the specific information requested<sup>35</sup>; and
- If a field audit is conducted also determine whether the authorisation letter meets the requirements of Section 41 of the TAA.

Sometimes the request by SARS will be made to the client who may then request the auditor to provide certain working papers.

## **2.3 Search and seizure**

For purposes of information gathering, SARS may conduct a search and seizure with or without a warrant (refer to Sections 59 and 63 of the TAA) and enter premises

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<sup>35</sup> Refer to Appendix 6: Establishing policies and procedures regarding access to working papers for further guidance.

unannounced, if relevant material is being kept at such premises. Sections 61 and 62 of the TAA set out how SARS may execute a search and seizure.

**With a warrant**

A senior SARS official may, in terms of Section 59 of the TAA, in circumstances considered relevant or necessary for the administration of any tax Act, authorise an application for a warrant. SARS may, under such a warrant, enter premises where relevant material is kept to search the premises and any person present on the premises and seize relevant material. SARS must apply to a judge or magistrate (in the case of smaller matters) for the warrant. The application for a warrant must be supported by information supplied under oath or solemn declaration, based on the relevant facts.

A judge or magistrate may issue the warrant, if satisfied there are reasonable grounds to believe that a person failed to comply with any tax obligation, or committed a tax offence; and relevant material likely to be found on the premises specified in the application may provide evidence of the failure to comply or a commission of an offence.

In terms of Section 61 of the TAA, a SARS official exercising a power under a warrant must produce the warrant. If the owner of the premises or person in control of the premises is not present, the SARS official must affix a copy of the warrant to the premises in a prominent and visible place. Failure to produce the warrant as required entitles a person to refuse access to the premises.

In terms of a warrant, the SARS official may, as contemplated in Section 61(3) of the TAA:

- Open or cause to be opened or removed, while conducting a search, anything that the official suspects to contain relevant material;
- Seize any relevant material;
- Seize and retain a computer or storage device in which relevant material is stored for as long as it is necessary to copy the material required;
- Make extracts from or copies of relevant material, and require from a person a reasonable explanation of relevant material; and
- Search any premises.

An auditor who is presented with such a warrant should:

- Determine whether the warrant is valid before granting access to their premises;
- Inform the relevant client of the search and seizure; and
- Take the necessary steps to limit access solely to the relevant material, which must be described with reasonable specificity in the warrant.

It must be noted that a search and seizure in relation to Customs and Excise Duties is not governed by the TAA. Similar provisions as mentioned above are, however, contained in Section 4(4) of the Customs Act.

**Without a warrant**

In terms of Section 63 of the TAA, a search without a warrant may be executed by a senior SARS official. A warrantless search is only permitted if the owner or person in control of the premises so consents in writing or a senior SARS official, on reasonable grounds, is satisfied that:

- There may be imminent removal or destruction of relevant material likely to be found on the premises;
- If SARS applies for a search warrant under its statutory power to do so, a search warrant will be issued; and
- The delay in obtaining a warrant would defeat the objective of the search and seizure.

Before carrying out the search, a SARS official must inform the owner or person in control of the premises what the legislative basis is for the search and of the alleged failure to comply with an obligation imposed under a tax Act or tax offence that is the basis for the search.

In such circumstances, the auditor should:

- Inform the relevant client of the search and seizure; and
- Take the necessary steps to limit access solely to the relevant material being seized.

Furthermore, when in doubt, auditors are encouraged to seek legal advice to ensure that appropriate action is taken in any given circumstances.

**3. South African Police Service (SAPS)**

SAPS officials may search and seize documents *in terms of a search warrant*.

Where the police official wishes to remove documents from the auditor's office, regard should be given to the following:

- No legal privilege exists between an auditor and the auditor's client as exists in the case of certain professional relationships. Section 140 of the Code, read with Rule 2.6 of the Rules Regarding Improper Conduct, does not create legal privilege in favour of an auditor's client. Therefore, an auditor may not lawfully refuse to hand over documents of relevance when called upon to do so by the SAPS, provided the latter have shown that they are acting within the ambit of their powers.
- The relevant sections of the Criminal Procedure Act, 51 of 1977 (Criminal Procedure Act) are as follows:

“Section 21 – Article to be seized under search warrant:

- (1) Subject to the provisions of Sections 22, 24 and 25, an article referred to in Section 20 shall be seized only by virtue of a search warrant issued –
  - (a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person or upon or at any premises within his area of jurisdiction; or

- (b) By a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or at any premises is required in evidence at such proceedings.
- (2) A search warrant issued under subsection (1) shall require a police official to seize the article in question and shall to that end authorise such police official to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.
- (3) (a) A search warrant shall be executed by day, unless the person issuing the warrant in writing authorises the execution thereof by night.
- (b) A search warrant may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.
- (4) A police official executing a warrant under this section or Section 25 shall, after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant.”

***Without a warrant***

Articles may be seized without a search warrant if the person concerned consents thereto, or if the police official believes a search warrant would be issued if he applied for one and the delay in obtaining one would defeat the objective of the search (Section 22).

Any police official requesting documentary evidence should be asked to produce a search warrant as envisaged by Section 21 of the Criminal Procedure Act. Auditors should not consent to a search or seizure without this written search warrant being produced. However, if the police official maintains that he would be issued with a search warrant if it were applied for and that the delay in obtaining such a warrant would defeat the objective of the search, auditors may not lawfully refuse to allow the police official to search and seize any documents.

In summary, where the auditor is presented with a warrant by the SAPS, the auditor may need to:

- Determine whether the warrant is valid before granting access to the auditor’s premises;
- Inform the relevant client of the search and seizure; and
- Take the necessary steps to limit access solely to the specific information covered by the warrant.

Also refer to the references below on a search and seizure in Section 6.

#### **4. Information Requests in Terms of the Promotion of Access to Information Act, 2 of 2000**

The purpose of the Promotion of Access to Information Act (PAIA) is to give effect to the constitutional right of access to any information held by the State and any information held by another person, and which is required for the exercise or protection of any rights. Chapter 3 regulates the manner in which access to information should be treated. The right to access is not automatic. Auditors are encouraged to seek legal advice to ensure that appropriate action is taken in any given circumstances.

Subject to the mandatory grounds for the refusal of access contained in Chapter 4 of the PAIA, Section 50 of the PAIA provides that a person must be given access to any record of a private body if:

- (a) That record is required for the exercise or protection of any of the person's constitutional rights;
- (b) That person complies with the procedural requirements laid down in the Act relating to a request for access to that record; and
- (c) The request for information does not fall within any of the grounds laid down in the PAIA upon which access to information may be refused.

#### **5. Enquiries in Terms of the Companies Act**

##### **5.1 *Summoning and examination of persons as to the affairs of the company in terms of Section 417 of the Companies Act, 61 of 1973***<sup>36</sup>

In any winding-up of a company unable to pay its debts, the Master or the Court, or any person appointed by the Master or the Court as a commissioner, may, at any time after a winding-up order has been made, summon before him or it, any director or officer of the company or person known or suspected to have in his possession any property of the company or believed to be indebted to the company, or any person whom the Master or the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

Any person summoned under subsection 417(1) may be represented, and should consider obtaining representation, by an attorney, with or without counsel, at his attendance before the Master or the Court.

The Master or the Court may examine any person summoned under subsection (1) on oath or affirmation concerning any matter referred to in that subsection, either orally or on written interrogatories, and may reduce his answers to writing and require him to sign them.

Any such person is required to answer any question put to him at the examination, notwithstanding that the answer could incriminate him, and shall, if he does so refuse on those grounds, be obliged to so answer at the instance of the Master or the Court, provided that the Master or the Court may only oblige the person in question to so

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<sup>36</sup> Section 417 of the Companies Act, 1973, has remained in force after the Companies Act, 2008, came into effect; and this will be until the Minister determines, by notice in the Gazette, that the section will cease to have effect.



answer after the Master or the Court has consulted with the Director of Public Prosecutions who has jurisdiction.

Any incriminating answer or information directly obtained, or incriminating evidence directly derived from, an examination in terms of this section shall not be admissible as evidence in criminal proceedings in a court of law against the person concerned or the body corporate of which he is or was an officer, except in criminal proceedings where the person concerned is charged with an offence relating to-

- i) The administering or taking of an oath or the administering or making of an affirmation;
- ii) The giving of false evidence;
- iii) The making of a false statement; or
- iv) A failure to answer lawful questions fully and satisfactorily.

The Master or the Court may require any such person to produce any books or papers in his custody or under his control relating to the company but without prejudice to any lien claimed with regard to any such books or papers, and the Court shall have power to determine all questions relating to any such lien.

If any person who has been duly summoned under subsection (1), and to whom a reasonable sum for his expenses has been tendered and agreed to between the parties, fails to appear before the Master or the Court at the time appointed by the summons without a lawful excuse made known to the Master or the Court at the time of the sitting and accepted by the Master or the Court, the Master or the Court may cause such person to be apprehended and brought before him or it for examination.

Any person summoned by the Master under subsection (1) shall be entitled to such witness fees as he would have been entitled to if he were a witness in civil proceedings in a magistrate's court.

Any person who applies for an examination or enquiry in terms of this section or Section 418 shall be liable for the payment of the costs and expenses incidental thereto, unless the Master or the Court directs that the whole or any part of such costs and expenses shall be paid out of the assets of the company concerned.

Any examination or enquiry under this section or Section 418 and any application therefore shall be private and confidential, unless the Master or the Court, either generally or in respect of any particular person, directs otherwise.

For practical purposes, the above provisions relating to Section 417 enquiries apply also to an auditor to whom a summons has been served in respect of his working papers.

## **5.2 Section 176 of the Companies Act, 71 of 2008**

In terms of Section 176 of the Act, the Companies and Intellectual Property Commission or the Takeover Regulation Panel may issue a summons to any person to appear before the Commission or Panel or to deliver or produce documents for purposes of an investigation or inspection carried out by them. The powers of the Commission and the Panel, and the duties of the auditor, are largely the same as those applicable under a Section 417 enquiry in terms of the Companies Act, 1973.

## 6. Search and Seizure

Certain laws make provision for a search of premises and a seizure of information. The auditor should be aware of the auditor's obligations and rights in terms of these laws.

The principal laws with search and seizure provisions are set out in the table below.

No.	Regulatory requirement	Authorised person to search the premises
1.	Administration of Estates Act, 66 of 1965, Section 26	Police official on behalf of the executor of a deceased estate.
2.	Criminal Procedure Act, 51 of 1977, Sections 21 and 22	Police official on behalf of the State.
3.	Competition Act, 89 of 1998, Sections 46 and 47	An inspector on behalf of the Competition Commissioner, possibly accompanied by a police official.
4.	Companies Act, 71 of 2008, Sections 177, 178 and 179	Police official. Authorised person.
5.	Consumer Protection Act, 68 of 2008, Sections 103 and 104	Authorised person.
6.	Customs and Excise Act, 91 of 1964, Section 4	Customs and Excise officers, who may be accompanied by an assistant officer and/or police official.
7.	Electronic Communications and Transactions Act, 25 of 2002, Sections 81 and 82	Cyber inspector, who may be accompanied by a police official.
8.	Financial Intelligence Centre Act, 38 of 2001, Section 70	Police official. Authorised person.
9.	Insolvency Act, 24 of 1936, Section 69	Police official on behalf of the trustee or on behalf of the insolvent estate.
10.	Inspection of Financial Institutions Act, 80 of 1998, Section 5	An inspector appointed by the registrar of the Financial Services Board or the Medical Schemes Council.
11.	Public Audit Act, 25 of 2004, Section 16	Auditor-General or an authorised auditor, who may be accompanied by a police official.
12.	Prevention and Combating of Corrupt Activities Act, 12 of 2004, Section 23	National Director or authorised person.
13.	Financial Markets Act, 19 of 2012, Section 84	Financial Services Board official.
14.	Tax Administration Act, 28 of 2011, Sections 61-63	SARS official.

## **7. Inspections by the Public Company Accounting Oversight Board (PCAOB)**

Section 104 of the Sarbanes-Oxley Act of 2002 of the United States of America (SOX Act) requires the PCAOB to conduct a continuing programme of inspections of registered public accounting firms. All firms of auditors, worldwide, who perform audits of Securities Exchange Commission Registrants (SEC Registrants) are required to register with the PCAOB and comply with the PCAOB Board's Rules. Section 4 of the Rules provides for the inspection of PCAOB registered firms, including foreign firms and auditors performing audits of SEC Registrants.

The SOX Act requires the PCAOB to prepare a written report concerning each inspection. Under the Act and the PCAOB Rules, the PCAOB provides a copy of each report, in appropriate detail, to the SEC and to certain state regulatory authorities. The PCAOB also makes portions of those reports available to the public, subject to restrictions in the Act that prohibit, or require a delay in, the public disclosure of certain information.

The auditor is advised to seek legal advice when granting the PCAOB access to working papers.

## **8. Inspections by Regulators in Other Foreign Jurisdictions**

Regulatory authorities in foreign jurisdictions, pursuant to their legal or regulatory powers, might require access to an auditor's working papers for purposes of inspections in respect of work performed for an entity registered (or operating) in that foreign jurisdiction.

The auditor should consider their firm's established policies and procedures to assist in managing the risks associated with granting access to his or her working papers, especially if the firm is part of a network firm.

The auditor is also advised to seek legal advice when granting a foreign regulatory authority access to working papers (also refer to paragraphs 21-22 of this Revised Guide).

## APPENDIX 2: EXAMPLES WHERE ACCESS IS REQUIRED BY THE IRBA

### 1. Inspections

Section 47 of the Auditing Profession Act 26 of 2005 (APA) gives the IRBA, or any person authorised by it, the power to inspect or review the practice of an auditor at any time and may, for these purposes, inspect and make copies of any information, including but not limited to any working papers, statements, correspondence, books or other documents, in the possession or under the control of an auditor.

Despite the generality of the above paragraph, the IRBA, or any person authorised by it, must at least every three years inspect or review the practice of an auditor that audits a public company, as defined in the Companies Act, 71 of 2008.

An auditor may not refuse to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents, and, subject to the provisions of the Promotion of Access to Information Act 2 of 2000, or any other law, requested by the IRBA, even though the registered auditor is of the opinion that the information contains confidential information about a client.

An auditor who acts in good faith during an inspection of the practice of that auditor and who produces information requested by the IRBA will not be held liable civilly or criminally for producing the information.

Subject to the Constitution and any other law, no person who is or was concerned with the performance of any function under this section may disclose any information obtained in the performance of that function except –

- For the purpose of an investigation into, or a hearing of, improper conduct;
- If the person, of necessity, supplies it in the performance of functions under the APA;
- When required to do so by order of a court of law;
- At the written request of, and to, any appropriate regulator which requires it for the institution, or an investigation with a view to the institution of any disciplinary action or criminal prosecution; or
- At the written request of, and to, any appropriate international regulator of audits and auditors that requires it for the purpose of inspection, with the consent of the auditor.

### 2. Investigations

Section 48(5)(a)(i) of the APA provides that when investigating a charge of improper conduct, the Investigating Committee may require the auditor to whom the charge relates, or any other person, to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that auditor or other person and which relates to the subject matter of the charge, including specifically, but without limitation, any working papers of the auditor.

Section 48(5)(b) provides that the provisions of Section 48(5) apply regardless of whether the auditor is of the opinion that such information contains confidential information about a client.

### **3. Disciplinary Hearings**

Section 50(5) of the APA provides that the Disciplinary Committee may, for the purposes of a hearing, subpoena any person who might be able to provide material information concerning the subject of the hearing or who it suspects or believes has in his or her possession or custody or under such person's control any information, including but not limited to any working papers, statements, correspondence, books or other documents, which has any bearing on the subject of the hearing, to appear before the disciplinary committee at the time and place specified in the subpoena, to be questioned or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents.

## APPENDIX 3: ACCESS TO WORKING PAPERS OF THE AUDITOR-GENERAL OF SOUTH AFRICA (THE AGSA)

### 1. Legal Position of the AGSA

The AGSA is the owner of all information, documentation, advice, recommendations and reports furnished and/or compiled during an audit. The working papers do not form part of the information of the auditee. Access can therefore only be granted by the AGSA and not by its clients/auditees or those performing functions on its behalf (authorised auditors).

The AGSA and authorised auditors have a statutory obligation to guard the AGSA against the disclosure of certain information. The Public Audit Act, 25 of 2004 (Public Audit Act), also provides for the protection of the AGSA and authorised auditors against proceedings instituted in this regard. Section 18 of the Public Audit Act is reproduced in point 2 below.

### 2. Extracts from Relevant Sections of the Public Audit Act

#### ***Section 18: Protection of information***

Section 18 provides that:

- “18.(1) The Auditor-General must take precautionary steps to guard against the disclosure of secret or classified information obtained in terms of Section 15(1), (2) or (3) or Section 16.
- 18.(2) Steps taken in terms of subsection (1) may not prevent the disclosure of any audit finding by the Auditor-General or an authorised auditor on any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure within the meaning of the Public Finance Management Act or the Municipal Finance Management Act, or any other legislation as applicable to the auditee which is the subject of the audit, or on any other irregular or criminal conduct relating to the financial affairs of an auditee, but any such disclosure may not include facts the disclosure of which would harm the national interest.
- 18.(3) The Auditor-General, an authorised auditor or an assistant or other person referred to in Section 17, is competent but may not be compelled to disclose information obtained in the course of official duties in any proceedings in which the Auditor-General is not a party, before—
- a court in a civil matter; or
  - any other body or institution established in terms of legislation.
- 18.(4) Subsection (3) does not apply in any proceedings before—
- a legislature or an internal committee of a legislature; or
  - a court in a criminal matter.”

The AGSA has exercised its discretion in terms of subsection 18(3) and directed that no staff member or authorised auditor may disclose information obtained during the course of an audit or the execution of official duties, save for when required to do so before a legislature, a legislature committee or a criminal court.

***Section 50: Disclosure of information***

Section 50 provides that: “No authorised auditor, person assisting an authorised auditor or a member of the staff of the Auditor-General may, without the permission of the Auditor-General, disclose information obtained in the course of an audit or the carrying out of duties in terms of this Act otherwise than in an audit report or in accordance with Section 18(4).”

***Section 51: Offences and penalties***

Section 51 provides inter alia:

“51.(1) A person is guilty of an offence if that person—

(d) contravenes Section 50”.

“(4) Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.”

## APPENDIX 4: SPECIMEN CLIENT AUTHORISATION LETTERS

This appendix provides examples of the letters that a firm may use when granting access to its working papers in the circumstances indicated. These specimen letters have been drafted for audit engagements only, but can and should be adapted accordingly for other types of engagements. The illustrative letters do not cover an exhaustive list of all matters that might arise, and firms are advised to take care to prepare letters that provide for their particular circumstances and requirements.

### 1. Client's authorisation to the auditor to provide access to a group engagement partner<sup>37</sup>

This letter can be sent to the client to obtain authorisation to provide access to the auditor's working papers, to a group engagement partner, or to respond to the group engagement partner's enquiries. Management of the client should confirm their authorisation by signing in the space provided and returning a copy of the letter to the auditor. The letter is generally addressed to and accepted and agreed to by the chief executive officer or chief financial officer of the client (or the person who holds a similar position within the relevant organisation). Modifications to the letter should be made where considered necessary.

*Name and Title of Individual*

*XYZ Company*

[Address]

[Date]

Dear [Name of Individual]

We have previously audited the financial statements of *XYZ Company* (the "Company") for the year ended <insert date>, and issued our report thereon dated <insert date>. We have not audited any financial statements for any dates or periods subsequent to <insert year-end date>.

You have informed us that *ABC Firm*, as auditors of *DEF Company* (the parent company of *XYZ Company*), has asked you to authorise us to provide access to our working papers prepared in connection with the audit referred to above and to respond fully to its enquiries in connection with its audit of *DEF Company's* group financial statements and its investment in *XYZ Company*. In response to that request, you have authorised us to provide access to our working papers to *ABC Firm* and to respond fully to its enquiries.

Working papers that we consider proprietary will not be made available. We will obtain a letter from *ABC Firm*, substantially in the form attached hereto, prior to permitting access to the working papers.

<sup>37</sup> This letter is still considered appropriate in terms of providing ongoing access to the group engagement partner when working papers are requested in terms of ISA 600. The component auditor might consider providing for such authorisation when establishing the terms of the engagement for the audit of the component company.



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Please confirm your understanding and agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

Yours faithfully,

[Firm]

Enclosure

Accepted and agreed to by *XYZ Company*.

By:

Title:

Date:

**2. Client's authorisation to the predecessor auditor to provide access to the successor auditor**

This letter can be sent to existing or former clients to obtain authorisation to provide access to the existing or predecessor auditor's working papers to a successor auditor or to respond to the successor auditor's enquiries. Management of the client should confirm their authorisation by signing in the space provided and returning a copy of the letter to the auditor. The letter is generally addressed to and accepted and agreed to by the chief executive officer or chief financial officer of the client (or the person who holds a similar position within the relevant organisation). Modifications to the letter should be made where considered necessary.

*Name and Title of Individual*

*XYZ Company*

[Address]

[Date]

Dear [Name of Individual]

We have previously audited the financial statements of *XYZ Company* (the "Company") for the year ended <insert date>, and issued our report thereon dated <insert date>. We have not audited any financial statements for any dates or periods subsequent to <insert year-end date>.

You have consented to our responding fully to the enquiries of *ABC Firm*, as successor independent auditors for *XYZ Company*, and to providing access to our working papers prepared in connection with the audit referred to above. You understand and agree that access to our working papers is undertaken solely for the purpose of obtaining an understanding about *XYZ Company* and that certain information about our audit will be made available to assist *ABC Firm* in planning the audit of the <insert year-end date> financial statements of *XYZ Company*.

*XYZ Company* also agrees to indemnify and hold harmless [Name of auditor] and its personnel from any claim by *ABC Firm* or any other third party that arises as a result of [Name of auditor] permitting access to its working papers in connection with this request other than those claims that may arise directly and indirectly as a result of disclosures required to be made by *ABC Firm* in terms of the requirements of any law, regulation, accounting or auditing standard.

Our rights and obligations in this letter will be governed by South African law.

Please confirm your understanding and agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

Yours faithfully,

[Firm]

Enclosure

Accepted and agreed to by *XYZ Company*.

By:

Title:

Date:

### 3. Client's authorisation to the auditor to provide access to prospective purchasers, investors or lenders

This letter can be sent to the client to request authorisation to provide access to the auditor's working papers to prospective purchasers, prospective investors or prospective lenders. Management of the client should confirm their authorisation by signing in the space provided and returning a copy of the letter to the auditor. The letter is generally addressed to and accepted and agreed to by the chief executive officer or chief financial officer of the client (or the person who holds a similar position within the relevant organisation). Modifications to the letter should be made where considered necessary.

*Name and Title of Individual*

*XYZ Company*

[Address]

[Date]

Dear [Name of Individual]

We have previously audited the financial statements of *XYZ Company* (the "Company") for the year ended *<insert date>*, and issued our report thereon dated *<insert date>*. We have not audited any financial statements for any dates or periods subsequent to *<insert year-end date>*.

In connection with the proposed [*describe transaction (e.g. "sale of xx shares of the Company to ABC Purchaser")*], you have informed us that you have been requested by *ABC Purchaser* to allow *ABC Purchaser* and its independent auditors, *DEF Firm*, access to our working papers prepared in connection with the audit referred to above, and you have authorised our firm to permit *ABC Purchaser* and *DEF Firm* to review such working papers and, if requested, to respond to enquiries in relation to our working papers by *ABC Purchaser* and its representatives.

The working papers were prepared in connection with our audit of the Company's *<insert year>* financial statements, taken as a whole, and to aid in the conduct and supervision of our audit. The working papers are the primary records kept by an auditor of the procedures applied, the tests performed, the information obtained and the pertinent conclusions reached in the audit. They will not address all the questions that a prospective [*investor*] may have. They also generally contain sensitive and candid comments about the Company that may be subject to interpretation. You acknowledge that we will have no responsibility to you if access by *ABC Purchaser* or *DEF Firm* results in the termination of, or change in, the proposed transaction, any other action against the Company, or misuse of any confidential information obtained from a review of our working papers or by way of explanations from us.

Working papers that we consider proprietary will not be made available. We will obtain a letter from *ABC Purchaser*, substantially in the form attached hereto, prior to permitting access to the working papers.

Our rights and obligations in this letter will be governed by South African law.

Please confirm your understanding and agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

Yours faithfully,

[Firm]

Enclosure

Accepted and agreed to by *XYZ Company*:

By:

Title:

Date:

## APPENDIX 5: SPECIMEN THIRD PARTY ACKNOWLEDGEMENT (HOLD HARMLESS) LETTERS

This appendix provides examples of the “**hold harmless**” letters that a firm may obtain when granting access to its working papers in the circumstances indicated. These specimen letters have been drafted for audit engagements only, but can and should be adapted accordingly for other types of engagements. The illustrative letters do not contain an exhaustive list of all matters that might arise, and firms are advised to take care to prepare letters that provide for their particular circumstances and requirements. The auditor is also advised to obtain authorisation from the former client to provide access to the auditor’s working papers to a successor auditor or to respond to enquiries.

### 1. Acknowledgement from the group engagement partner

This letter can be sent to the group engagement partner to obtain acknowledgement of, and agreement to, conditions precedent to obtaining access to the component auditor’s working papers.<sup>38</sup>

Where access is requested by a group engagement partner in complying with the requirements of ISA 600, *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)*, and group audit instructions have been issued setting out the relevant working papers and information of component auditors of significant components to which access is requested and inter-office reports are required, it is inappropriate to request a “hold harmless” letter as the component auditor is aware that the group engagement partner intends to use the information in connection with the audit of the group financial statements. A refusal to provide access or respond to group audit instructions may result in non-compliance with the requirements of ISA 600.

Where, however, group audit instructions have not been issued by the group engagement partner, in accordance with ISA 600, it may be appropriate for the component auditor to issue an illustrative letter such as this to clarify what access is required.

*Principal Auditor*

[Address]

[Date]

Dear [Name of individual]

We have previously audited, in accordance with International Standards on Auditing [or other auditing standards applicable to the audit], the <insert date> financial statements of ABC Company (the “Company”). We issued a report dated <insert date> on those financial statements and have not performed any audit procedures since that date. In connection with your <insert year> audit of the group financial statements of XYZ Company, you have requested access to our relevant working papers in accordance with ISA 600, *Special Considerations — Audits of Group Financial Statements (including the Work of Component*

<sup>38</sup> For guidance, auditors are referred to Appendix 5 of ISA 600 for “Required and Additional Matters Included in the Group Engagement Team’s Letter of Instruction”.

*Auditors*), prepared in connection with our audit of the Company. The Company has authorised our firm to provide you with access to those working papers.

We understand that the purpose of you having access to our relevant working papers is to obtain information about the Company and our <insert year> audit results to assist you in performing your <insert year> audit of the group financial statements of *XYZ Company*, which include the Company as a group subsidiary [*or explain relationship*], and that you will not be making reference to our report in your report on the group financial statements. For that purpose only, we will provide you access to those of our working papers that are relevant to that objective. Working papers that we consider proprietary will not be made available.

Our audit, and the working papers prepared in connection therewith, of the Company's financial statements were not planned or conducted for your purposes<sup>39</sup>. Therefore, items of possible interest to you may not have been specifically addressed. Our use of professional judgement and the assessment of materiality for the purpose of our audit means that circumstances may have existed that would have been assessed differently by you. We make no representations as to the sufficiency or appropriateness of the information in our working papers for your purposes. In addition, any notations, comments and individual conclusions appearing on any of the working papers do not stand alone, and should not be read as an opinion on any individual amounts, accounts, balances or transactions.

Because your review of our working papers is undertaken solely for the purpose described above, and will not entail the inspection of all our working papers, you agree that:

- (1) The information obtained will not be used by you for any other purpose;
- (2) You are unable to and will not comment orally or in writing to anyone as to whether our audit was performed in accordance with *International Standards on Auditing* [*or other jurisdictions' auditing standards applicable to the audit*];
- (3) The audit results documented in our working papers will not be used<sup>40</sup> for any other purpose other than as audit evidence in expressing your opinion on the <insert year> group financial statements of *XYZ Company* and subsidiaries; and
- (4) You will not make reference to our report in your report on *XYZ Company's* group financial statements.

In the event of a third party request for access to your working papers prepared in connection with your audit of *XYZ Company*, you agree to request and obtain our permission before allowing any such access to any copies of documents or information derived from our working papers (*[Company Auditor] Working Paper Information*), and to obtain on our behalf any releases that you obtain from such third party with respect to your own working papers. Furthermore, in the case of a subpoena or other court order seeking access to any *[Company auditor] Working Paper Information*, you agree to notify us upon receipt of the subpoena or other court order and to provide us with a copy thereof.

Our rights and obligations in this letter will be governed by South African law.

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<sup>39</sup> Refers to those circumstances where the group engagement partner has not issued instructions which the component auditor has agreed to follow.

<sup>40</sup> Except as contemplated by local laws [*or in the absence of these, International Standards on Auditing*].

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Please confirm your agreement to the foregoing by signing and dating a copy of this letter and returning it to us.

Yours faithfully,

[Firm]

Enclosure

Accepted and agreed to by *Group engagement partner*.

By:

Date:



**When signing an audit report on group financial statements reporting in a legal jurisdiction that does require reference to the component auditor’s report in the audit report on the group financial statements**

Auditors signing an audit report on group financial statements in South Africa do not refer to the report of a component auditor in their report. However, if registered auditors are signing an audit report on group financial statements reporting in a legal jurisdiction that does require such reference to be made, the paragraph below should replace the second and fourth paragraphs of the illustrative letter in point<sup>1</sup> above.

*[If the principal auditor intends to refer to the auditor’s report, and the auditor has agreed to provide access to the working papers, **paragraph 2** should be replaced with the following:*

“We understand that the purpose of you having access to our working papers is to obtain information about the Company and our <insert year> audit results to assist you in performing your <insert year> audit of the group financial statements of XYZ Company, which include the Company as a group subsidiary [*or explain relationship*], and that you will be making reference to our report in your report on the group financial statements. For that purpose only, we will provide you access to those of our working papers that relate to that objective. Working papers that we consider proprietary will not be made available.”]

*[If the principal auditor intends to refer to the auditor’s report, and the auditor has agreed to provide access to his or her working papers, **paragraph 4** should be replaced with the following:*

“Because your review of our working papers is undertaken solely for the purpose described above, and will not entail the inspection of all our working papers, you agree that:

- (1) The information obtained will not be used by you for any other purpose;
- (2) You are unable to and will not comment orally or in writing to anyone as to whether our audit was performed in accordance with International Standards on Auditing [*or other auditing standards applicable to the audit*]; and
- (3) The audit results documented in our working papers will not be used<sup>41</sup>, when making reference to the report of component auditors, as audit evidence in expressing your opinion on the <insert year> group financial statements of XYZ Company and subsidiaries.”]

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<sup>41</sup> Other than circumstances when a successor auditor refers to a modified audit opinion of the predecessor auditor as required by ISA 510.

## 2. Acknowledgement from the successor auditor

This letter can be sent to a successor auditor to obtain that auditor's acknowledgement of, and agreement to, conditions precedent to them obtaining access to the working papers.

*Successor Auditor*

[Address]

[Date]

Dear [Name of individual]

We have previously audited, in accordance with International Standards on Auditing [or other auditing standards applicable to the audit], the financial statements of *XYZ Company* (the "Company") for the year ended <insert date>. We issued a report dated <insert date> on those financial statements and have not performed any audit procedures since that date. In connection with your <insert year> audit of *XYZ Company*, you have requested access to our working papers prepared in connection with our <insert year> audit of the Company's financial statements. The Company has authorised our firm to provide you with access to those working papers.

Our audit, and the working papers prepared in connection therewith, of the Company's financial statements were not planned or conducted for your purposes. Therefore, items of possible interest to you may not have been specifically addressed. Our use of professional judgement and the assessment of audit risk and materiality for the purpose of our audit means that circumstances may have existed that would have been assessed differently by you. We make no representations as to the sufficiency or appropriateness of the information in our working papers for your purposes.

We understand that the purpose of you having access to our working papers is to obtain information about the Company and our <insert year> audit results to assist you in planning your <insert year> audit of the Company. For that purpose only, we will provide you access to those of our working papers that relate to that objective. You agree that the audit results documented in the working papers will not be used, except as contemplated by ISA 510, Initial Engagements – opening balances.

Because your review of our working papers is undertaken solely for the purpose described above, and will not entail the inspection of all our working papers, you agree that:

- (1) The information obtained will not be used by you for any other purpose;
- (2) You are unable to and will not comment orally or in writing to anyone as to whether our audit was performed in accordance with International Standards on Auditing [or other auditing standards applicable to the audit];
- (3) You will not provide expert evidence or litigation support services or otherwise accept an engagement to comment on issues relating to the quality of our audit; and
- (4) You will not use the audit procedures or results thereof documented in our working papers as evidential matter in rendering your opinion on the <insert year> financial statements of *XYZ Company*, except as contemplated in the International Standards on Auditing [or other auditing standards applicable to the audit].

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Upon request, we will consider providing you with copies of certain audit documentation. You agree to subject any such copies or information otherwise derived from our working papers ([*Previous auditor firm name*] Working Paper Information) to your normal policy for retention of working papers [*if more restrictive retention is requested, so describe*] and protection of confidential client information. In the event of a third party request for access to your working papers prepared in connection with your audits of the Company, you agree to request and obtain our permission before allowing any such access to any copies of [*Previous auditor firm name*] audit documentation, and to obtain on our behalf any releases that you obtain from such third party with respect to your own working papers. Furthermore, in the case of a subpoena or other court order seeking access to any copies of [*Previous auditor firm name*] audit documentation, you agree to notify us promptly upon receipt of the subpoena or other court order and to provide us a copy thereof.

You also agree to indemnify and hold harmless [*Previous auditor firm name*] and its personnel from any claim by *XYZ Company* or any other third party that arises directly and indirectly as a result of [*Name of auditor*] permitting access to its working papers other than those claims that may arise as a result of disclosures required to be made by [*Successor auditor firm name*] in terms of the requirements of any law, regulation, accounting or auditing standard.

Our rights and obligations in this letter will be governed by South African law.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Yours faithfully,

[Firm]

Enclosure

Acknowledged and agreed to by *Successor Auditor*.

By:

Date:

**3. Acknowledgement from prospective purchasers, investors, lenders and an independent accounting firm**

This letter can be sent to a prospective purchaser, prospective investor or prospective lender (the “third party”) who has requested access to the auditor’s working papers. The third party should indicate its acceptance of and agreement with the terms of the letter by signing in the space provided and returning a copy of the letter to the auditor. The letter is accepted and agreed to by the chief executive officer, chief financial officer or other appropriate third party representative. Additionally, the independent accounting firm to which the auditor may be providing access to the working papers and/or the information contained therein should also sign the letter to accept and agree to it.

*Name and title of individual/s*

*ABC prospective purchaser, prospective investor or prospective lender*

[Address]

[Date]

Dear [Name of individual]

In connection with the proposed [*describe transaction (e.g. “proposed acquisition of sale of XX shares of XYZ Company (the “Company”) to ABC Purchaser”)*], the Company has requested that we allow *ABC Purchaser* and *DEF Firm*, which has been engaged by *ABC Purchaser* to assist it in evaluating the proposed transaction, access to our working papers prepared in connection with our audit of the *<insert year>* financial statements of the Company and to the taxation computations, together with access to copies of the correspondence and related formalities between us and the South African Revenue Service in respect of the computations, and to provide them with whatever explanations are necessary. We have received authorisation from management of the Company to allow *ABC prospective purchaser, prospective investor or prospective lender* and *DEF Firm* such access to working papers prepared in the course of the audit, but working papers that we consider proprietary will not be made available.

The financial statements are the responsibility and representations of the Company’s management. We have conducted our audit of the *<insert year>* financial statements of the Company in accordance with International Standards on Auditing [or other auditing standards applicable to the audit], the objective of which is to form an opinion as to whether the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Company in conformity with International Financial Reporting Standards [or other accounting standards applicable to the audit]. International Standards on Auditing [or other auditing standards applicable to the audit] require that we plan and perform our audit to obtain reasonable assurance that the financial statements are free of material misstatement. Because an audit incorporates the concept of selective testing of data, which is judgemental both as to the selection of accounts and the number of transactions to be tested, our audit is subject to the inherent risks that material

misstatements that may exist will not be detected. Further, the audit does not address the possibility that material misstatements may occur in the future. Nothing in this letter is intended to alter the terms or scope of our audit beyond that contemplated by an audit in accordance with International Standards on Auditing<sup>42</sup>.

Also, our use of professional judgement and the assessment of materiality for the purpose of our audit of the financial statements means that circumstances may have existed that would have been assessed differently by *ABC prospective purchaser, prospective investor or prospective lender* or *DEF Firm*. We make no representation as to the sufficiency or appropriateness for your purposes of the information included in our working papers. The auditing procedures that we performed were limited to those that we considered necessary under International Standards on Auditing [or other auditing standards applicable to the audit] to enable us to form and express an opinion on the fairness of presentation of the Company's *<insert year>* financial statements taken as a whole as described above. Thus, any notations, comments and individual conclusions appearing on any of our working papers do not stand alone and do not represent, and should not be read as, an opinion, conclusion or other form of assurance with respect to any individual amounts, accounts, balances, transactions or other information related to the Company.

Our audit of the Company's *<insert year>* financial statements was performed (and the working papers were prepared) for the purpose stated above and was not planned or conducted in contemplation of the proposed transaction between the Company and *ABC Purchaser*. Therefore, items of possible interest to *ABC prospective purchaser, prospective investor or prospective lender* may not have been specifically addressed. In addition, we have not audited any subsequent financial statements of the Company, and significant subsequent events may have occurred. Accordingly, our audit and the working papers prepared in connection therewith were not intended for the benefit of *ABC Purchaser* and should not be taken to supplant other enquiries and procedures that *ABC Purchaser* should undertake for the purpose of considering the transaction described above.

In consideration of *[Name of auditor]* allowing *ABC prospective purchaser, prospective investor or prospective lender* and *DEF Firm* access to the working papers referred to above, and to the information contained therein, *ABC Purchaser* agrees that it does not acquire, and will not assert that it has acquired, any right as a result of such access that it would not otherwise have had. *ABC Purchaser* also agrees that *[Name of auditor]* has not assumed any duties or obligations that it would not otherwise have had.

*ABC prospective purchaser, prospective investor or prospective lender* also agrees to indemnify and hold harmless *[Name of auditor]* and its personnel from any claim by *ABC prospective purchaser, prospective investor or prospective lender, DEF Firm* or any other third party that arises directly and indirectly as a result of *[Name of auditor]* permitting access to its working papers in connection with this transaction.

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<sup>42</sup> If the audit for the year is not yet completed, the following wording could be included: "As you are aware, this firm has not yet completed this year's statutory audit of the "XYZ Company" (and its subsidiaries) financial statements, and therefore, the working papers for this year are incomplete. We are presently not able to give any opinion on the financial statements, and have not done so. We understand that the purchaser and the "DEF Firm" wish the accountants to review such working papers as are currently available."

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No-one is authorised by [*Name of Audit Firm*], whether expressly or implicitly, to make representations that are inconsistent with or that vary the terms and conditions set out in this letter.

All explanations, representations or disclosures made to [*ABC prospective purchaser, prospective investor or prospective lender*] or [*DEF Firm*] by [*Name of Audit Firm*] in relation to the working papers are no more than explanations of matters contained in the working papers. To the extent that any such explanations, representations or disclosures may be construed as relating to the affairs of the [*Company*], the onus will be on [*ABC prospective purchaser, prospective investor or prospective lender*] or [*DEF Firm*] to verify the information with [*Company*] before relying on it for the purpose of any decision relating to the proposed acquisition.

If [*ABC prospective purchaser, prospective investor or prospective lender*] or [*DEF Firm*] wishes to rely upon the working papers or any such representation, statement, explanation or other information made by [*Name of Audit Firm*], it does so entirely at its own risk.

No copies are to be made of any working papers (whether by photocopying, copying of the electronic files, or in any other way) without the express consent of [*Name of Audit Firm*].

Further, it is understood and agreed that the use of the information obtained as a result of the review of the working papers will be limited to *ABC prospective purchaser, prospective investor or prospective lender's* consideration of the transaction described above, and will not be shared with any person other than *DEF Firm*.

*DEF Firm* also agrees to indemnify and hold harmless [*Name of auditor*] against loss, damage and costs (including legal costs) as a consequence of the breach of its undertakings documented in this letter.

Our rights and obligations in this letter will be governed by South African law.

Please confirm your agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

Yours faithfully,

[Firm]

Enclosure

Accepted and agreed to by *ABC Purchaser*:

By:

Title:

Date:

Accepted and agreed to by *DEF Firm*:

By:

Title:

Date:

## **APPENDIX 6: ESTABLISHING POLICIES AND PROCEDURES REGARDING ACCESS TO WORKING PAPERS**

The Protection of Personal Information Act, 4 of 2013 (PoPI), seeks to ensure that personal information is processed responsibly in terms of the processing conditions contained in the Act. Where auditors provide access to working papers, they should always comply with the requirements of PoPI and ensure that the law is sufficiently addressed in the engagement letter. The auditor must ensure that they establish and maintain the appropriate security measures referred to in Section 19 of PoPI when releasing working papers.

The items listed below serve as an illustration of the policies and procedures that could be implemented to manage the risks that arise when granting access to working papers. The illustration does not serve as an exhaustive list and firms are advised to take care to formulate policies and procedures specifically for their circumstances and requirements.

### **1. Responsibility for granting access to working papers on behalf of the firm or engagement partner**

The policies and procedures may assign responsibility for the granting of access to working papers to a specific individual/s within the firm, for example, the “Risk Management Partner”. The responsibility can also be retained by the engagement partner, possibly with the proviso that the engagement partner consults with another partner within the firm before granting access to the working papers.

### **2. Circumstances where access may be required by law**

The policies and procedures may provide the procedures to be followed where access is required in terms of the law or contract. Further, this may describe the procedures to be followed in instances where the firm is presented with a subpoena or other similar legal instrument demanding access to specific working papers. These include, for example:

- Obtaining legal advice;
- Informing the client; and
- Restricting access in terms of the subpoena.

#### **2.1. Circumstances under which the firm can elect to grant or deny access to working papers**

The policies and procedures may restrict access to working papers to certain circumstances or could be more general by listing safeguards and risk factors that need to be considered in each specific circumstance. This may further provide for certain terms that need to be met before access is granted.

#### **2.2. Obtaining authorisation and acknowledgement letters when access is granted, and specimen authorisation and acknowledgement letters**

The policies and procedures may address the content of the authorisation and acknowledgement letters to be obtained before access is granted. Controlling the editing of the content of the letters needs to be considered. This includes a review by a “Risk Management Partner” or other appropriate partner within the firm. These

procedures also include consideration of the timing of obtaining the letters (i.e. letters are obtained before access is granted), and from whom they need to be obtained.

### **2.3. Working papers to which access is granted**

Policies and procedures may include the type of working papers to which access is granted, for example:

- Limited to working papers that disclose the results of the work performed, excluding those that relate to the scope and design of the process that generated the working papers. Characteristics of working papers to which access is generally granted are:
  - Factual information about the client.
  - Information supporting the assessment of engagement risk, the control environment and risks of material misstatement.
  - Information about key audit issues, significant risks of material misstatement and their resolution.
  - Information concerning tests of control and substantive testing.

Professional judgement may need to be applied when assessing which working papers meet the criteria described above.

- Excluding, for example, administrative information such as time summaries and billing data.

### **3. Inspection of working papers**

Policies and procedures may require that the working papers be reviewed by a suitable person within the firm to identify any information that does not support the opinion, conclusion or report; and to determine whether the papers are in a suitable condition for review by a third party before access is granted.

### **4. Format**

The auditor may determine the format in which to provide access. This may either be in hard copy or in an electronic format, but should not put the confidentiality of the firm's methodologies or the information of other clients at risk.

### **5. Requests for copies**

The auditor is under no obligation to allow copying of the working papers. Policies and procedures regarding the copying of working papers need to be included. Such policies and procedures could provide that, as a minimum, the copying of extracts of the books and records of the client is allowed. It would also be reasonable and helpful to allow copying of papers such as a breakdown of analyses of financial statement figures and documentation of the client's systems and processes, but that any audit comments, legends, tick marks, among others, are not provided on the copies or are covered prior to copying.

It is reasonable for the successor auditor to make notes of their review in support of their own documentation requirements.

The predecessor and the successor auditor should discuss and arrive at an agreement of what it is reasonable to copy.



Ultimately, the predecessor auditor will maintain control of which working papers can be and are copied. It would be sensible to check through any documents that the successor auditor requests to copy and to keep a record of all the copied items.

## **6. Timing and period of access**

The timing of access should have regard for the following:

- The point at which the engagement working paper file will be complete; and
- The successor auditor's reporting timetable.

Requests for access need to be reasonable without causing undue resourcing or timing difficulties to either of the parties.

There will need to be cooperation between the parties regarding the period of time during which access will be granted. The period needs to be reasonable.

## **7. Location**

The auditor should determine the location at which access is to be provided, and this will usually be the auditor's premises.

Whatever location is chosen, the auditor will need to be mindful of the confidentiality of other clients' information.

## **8. Cost**

The recovery of actual costs is reasonable and acceptable.

Actual costs may be incurred in retrieving the information, gathering it, extracting what is not relevant and then making it available to the other party. Payment for these actual costs can be justified on the basis that without payment, disclosure could impose an unnecessary and unreasonable burden on the auditor, who would otherwise incur a financial loss through compliance with statutory obligations. Thus, it may be reasonable to charge for the cost of:

- Copying documents;
- Paying someone to make the copies;
- Retrieving documents from archive sources; and
- Paying someone to attend to such retrieval and provide documents for inspection.

It is, however, not likely to be reasonable for an element of profit to be included in the cost.

## **9. Requirements of laws and professional standards**

The policies and procedures should take into account any legal or professional requirements regarding the granting of access to information.

**APPENDIX 7: EXTRACT OF SECTION 213 OF THE COMPANIES ACT, 71 OF 2008 (THE COMPANIES ACT), AND SECTION 140 AND PARAGRAPH 225.31 OF THE IRBA CODE OF PROFESSIONAL CONDUCT FOR REGISTERED AUDITORS (THE CODE)**

**1. Section 213 of the Companies Act**

***Breach of confidence***

213.1 *It is an offence to disclose any confidential information concerning the affairs of any person obtained—*

- (a) in carrying out any function in terms of this Act; or*
- (b) as a result of initiating a complaint, or participating in any proceedings in terms of this Act.*

213.2 *Subsection (1) does not apply to information disclosed—*

- (a) as contemplated in Section 206(2)(e)(i) or (ii) or 212(5) to (7);*
- (b) for the purpose of the proper administration or enforcement of this Act;*
- (c) for the purpose of the administration of justice;*
- (d) at the request of the Commission, the Panel, an inspector or investigator, the Companies Tribunal, or a court entitled to receive the information; or*
- (e) when required to do so by any court or under any law.*

**2. Section 140 of the Code**

***Confidentiality***

140.1 *The principle of confidentiality imposes an obligation on all registered auditors to refrain from:*

- (a) Disclosing outside the firm confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and*
- (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.*

140.2 *A registered auditor shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.*

140.3 *A registered auditor shall maintain confidentiality of information disclosed by a prospective client.*

140.4 *A registered auditor shall maintain confidentiality of information within the firm.*

140.5 *A registered auditor shall take reasonable steps to ensure that staff under the registered auditor's control and persons from whom advice and assistance is obtained respect the registered auditor's duty of confidentiality.*

- 140.6 *The need to comply with the principle of confidentiality continues even after the end of relationships between a registered auditor and a client. When a registered auditor acquires a new client, the registered auditor is entitled to use prior experience. The registered auditor shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.*
- 140.7 *The following are circumstances where registered auditors are or may be required to disclose confidential information or when such disclosure may be appropriate:*
- (a) Disclosure is permitted by law and is authorised by the client;*
  - (b) Disclosure is required by law, for example:*
    - (i) Production of documents or other provision of evidence in the course of legal proceedings; or*
    - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light, including disclosures of reportable irregularities reported to the Regulatory Board as required by section 45 of the Act; and*
  - (c) There is a professional duty or right to disclose, when not prohibited by law:*
    - (i) To comply with the quality review of the Regulatory Board or a professional body;*
    - (ii) To respond to an inquiry or investigation by the Regulatory Board or other regulatory body;*
    - (iii) To protect the professional interests of a registered auditor in legal proceedings;*
    - (iv) To comply with technical standards and the requirements of this Code.*
- 140.8 *In deciding whether to disclose confidential information, relevant factors to consider include:*
- (a) Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client consents to the disclosure of information by the registered auditor;*
  - (b) Whether all the relevant information is known and substantiated, to the extent it is practicable. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any;*
  - (c) The type of communication that is expected and to whom it is addressed; and*
  - (d) Whether the parties to whom the communication is addressed are appropriate recipients.*

**3. Paragraph 225.31 of the Code**

*Where the registered auditor has withdrawn from the professional relationship pursuant to paragraphs 225.25 and 225.29, the registered auditor shall, on request by the proposed successor registered auditor, provide all such facts and other information concerning the identified or suspected non-compliance that, in the predecessor registered auditor's opinion, the proposed successor registered auditor needs to be aware of before deciding whether to accept the audit appointment. The predecessor registered auditor shall do so despite paragraph 210.14, unless prohibited by law or regulation. If the proposed successor registered auditor is unable to communicate with the predecessor registered auditor, the proposed successor registered auditor shall take reasonable steps to obtain information about the circumstances of the change of appointment by other means, such as through inquiries of third parties or background investigations of management or those charged with governance.*

**APPENDIX 8: REFERENCES TO REVISED AND RESTRUCTURED IRBA CODE OF PROFESSIONAL CONDUCT FOR REGISTERED AUDITORS (REVISED AND RESTRUCTURED IRBA CODE)**

The table below provides a list of sections and paragraphs in the extant IRBA Code of Professional Conduct for Registered Auditors (the Code) that are referred to in this Revised Guide and maps these to the corresponding sections and paragraphs in the Revised and Restructured IRBA Code, which is to be issued during the latter part of 2018.

The Extant Code	The Revised and Restructured IRBA Code
Section 140	Section 114
Paragraphs 140.2 and 140.6	Paragraph R114.1
Paragraph 140.8	Paragraph 114.1 A2
Section 210	Section 320
Paragraph 210.14	Paragraph R320.7
Paragraph 210.15	Paragraph R320.6a SA
Paragraph 225.31	Paragraph R360.22