
INDEPENDENT REGULATORY BOARD FOR AUDITORS

Johannesburg/ 14 December 2017

NOTIFICATION OF CHANGES REGARDING SANCTIONS FOR IMPROPER CONDUCT BY REGISTERED AUDITORS

Purpose

1. The purpose of this notification is to alert registered auditors (RAs) to the following:
 - The change in the current practice of implementing sanctions on an RA for improper conduct; and
 - Future changes regarding sanctions to be introduced after the necessary amendments to the Auditing Profession Act, 2005 (APA).

Introduction

2. The objectives of the IRBA are to create the framework and principles to contribute to the protection of the public who rely on the services of RAs, and to support RAs who carry out their duties competently, fearlessly and in good faith.
3. The IRBA regulates all RAs who provide professional services to both public interest and non-public interest entities.
4. The IRBA enforces compliance with the professional standards and the Code of Conduct through administering sanctions that act as a penalty for past transgressions; act as a deterrent to future improper conduct; and which will promote public confidence in the regulation of the audit profession and the way in which improper conduct is addressed.
5. Sanctions, as per the APA, include:
 - Section 51(3) – Penalties, being cautions, reprimands, fines, suspension of the right to practice for a specific period and the cancellation of an RA's registration.
 - Section 51(4) – Payment of costs incurred by the Investigating Committee and the Disciplinary Committee.
 - Section 51(5) – Publication of the finding and sanction imposed.

Background

6. In 2013, at the request of the Minister of Finance, the World Bank conducted and concluded its second Report on the Observance of Standards and Codes – Accounting and Auditing (ROSC A&A) for South Africa.
7. The ROSC A&A was conducted to assess progress in the implementation of policy recommendations from the previous ROSC A&A; assess the institutional framework underpinning accounting and auditing practices in comparison with international standards and good practices to identify any emerging issues that require strengthening; share good practices adopted in the country; and propose policy recommendations addressing areas that require improvement.
8. One of the recommendations from the ROSC A&A was that although the audit quality reviews contribute to strengthening the quality of financial statements, “the disciplinary process and sanctioning requires independence, rigor and timely resolution”.
9. The ROSC A&A specific policy recommendations in relation to the above were:

- The monetary penalty available under the law should be increased from its current level of R100 000 to at least R150 000 per charge; new levels should probably be aligned to those of the Financial Services Board (FSB); and
 - Names of auditors who are sanctioned through a “settlement order” should be published. This would serve as a deterrent and also increase the visibility of the IRBA. The public has an interest in knowing the names of the auditors who have been found guilty of misconduct, through consent or otherwise.
10. There have been negative media reports regarding the following aspects of the sanctions:
- The low level of fines imposed;
 - The harshest sanctions available, as per the APA, are rarely used; and
 - When publishing, the auditors’ identities and misconduct are almost never exposed to public scrutiny.
11. The IRBA has undertaken research into the sanctions applied by other regulators both nationally and internationally. As a result, it has concluded that two actions are necessary, and these are:
- To make certain amendments to the APA to strengthen and improve the sanctions for improper conduct by an RA; and
 - To change the current practice of implementing sanctions for improper conduct by an RA. These are dealt with in more detail below.

Amendments to the APA

Section 48

12. In line with global audit regulator practice, the IRBA is of the view that it should primarily focus its investigations on complaints that involve RAs providing services to public interest entities [as per the definition of public interest entities in the IRBA Code of Professional Conduct in paragraphs 290.25, 290.26 and 290.26(a)]. Section 48 of the APA will, therefore, need to be amended to allow the Board, at its discretion, to consider alternative processes that will deal with certain non-audit and non-assurance matters that do not relate to public interest. Implementation details and the necessary general public education regarding this change will still be undertaken.

Section 51(3)(a)(ii)

13. In terms of Section 51(3)(a)(ii) of the APA, the fine may not exceed the amount calculated according to the Adjustment of Fines Act, and currently this is R200 000 per charge.
14. As mentioned above, it is believed that the quantum of this penalty is not sufficient to effectively act as a deterrent against improper conduct.
15. In this light, Section 51(3)(a)(ii) will need to be amended to remove the link to the Adjustment of Fines Act and rather allow the Board to determine the maximum fine to be imposed.

Changes to the current practice of implementing sanctions for improper conduct

Imposition of sanctions, Section 49(1)

16. The practice at the IRBA over the years has been to sanction the individual RA or the CEO of the firm in instances where systemic issues have been identified. The reason for this approach is that in terms of ISQC1 the CEO takes ultimate responsibility for quality in the firm. This is, however, no longer in line with practice by global audit regulators.
17. The definition of an RA includes both a firm and an individual. In terms of Section 49 of the APA, the Board must charge an RA for improper conduct, meaning that both a firm and/or an individual can be charged.
18. Going forward, in addition to sanctioning the individual RA guilty of improper conduct, a sanction will also be applied to the implicated firm, if the following criteria are present:
 - There are systemic issues; and/or
 - There has been tacit approval of the noncompliance by firm management.

Caution or reprimand, Section 51(3)(a)(i)

19. In terms of the APA, the Board may caution or reprimand an RA when found guilty of improper conduct. The Board will, in future, utilise this sanction in conjunction with other sanctions, as permitted in terms of Section 51(3)(b).

Suspension of the right to practice, Section 51(3)(a)(iii)

20. In terms of the APA, the Board may suspend the RA's right to practice as an RA for a specific period. The Board will, in future, utilise this sanction where it has determined that a monetary penalty alone will not suffice, but removal from the register is not warranted.

Removal from the register, Section 51(3)(a)(iv)

21. In terms of the APA, the Board may cancel the registration of an RA and remove them from the register. Where this sanction is applied, in future it will include the pre-conditions that the RA needs to comply with, as well as the timeframe, prior to being eligible to apply for re-registration with the IRBA. Disciplinary Rule 12.2 allows for conditions to be included in a sanction.

Publication of the finding and sanction imposed, Section 51(5)

22. In terms of Section 51(5) of the APA, the Regulatory Board may, if it deems it appropriate, publish the finding and sanction imposed.
23. In terms of Disciplinary Rule 12.3, if a respondent is found guilty of a charge of improper conduct, an order of publication made may include:
 - The name of the respondent; and/or
 - The name of the respondent's firm (if applicable); and/or
 - The charge against and the finding in respect of the respondent; and/or
 - Any other information that is considered appropriate to be published.
24. Matters are currently published in *IRBA News* either in general or in specific terms.

25. The ROSC A&A recommended that the names of auditors who are sanctioned should be published, as this serves as a deterrent. The public has an interest in knowing the names of the auditors who have been found guilty of misconduct, through consent or otherwise.
26. Going forward, the Board has determined that practice will be as follows:
- Where a matter is finalised via a consent order and the RA is found guilty of unprofessional conduct in connection with a:
 - public interest entity, the publication will be in specific terms.
 - non-public interest entity, specific publication will be reserved for consent orders on repeat offenders; and on all other matters, publication will be general.
 - Where a matter is finalised at a disciplinary hearing, publication will be in specific terms.

Non-monetary sanctions, Section (4)(1)(b)

27. In line with global audit regulator practice and in terms of the APA requiring the Board to take steps it considers necessary to protect the public in their dealings with RAs, going forward, non-monetary sanctions will be imposed where relevant, in conjunction with other sanctions, such as:
- Additional professional education or training;
 - Presentation on specified topics to other auditors and/or clients;
 - Re-issuance of an audit opinion at no additional cost to the client; and
 - Improved systems, controls and procedures implemented.
28. The RA will be given 60 days, from the date of the imposition of the sentence, to implement the non-monetary sanction; and within 90 days of the imposition of the sentence they will be required to provide the IRBA with written evidence of compliance in the form of a narrative supported by exhibits sufficient to demonstrate compliance. Failure to comply with the non-monetary sanction will result in a new charge of improper conduct being brought against the RA.

Postponement of a sanction

29. Disciplinary Rule 12.2 allows for a sanction to be suspended for a specific period. The Board has previously adopted a practice of postponing the payment of fines in instances where the RA is no longer on the register. The conditions attached to the postponement are that the fine is payable on the RA's re-registration with the IRBA.
30. The Board will, in future, impose a percentage of the fine to be payable immediately in all instances, including matters where the RA is no longer on the register. Furthermore, disciplinary hearings pertaining to RAs who are no longer on the register will proceed so as to reach finalisation on the matters.

Implementation dates

31. The amendments to the APA will be effective for transgressions reported from the date that the amended Act is enacted by the legislature.
32. The change to the current practice of implementing sanctions for improper conduct will be implemented with immediate effect to all transgressions already reported to the IRBA and to future matters reported.