



SECTIONS 48A AND 48B SEARCH AND SEIZURE PROCEDURE GUIDE

NOTE: *This procedure guide gives effect to the provisions of Sections 48A and 48B of the Auditing Profession Amendment Act 5 of 2021. Furthermore, it outlines the powers of the IRBA in relation to search and seizures; sets out, in broader terms, the procedure to be followed in exercising such powers; and also lays out the rights and obligations of those subjected to a search and seizure, in terms of Section 48A and/or Section 48B.*

1. Introduction

The IRBA was established in terms of Section 3 of the Auditing Profession Act, 26 of 2005, as amended by Act 2 of 2015 and Act 5 of 2021 (the Act); and is a Schedule 3 public entity, in terms of the Public Finance Management Act 1 of 1999 (PFMA). Its primary mandate is the regulation of registered auditors within the Republic of South Africa.

Section 4, read together with Section 48 of the Act, mandates the IRBA to investigate complaints of improper conduct against registered auditors, to promote the integrity of the auditing profession.

Sections 48A and 48B of the Act, introduced through the 2021 amendments, seek to facilitate access to information during an investigation, by authorising the Investigating Committee to enter premises, search and seize information that is relevant to and necessary for the investigation of a complaint of improper conduct. This will enable the IRBA to conduct unhindered investigations and deliver on its legislated mandate.

The IRBA recognises that search and seizure powers, when not properly exercised, may encroach on one's right to freedom, privacy, security and dignity. To this end, the IRBA is committed to ensuring the proper and lawful exercise of its powers to enter premises and seize information that is necessary for an investigation.

Consequently, this document seeks to provide guidelines for the proper exercise of search and seizure powers, as per Sections 48A and 48B of the Act.

2. Definitions

Words	Meaning
Act/APA	Auditing Profession Act 26 of 2005, as amended by Act 2 of 2015 and Act 5 of 2021.
Authorised person	A person appointed by the Investigating Committee, in terms of Section 48A(1), to conduct a search and seizure in accordance with Section 48A and/or Section 48B of the Act.
A person apparently in control of the premises	An owner of the premises/business or a manager/person in the management team of the business where the search and seizure is to be performed, or a person who is 16 years or older and appears to be responsible for the premises.
Cleared personnel	Persons whose access to information or documents has been authorised, in writing, by the IRBA Director Investigations.
Certificate of authority	A certificate issued by the Investigating Committee Chairperson giving the authorised person permission to enter the premises, for the purpose of conducting a search and seizure.
Identification documents	An identity document or card issued by the South African Home Affairs Department or a valid passport or valid driver's license.
Investigation	An investigation into allegation/s of improper conduct initiated by the IRBA against a registered auditor, in terms of Section 48 of the Act.
Investigating Committee	A committee appointed in terms of Section 20, read together with Section 24, of the Act.
Investigations Department	The IRBA department entrusted with the receipt and investigation of complaints of improper conduct against registered auditors.
Ordinary business hours	08h00 to 17h00, Monday to Friday, excluding public holidays.
Premises	The building identified in the certificate of authority or warrant in respect of which a search and seizure is to be conducted.
Reasonable force	The amount of force necessary to gain access to the premises or relevant information, or necessary to overcome any means employed to prevent access to the premises.
Relevant documentation/ information	Documents or information considered necessary or relevant to an ongoing investigation.
SAPS	South African Police Service.
Search	A process of carefully and thoroughly looking through items, information and/or documentation that may be relevant to an investigation of improper conduct.

Seizure	The act of taking possession of a document or item, and the subsequent retention of same.
Warrant	A document issued by a competent court authorising a search and seizure on the premises.

3. **Scope and application**

These guidelines are applicable to all searches and seizures conducted in terms of Sections 48A and 48B of the Act, for the purpose of investigations instituted in terms of Section 48 of the Act.

4. **What empowers the IRBA to conduct search and seizure?**

The IRBA is empowered in terms of Section 48A (with consent) and Section 48B (with a warrant) of the Act, to enter and search premises for the purpose of seizing information that is relevant to an investigation¹.

5. **Under which circumstances will the IRBA enter premises for the purpose of search and seizure?**

The IRBA will enter premises with the intention of searching for and seizing any information, documentation and/or items that it requires for the purpose of an investigation.

A search and seizure will be conducted where there are reasonable grounds² to believe that relevant information is being held on the premises of, and/or under the control of, any person.

6. **When is the IRBA allowed to enter premises for search and seizure?**

The IRBA is allowed to enter premises to search for and seize information that is relevant to an investigation, where³ the Chairperson of the Investigating Committee has, following a decision by the committee, issued a certificate of appointment authorising entry into the premises, and:

- a) A person apparently in control of the premises consents to the entry, for the purpose of a search and seizure; or
- b) Where a warrant is issued by a Judge or Magistrate in a court with competent jurisdiction.

7. **What is the process to be followed to initiate a search and seizure operation?**

The Director Investigations must prepare a formal request to the Investigating Committee,

¹ While the Act empowers the IRBA to conduct searches and seizures, the exercise of such powers is discretionary on the part of the IRBA and not mandatory. Therefore, these powers do not absolve registered auditors who are subjected to an investigation, or any other person with relevant knowledge or information, from timeously and positively responding to the IRBA's request for information, documents and/or any other items, in terms of Section 48(5)(a)(i) of the Act.

² In *Zuma v National Director of Public Prosecutions* 2000 BCLR 1079 (CC), the court reiterated that the emphasis is on the existence of "reasonable grounds for believing". In *Powell and Others v Van der Merwe and Others* 2005 1 All SA 149 (SCA) 161 38, the court held that a reasonable suspicion is an impression formed on the basis of diverse factors, including facts and pieces of information falling short of fact, such as allegations and rumours.

³ Sections 48A and 48B.

requesting authority to conduct a search and seizure on the specified premises.

The request should include the following information:

- a) The purpose of the search and seizure⁴;
- b) The address and description of the premises to be searched;
- c) The particulars of the person(s) who will conduct the search;
- d) An indication of whether the search poses any safety concerns;
- e) An indication whether law enforcement or an external service provider will be required;
- f) A description of the records sought, if available; and
- g) Any other information that might assist the Investigating Committee to make an informed decision⁵.

If satisfied that the circumstances justify an approval of the request, the Investigating Committee Chairperson, on behalf of the Committee, must approve the appointment of the identified person, for the purpose of conducting a search and seizure and/or approaching the court for a warrant, where consent to enter the premises is not granted by the person in control thereof.

The approval may be on parameters determined as appropriate by the Investigating Committee or where it is believed that the presence of law enforcement personnel would be necessary.

8. Who can conduct a search and seizure operation?

The following persons may conduct a search and seizure, but only with the authority of the Investigating Committee Chairperson:

- a) An official of the IRBA⁶; and/or
- b) A person appointed by the IRBA for this purpose, notwithstanding the fact that such a person is not in the employ of the IRBA.

Any of the above persons may be accompanied and/or assisted by a member of SAPS or the Investigating Committee during the search and seizure.

⁴ Inclusive of the grounds under which it is believed the information is held at the premises or by any person.

⁵ This is not an exhaustive list, and all relevant information must be provided to enable the Investigating Committee to make an informed decision.

⁶ This is any person in the employ of the IRBA and duly authorised by the Investigating Committee Chairperson to enter any premises, for the purpose of searching and seizing relevant information in terms of the Act.

9. How can one confirm the authority of the person seeking to enter premises for the purpose of a search and seizure?

When approving a search and seizure, the Chairperson of the Investigating Committee must issue the person authorised to conduct a search and seizure with a certificate of appointment that reflects the following:

- a) the details of the authorised person;
- b) the premises to be entered and searched, for the purpose of seizing relevant information;
- c) the person/s against whom the investigation is being conducted; and,
- d) where applicable, the authority to enlist the assistance of a member of SAPS or the Investigating Committee in conducting the search and seizure.

The certificate must be signed by the Chairperson of the Investigating Committee or, in his/her absence, a member of the Investigating Committee authorised in writing to do so.

The person seeking to enter any premises is thus required to present the certificate of authority issued by the Investigating Committee Chairperson, supported by his/her identification document, to the person apparently in control of the premises⁷.

10. Which information, documentation and/or items may be seized during a search and seizure operation?

The person conducting a search and seizure may only seize the information that is relevant or believed to be relevant to an investigation, which may include:

- a) Paper records or documentation or any item that may afford evidence of the alleged improper conduct; and
- b) Electronic records stored in a digital format on any computerised systems, networks, storage devices, cloud systems, communication, filing and archiving systems, inclusive of third-party software.

11. Who may consent to a search and seizure, and under what circumstances may such a consent be granted?

The following persons may consent to the authorised person entering premises, for the purpose of a search and seizure:

- a) In relation to a private residence, a person apparently in control of the business reasonably believed to be conducted at the premises, and the occupant of the private residence or part of the private residence to be entered; or
- b) In the case of any other premises, a person who is or appears to be in control of the relevant premises and who must be 16 years or older.

⁷ Notwithstanding this paragraph, access may not be denied where a warrant is presented.

Consent may be granted upon presentation of a certificate of authority and an explanation by the authorised person of the purpose of the search and seizure. However, persons from whom consent is required are not obliged to provide consent, as this is given voluntarily.

In the absence of consent, premises may only be accessed on presentation of a warrant that is issued by a court with competent jurisdiction.

12. When can a court be approached to issue a search and seizure warrant?

The person authorised by the Investigating Committee Chairperson may approach a court of competent jurisdiction to request it to issue a warrant authorising the entry and search of the premises, for the purpose of seizing information that is relevant for an investigation, where:

- a) Consent to conduct a search and seizure has been withheld;
- b) The search and seizure is reasonably believed to be urgent and there are reasonable grounds to believe that consent will be withheld; or
- c) Where there are reasonable grounds to believe that prior notice will compromise the search⁸.

13. What process must be followed to obtain a warrant?

The authorised person must send an instruction to the IRBA Legal Department to lodge an application for a search and seizure warrant.

The Legal Department must, following consultation with the authorised person and the Investigations Department, prepare and file an application for a warrant or appoint external attorneys to do so on its behalf. The affidavit supporting the application must be deposited to by the authorised person.

The application must be issued on an urgent basis, in line with the relevant court rules, unless the information sought is not considered urgent and is not at risk of destruction or relocation. Where the application is not issued on an urgent basis, it must still be filed with the relevant court within fourteen (14) days of receipt of instructions, unless the information required to support the application remains outstanding.

The application must show that there are reasonable grounds for suspecting⁹ that improper conduct has occurred, and that entry and search of the premises are likely to yield information pertaining to the improper conduct.

The application must therefore address the following:

- a) The purpose of the search and seizure.
- b) The nature of the improper conduct being investigated.
- c) Reasons to believe that entry and search of the premises are likely to yield information pertaining to the improper conduct.

⁸ A search may be compromised where information is at risk of destruction or relocation.

⁹ This may be a suspicion brought about by a complaint received by the IRBA, or any information coming to the attention of the IRBA through the media or any other publicly available platform.

- d) The address and description of the premises sought to be searched.
- e) The particulars of the authorised person who will conduct the search.
- f) Whether the search poses any safety concerns.
- g) Whether law enforcement¹⁰ or an external service provider will be required to assist in the search and seizure, and where an external service provider is required, details pertaining to:
 - a. Why the presence of an external service provider is necessary;
 - b. Whether an external service provider brings special expertise or knowledge to the search and seizure operation, and whether such knowledge and/or expertise are not ordinarily available within the IRBA;
 - c. The role that an external service provider is required to play in the search and seizure operation;
 - d. Under whose control and authority an external service provider would operate during the search and seizure operation; and
 - e. In what manner the presence and assistance of an external service provider would render the search more effective and compliant, and possibly reduce or limit the incursion into the privacy and other rights of those who are the subject of the search.
- h) A description of the records sought that will intelligibly convey, to both the searcher and the searched, the ambit of the search that the warrant authorises¹¹.
- i) Any other information that might assist the Judge or Magistrate to make an informed decision when granting a warrant.

The application must be issued in a court that has jurisdiction to consider the application and issue the warrant sought, this being the court in the area where the premises sought to be accessed are located.

Should the application be granted, the warrant must be issued and bear the signature of the issuing Judge or Magistrate to be valid.

14. During which times can a search and seizure be conducted?

A search and seizure should ideally be conducted within ordinary business hours.

Notwithstanding the above, the search and seizure may be conducted outside ordinary business hours, but as close to ordinary business hours as the circumstances reasonably permit, where:

- a) The authorised person reasonably believes that the purpose for which the entry and search are sought is likely to be defeated by a delay; and/or

¹⁰ If the assistance of law enforcement is required, the reasons supporting same, as stipulated in paragraph 22, must be outlined.

¹¹ Zuma v National Director of Public Prosecutions 2006 2 All SA 91 (D).

- b) The warrant expressly permits the search and seizure to be conducted at night or at any other time specified therein.

15. Search and seizure procedures

The following procedures must be followed when conducting a search and seizure:

- a) The authorised person must announce him/herself on arrival at the premises;
- b) The authorised person should identify him/herself to the person apparently in control of the premises by presenting the certificate of authority together with his/her identification document and/or a warrant;
- c) The authorised person should enquire if the person is in fact in control of the premises intended to be searched;
- d) The authorised person should state the purpose for requesting to enter the premises;
- e) In the absence of a warrant, and upon establishing the person in charge of the premises, the authorised person should request permission to enter the premises. When requesting such permission, the authorised person must advise the person in charge of the premises that he/she has the right to refuse access.
- f) Where consent is granted, the authorised person must request the person granting consent to complete and sign the prescribed consent form.
- g) Where consent is withheld and thus access refused, the authorised person must immediately leave the premises and initiate processes for the procurement of a warrant.
- h) If access is sought on the basis of a warrant, the authorised person must present a copy of the warrant to the person in charge of the premises. He/she must then advise such a person that failure to allow access to the premises, for the purpose of conducting a search and seizure, would constitute them being in contempt of court, an offence that would be punishable by either a fine or imprisonment or both.
- i) Where access is denied, notwithstanding the presentation of a warrant, the authorised person must leave the premises and seek the assistance of police officials to access the premises. In the event that access is still denied, relevant contempt proceedings must immediately be initiated.
- j) Once consent to enter the premises has been obtained or a warrant has been presented and access provided, the authorised person should proceed to enter, search the premises and seize information, documentation and/or items relevant to the investigation.
- k) Unless warranted, force should not be used to enter the premises, search for information or seize the required information. Where force is used, it must not be excessive in nature and must be reasonably necessary to ensure access.
- l) When conducting a search and seizure process, the authorised person must take cognisance of the affected persons' constitutional rights, including their right to freedom, privacy, security and dignity. Therefore, the authorised person must:
 - a. Conduct the search and seizure in a dignified manner and may not:

- i. Argue with, insult and/or disrespect the person in control of the premises or any person present at the premises at the time; or
 - ii. Exert authority in a manner that is disrespectful.
- b. Conduct the search in a decent and orderly manner, by entering and searching only such areas or objects as are reasonably required for the investigation, conducting the search as discreetly as possible, and causing as little disturbance as possible.
- c. Without compromising the process, conduct the search expediently and conclude same without undue delay.
- d. Answer questions posed in relation to the search and seizure process fully and honestly, without withholding any information.

16. Powers of the authorised person during a search and seizure

During a search and seizure, the authorised person has the right to:

- a) Subject to the limitations set out in the warrant, if a search is conducted on the basis of one, access any part of the premises, as well as any information, documentation or items on the premises that are deemed to be relevant to the investigation.
- b) Open or cause to be opened any strongroom, safe, cabinet or other container in which the authorised person reasonably suspects there is information, documentation or items that may be relevant to the investigation.
- c) Examine, make extracts from and copy any relevant documentation on the premises.
- d) Question any person on the premises, to find out relevant information or obtain documentation, but only after advising such a person that he/she has the right to object if information or documents sought might incriminate such a person. *Objections are dealt with in terms of paragraph 19 below.*
- e) Require a person on the premises to produce any relevant document or item that is in the possession or under the control of such a person.
- f) Require a person on the premises to operate any computer, or similar system, that is on or available through the premises to:
 - a. Search any information that is in or available through that system; and
 - b. Produce a record of that information in any media that the authorised person reasonably requires.
- g) If it is not practical or appropriate to make a request in terms of paragraph (f) above, operate any computer or similar system that is on or available through the premises, for the purpose set out in paragraph (f).
- h) Take possession of and remove from the premises any relevant document or item, excluding documents and/or items in respect of which privilege is asserted and determined, unless privilege has been waived.

17. Procedure for removing documentation, information and/or items from the premises that are subjected to a search and seizure

- a) Subject to the nature of the records seized, the records should be placed in sealed bags and/or containers, to avoid any damage or destruction.
- b) Passwords to computer systems and/or software shall be recorded in a relevant schedule by the authorised person and placed in the sealed bag/container referred to above.
- c) The authorised person must give the person apparently in control of the premises:
 - a. A reasonable opportunity to make copies of the documents taken, if so requested; and
 - b. A written receipt for documents or items taken from the premises during a search and seizure process.
- d) The receipt should, at the very least, provide the following:
 - c. A brief description of the document or item; and
 - d. The nature of the document or item.

18. Obligations of the person apparently in charge of the premises

- a) The person apparently in control of the premises must, after consent for a search and seizure is granted or on presentation of a warrant authorising a search and seizure:
 - a. Provide full access to the premises, relevant information, documentation and/or items;
 - b. Disclose all relevant computer systems or software in use at the premises;
 - c. Provide all passwords and access paths to the computer systems or software;
 - d. Assist with the navigation of relevant computer systems or software;
 - e. Answer, fully and truthfully, all questions posed by the authorised person, as they relate to the search and seizure and its purpose¹²; and
 - f. Receive, verify and acknowledge the written receipt of documents seized.

¹² Section 48A(9) states that the law relating to privilege – as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court – applies, with the necessary changes, in relation to the production of any information, including, but not limited to, any working papers, statements, correspondence, books or other documents, to the investigating committee acting in accordance with this section. In addition to this, information incriminating the person being questioned may not be used in criminal proceedings against them, save for exceptions as set out in subsection (10)(e).

19. Objections to question(s) or disclosure of document(s) and/or information during a search and seizure

- a) A person who is questioned or required to produce documentation or information during a search and seizure may object to answering the questions, or to producing the documentation or information, on the grounds that the answer and/or the contents of the documentation, or information may tend to incriminate that person.
- b) Notwithstanding an objection in terms of paragraph 19(a) above, the person who is questioned shall answer the question(s) or produce the documentation or information, subject to the limitations on the use of such information and documentation.
- c) A person requested to produce documentation or information may object to the disclosure of such documentation or information on the basis that the documentation or information is protected by legal privilege, in which case the person asserting legal privilege must:
 - a. Identify, specifically and in detail, each item of the documentation and/information requested, which he/she claims is covered by legal professional privilege;
 - b. Specify the circumstances in which he/she obtained the information and/or documentation; and
 - c. Identify the author of the information and/or documentation and the capacity in which the author produced the said information and/or documentation.
- d) If the authorised person or the IRBA disputes that the information and/or documentation is covered by privilege, then:
 - a. The IRBA must appoint a practitioner from its panel of attorneys (who does not act either for the IRBA or the person claiming privilege in respect of the specific investigation) to take receipt of the information and/or documentation;
 - b. The person asserting privilege must seal the information and/or documentation and hand it over to the appointed practitioner;
 - c. The practitioner must, within 10 business days, make a determination, stating his/her grounds as to whether privilege applies; and
 - d. If the party claiming privilege or the IRBA is not satisfied with that determination, then an application may be made to the High Court within 15 days for a court order to resolve the dispute.

20. Limitations to a search and seizure operation

The authorised person, may:

- a) In the absence of a warrant, not enter the premises where consent has not been provided or if there is no one present at the premises¹³.
- b) Enter and search all areas or objects, as are reasonably required for the purposes of the investigation.
- c) Only seize information, documentation and/or items that are reasonably believed to be relevant.
- d) Only ask questions that are relevant to the search and seizure and its purpose.

21. Reporting

No later than three (3) business days after the conclusion of a search and seizure, the authorised person must prepare a report on the outcome of the search and seizure and cause same to be submitted to the Director Investigations and the Investigating Committee Chairperson, together with the handover of the documentation, information and/or items seized to the Director Investigations.

22. Engagement of the services of police officials during a search and seizure

A police official may be engaged where:

- a) The certificate of authority issued by the Investigating Committee Chairperson authorises the engagement;
- b) A warrant issued by a competent court authorises the engagement;
- c) There are reasonable grounds to believe that access will be denied or that force may be required to gain access to the premises and/or to seize the relevant information, documentation and/or items;
- d) A search and seizure request has been met by force, notwithstanding a duly issued and presented warrant;
- e) Full access to the premises and/or information has been denied, notwithstanding the presentation of a warrant; and/or
- f) There are any other safety concerns in relation to the search and seizure.

¹³ Where a warrant has been obtained and there is no one at the premises, a copy of the warrant must be fixed in a prominent and accessible place on the premises i.e., main gate or door. Where two attempts were made to conduct a search and seizure at a certain premises, however, same could not be carried out due to the premises being unoccupied or due to there being no person apparently in charge of the premises, then the authorised person may approach the court that issued the warrant, on an urgent basis, to obtain the leave of the court to enter the premises notwithstanding the fact that that the premises is unoccupied.

Where the assistance of a police official is sought, the Director Investigations, who is ultimately responsible for implementing the decisions of the Investigating Committee Chairperson, shall issue a letter to the SAPS, seeking its intervention in conducting a search and seizure, enforcing a warrant and/or evading a threat of force or violence. The request must be supported by the warrant, the certificate of authority, allegations of a threat of violence or force aimed at evading the search and seizure and/or safety concerns.

The authorised person must go to the offices of the SAPS and present the letter requesting assistance, together with the supporting documentation.

Members of SAPS may use reasonable force, as is necessary, to assist the authorised person in effectively conducting a search and seizure.

23. Retention and/or preservation of documents/information/items seized

Documentation, information and/or items seized during a search and seizure must:

- a) Be kept in safe custody and the integrity thereof preserved;
- b) Be protected from any loss, tampering and/or destruction; and
- c) Only be accessed by IRBA-cleared personnel.

In view of the above, seized information, documentation and/or items shall be stored in an enclosed room, where access is limited and controlled. Digital records shall be safeguarded by ensuring the non-disclosure of passwords, save to cleared personnel.

To aid the protection, easy identification and/or access to seized information, the IRBA shall maintain a register of seized information, documentation and/or items, which shall be updated on receipt of a report contemplated in paragraph 21 above.

24. Use of seized documentation, information and/or items

- a) Information obtained during a search and seizure may only be used for the purpose of conducting an investigation into alleged improper conduct.
- b) Documents or information obtained during a search and seizure may only be disclosed in terms of Section 57A of the Act, specifically:
 - a. For the purpose of enforcing compliance with the Act or any decision made in terms of the Act;
 - b. When required to do so by a court;
 - c. At the written request of, and to, any appropriate regulator that requires the documents or information for the institution of an investigation, with a view to the institution of any disciplinary process or criminal prosecution; or
 - d. At the written request of, and to, any appropriate international regulator of audits and auditors that requires such information for the purpose of an investigation or a disciplinary process.

- c) Where information, documentation and/or items are obtained through questioning and the person so questioned had objected to being questioned or to disclose such information or documentation on the basis that the answer, the contents of the document or the information may tend to incriminate the person, then an answer given or a document or information produced during such questioning may only be used for the purposes of an investigation or disciplinary process by the Investigating Committee or the Disciplinary Committee, in terms of the Act, and shall not be admissible as evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of Section 53, based on the false or misleading nature of the answer.

25. Access to seized documentation, information and/or items

A person, or his/her authorised representative, from whose premises documentation, information and/or items are taken may, during normal office hours and under the supervision of the Investigating Committee Chairperson, access – for the purpose of examining, copying and/or making extracts – the documentation, information and/or items seized.

The access referred to above must be on no less than 48 hours written notice on business days to the Director Investigations.

The notice requesting access to seized documentation, information and/or items must identify the documentation, information and/or items sought to be accessed and the purpose of such access.

Access will be given at a time and venue so determined by the IRBA.

26. Return of seized documentation, information and/or items

The Investigating Committee Chairperson must ensure that any documentation, information and/or items taken from the premises is returned to the person in charge of the premises when:

- a) It becomes apparent that the seized documentation, information and/or items are not necessary for the purpose of the investigation and/or any subsequent disciplinary processes;¹⁴
- b) The retention of the documentation, information and/or items is no longer necessary for the purpose of the investigation and/or any subsequent disciplinary processes; and/or
- c) The investigation and/or any subsequent disciplinary proceedings have been finalised.

Notwithstanding the above, the documentation, information and/or items seized need not be returned, if it is not in the best interest of the public or any member of the public for the documentation, information and/or items to be returned.

¹⁴ See the judgement in *Ndabeni v Minister of Law and Order and Another 1984 (3) SA 500 (D)*.

ANNEXURE 1

**CERTIFICATE OF AUTHORITY TO CONDUCT A SEARCH AND SEIZURE
ISSUED IN TERMS OF SECTION 48A(2) OF THE AUDITING PROFESSION ACT 26 OF 2005,
AS AMENDED BY ACT 2 OF 2015 AND ACT 5 OF 2021 [THE ACT]**

This certificate authorises _____,

with ID number _____ (authorised person), to:

a) Enter, in terms of Section 48A(1) of the Act, the premises that are located at:

(premises), with the consent of the person apparently in charge of the premises;

b) For the purpose of searching for and seizing any documentation, items and/or information that is considered relevant to an investigation of improper conduct against:

_____ in relation to:

c) Exercise any powers contemplated in Section 48A(7)(a-c) and (8) of the Act while performing a search and seizure;

d) Question, in terms of Section 48A(10), any person found at the premises on any issue relating to the investigation and/or search and seizure; and

e) In the event of the person apparently in charge of the premises refusing to consent to the search and seizure, to approach the IRBA Legal Department for the purpose of initiating appropriate processes to obtain a warrant of search and seizure, as contemplated in Section 48B of the Act.

CHAIRPERSON OF THE IRBA INVESTIGATING COMMITTEE

DATE: _____

ANNEXURE 2

CONSENT TO SEARCH AND SEIZURE

Granted in terms of Section 48A(1)(a) of the Auditing Profession Act 26 of 2005, as amended by Act 2 of 2015 and Act 5 of 2021

I, the undersigned,

(Full names)

(Identity number)

In my capacity as:

(For example, the person in control of the business premises, or the occupant of the private residence premises)

do hereby consent that _____ and/or any persons assisting him/her, may enter the premises, being _____, and search same for any information, documentation and/or items that are relevant to an investigation currently being conducted by the IRBA against _____ in relation to _____ and to seize all information, documentation and/or items considered relevant to such an investigation, including, operating any computer system that is available at the premises, for the purpose of searching for and seizing relevant information.

I confirm that I have been duly advised of my right to refuse access and, notwithstanding such right, consent to the search and seizure freely, without any form of undue influence and/or duress.

SIGNED ON THIS _____ DAY OF _____, 20_____.

AS WITNESS:

Name

Signature

INVENTORY/RECIPT OF SEIZED DOCUMENTS OR ITEMS
Issued in terms of Section 48A(7)(c)

No.	DESCRIPTION OF DOCUMENT OR ITEM SEIZED	NATURE OF DOCUMENTS OR ITEMS ¹⁵	COMMENT
1.			
2.			
3.			
4.			
5.			

I, _____,
having been duly authorised to conduct a search and seizure at the premises located at _____, confirm that following a search, I seized the above listed information, documentation and/or items from the premises.

SIGNATURE: _____

DATE: _____

I, _____, being _____ (capacity), confirm that the search and seizure was conducted in my presence and that I have verified the documents and/or items listed above as documents and/or items seized by the authorised person during the search and seizure process. I also confirm receipt of a copy of this inventory list.

SIGNATURE: _____

DATE: _____

¹⁵ Examples are paper records, laptops, USBs, etc.